



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case: 11-03023
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Department Counsel
For Applicant: *Pro se*

06/06/2012

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the Government's security concerns raised under Guideline F, Financial Considerations and Guideline E, Personal Conduct. His eligibility for a security clearance is granted.

On July 8, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guidelines for Financial Considerations and Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after September 1, 2006.

On January 23, 2012, Applicant answered the SOR in writing (AR) and elected to have a hearing. On February 23, 2012, DOHA assigned the case to me. On March 23, 2012, DOHA issued a Notice of Hearing, setting the case for April 18, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through C into evidence without objection. DOHA received the hearing transcript on May 1, 2012.

Findings of Fact

In his Answer, Applicant admitted the allegations contained in Paragraphs 1.b and 2.b of the SOR. He denied the allegations contained in Paragraphs 1.a and 2.a. His admissions are incorporated into the findings of fact herein.

Applicant is 54 years old and separated from his wife since 2006. They have three adult children, ages 30, 28, and 26. After graduating from high school, Applicant attended college and completed two years in the Air Force ROTC program. He graduated in spring 1980 and entered the Air Force the following October. He is a combat veteran. He completed a master's degree in business administration in 1992. In 1995 he became a squadron commander. The Air Force selected him to attend the Army Command and General Staff College. He received a diploma from the Air War College – Distant Learning Program in August 1998. He earned several Defense Meritorious Service awards.

In November 2000 Applicant retired from the Air Force as a Lieutenant Colonel (O-5). He declined a full Colonel position because of family issues and a desire to settle in one location. He has held a security clearance since he was 22 years old. He had a Top Secret and Sensitive Compartmented Information clearance until it was recently revoked. (Tr. 8.)

After leaving the Air Force Applicant took a position with a company that supports the military, including a project with the DoD and the intelligence community. In July 2002 he became a director of defense analysis for a startup company where he stayed until February 2003. He then assumed a position with a defense contractor in his home state. He worked in its business development division. Applicant stayed there until March 2006 when he left for a position as a business development manager with a large defense contractor in another state. He remained there until November 2009. (GE 1.)

In early 2006 Applicant and his wife separated and contemplated divorce. They experienced marital difficulties for many years and decided to live apart. He relocated for the position with the large defense contractor. He and his wife attempted to sell their home but were unable to do so because of the depressed real estate market conditions. He continued to support his wife and college age children, and pay his living expenses. He deposited money into a joint account and his wife agreed to pay the mortgage and ongoing bills. (Tr. 32.) In late 2006 he learned that she stopped paying the mortgage

and other bills. (Tr. 36.) By that time, he had accumulated additional debt, including about \$50,000 in mortgage penalties and fees. (Tr. 40, 46-47.)

In January 2009 Applicant and his wife filed a Chapter 13 bankruptcy. In February 2009 he filed a payment plan for \$308,000 with the court. The plan included approximately \$100,000 on a first mortgage, \$142,000 on a home equity loan, a \$21,000 car loan, credit card debt, and student loans for his children. (AR; Tr. 41.) On March 17, 2009, he made his first monthly payment of \$3,500 into the plan. On October 17, 2009, the monthly payment increased to \$5,400. Applicant has consistently made his payments as documented in AE B. As of March 14, 2012, he has paid \$184,762 into the plan. (AE A.) He will complete the payments in April 2014. (Tr. 49.) His monthly net income, including his Air Force pension, is \$10,000. After deducting the bankruptcy payment and giving his wife money for her expenses, he has approximately \$2,000 a month for his living expenses. (Tr. 49, 79.) His wife does not work. They recently filed for divorce.

In response to a question in "Section 13C: Employment Record" of his July 2010 e-QIP, Applicant disclosed that he was fired from a position on November 9, 2009. He wrote:

I used Corporate Charge Card for Personal charges. I was separated (sic) from my wife and her lawyer requested copies of my personal credit card charges, so I used [the company's] corporate Charge card to hide my current charges from my wife's lawyer. The balance was always paid. I turned myself into my supervisor and VP of [the company's] operation . . . and was subsequently fired for not following a [company] Policy. . . I knew this was wrong. (GE 1 at 25.)

In his AR to the SOR, Applicant admitted that he used his corporate credit card for personal expenses from 2006 to mid-2009. He acknowledged that he breached company policy. He noted that sometime after he moved out of the house in early 2006, his wife started divorce proceedings. At one point his wife's lawyer requested, by letter, information regarding his personal expenses by letter. He did not respond to the letter because he did not want to disclose any evidence that he had a girlfriend, although his wife knew. He never received a subpoena for the information. (Tr. 51.) Ultimately, he did not need to respond to the letter because his wife cancelled the divorce proceeding after she had a psychiatric breakdown. (Tr. 63; AR.)

During that time Applicant routinely placed \$300 or \$400 of personal expenses a month on the corporate credit card. (Tr. 84.) On occasion his balance was \$3,000. (Tr. 70.) He normally paid the balance every month. (Tr. 37.) He was late once in 2007 and once in 2008. (Tr. 60, 83.) When a payment was late, the company notified Applicant's supervisor. After being advised of the problem in 2007 and 2008, his supervisor advised Applicant to pay the card in full or the credit card would be canceled. (Tr. 58.)

In spring of 2009, Applicant had a \$5,600 balance on the card. He anticipated receiving a \$10,000 income tax refund that he intended to use to pay the card. (Tr. 59. 67.) Instead he received a \$1,200 refund, which he nonetheless applied to the balance. Knowing that he could not pay off the card, he notified the vice president of the company of the problem and requested more time to pay the bill in full. (Tr. 67.) The vice president advised him to promptly pay the card because failure to do so could result in a termination. Up to that point, Applicant was unaware that he could be terminated for his actions. (Tr. 55.) He borrowed money from his parents and paid the bill and did not misuse the card again. (Tr. 56.)

While testifying, Applicant acknowledged that it was wrong to use the card for personal expenses, but stated that he did not realize the seriousness of the conduct. (Tr. 54.) He knew it was his responsibility to pay the card. (Tr. 60.) He denied that he ever received a written warning about misusing the credit card. (Tr. 53.) He received outstanding performance evaluations while at the company. (Tr. 61.) He also testified that "I think I made a mistake of, you know, trying to hide my personal expenses from my wife's lawyer, who I though was a little ruthless." (Tr. 87.)

On December 7, 2009, a month after the termination, Applicant returned to his previous employer. (Tr. 35.) He told his employer of the termination and reason underlying it. Since starting this position, he has used his corporate credit card without problems. Initially, the card had a \$5,000 spending limit, but now has a \$50,000 limit. (Tr. 75-76.)

Two former colleagues wrote letters on Applicant's behalf. One colleague worked with Applicant from 2006 to 2009 and is aware Applicant's termination. He was the technical lead on a project for which Applicant was the leader. They "were successful in developing new specialized combat capabilities supporting our warfighters. [They] worked side by side, day and night, working these programs, trying to get them to [the Middle East] as quickly as possible." He admires Applicant's trustworthiness, ability and "passion to provide our nation's warfighters with the best tools which industry can develop." (AE C-1.)

The other former colleague, an electrical engineer with many years of experience in the aerospace field, also worked with Applicant from 2006 to 2009. He is aware of the termination. He expressed confidence in Applicant's ethics and character and strongly endorses Applicant's request for a security clearance. He wrote:

From specialized laser communications, to developing special wind measurement devices so DoD snipers can hit targets at very long ranges, [Applicant] has led programs and their teams. He puts Government interests first and has made this clear through his actions to all team members. . . With my over 30 years of industry experience, his character stands above. (AE C-2.)

Applicant's estranged wife wrote a supportive letter on his behalf. She has been "a witness to [Applicant's] upbringing within a family that not only was an example of patriotism but also helped grow his patriotism." (AE C-3.) His uncle was a fighter pilot who died in a plane crash serving his country. "[Applicant's] primary goal was to serve honorably in the US Air Force, second only to family. He accomplished this because he was decorated and [promoted] below the zone." (AE C-3.) She noted that when they filed for bankruptcy they wanted to pay 100% of the monies owed to creditors, and not limit it to the required 80% by law. (AE C-3.)

Applicant testified candidly and remorsefully. He expressed embarrassment over his conduct. He recognized his mistake in misusing his corporate credit card as a means of hiding his personal expenses from his wife's former lawyer. (Tr. 87.) He has learned from this experience. (Tr. 74.) His personal life has improved and his financial life is "on track." (Tr. 86.) He and his wife are going through an amicable divorce, and each of them has formed a new relationship. (Tr. 87.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 set forth the security concerns pertaining to Financial Considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes three conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant was unable to resolve a large amount of delinquent debt that began accumulating in late 2006 until he filed a Chapter 13 bankruptcy in January 2009. The evidence supports the application of AG ¶¶ 19(a) and (c). Applicant acknowledged that he knowingly breached a company policy regarding the use of corporate credit cards from 2006 to spring 2009. AG ¶ 19(d) also applies.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns under this guideline. AG ¶ 20 includes four conditions that could mitigate the security concern arising under this guideline:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties began in 2006 as the result of his strained marital situation, subsequent separation, and inability to sell his house in a depressed market. Those were unforeseen circumstances, beyond his control. He did not adequately address the financial repercussions until January 2009 when he and his wife filed bankruptcy. Hence, AG ¶ 20 (b) has partial application.

In March 2009 Applicant made his first payment into the Chapter 13 repayment plan. He has consistently made monthly payments since then. He will complete those payments in April 2014, about two more years. The evidence indicates that the financial issues are under control, triggering the application of AG ¶ 20 (c).

Applicant chose to pay the creditors in full, rather than the 80% permitted by law. That decision demonstrates a good-faith effort to repay his creditors and supports the application of AG ¶ 20 (d).

Applicant misused a corporate credit card from 2006 to 2009, while separated from his wife, contemplating divorce, and experiencing financial difficulties. For the past three years, he has been resolving his delinquent debts. He and his wife are participating in an amicable divorce. The circumstances underlying his previous misconduct are unlikely to recur, given his current personal and financial situation. In addition, he has successfully worked for another employer since December 2009 and not violated its corporate credit card policies. AG ¶ 20 (a) has application.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified information.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

From 2006 to mid-2009, Applicant violated his employer's rules regarding the use of a corporate credit card. The evidence raised the above disqualifying condition.

AG ¶ 17 includes two conditions that could mitigate security concerns arising under this guideline:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The evidence supports the application of AG ¶ 17 (d). Applicant acknowledged his wrongful behavior in 2009 and has not violated any of his current employer's rules or policies related to the use of a corporate credit card. Today, he and his wife are in the process of obtaining an amicable divorce and moving on with their lives, and his debts are under control. Hence, the stressors and circumstances contributing to his misconduct are substantially reduced and unlikely to recur.

Applicant disclosed to his current employer the basis for his November 2009 termination. Colleagues from his former company are aware of the reason he was terminated. His family is aware of the misconduct. He has complied with his current employer's policy regarding the use of a corporate credit card since December 2009. The evidence supports the application of AG ¶ 17 (e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is a 53-year-old man, who honorably and impressively served this nation for 20 years while in the Air Force. He subsequently continued that service while working for defense contractors since late 2000 to the present. His colleagues have strong and respectful opinions about his trustworthiness and ethics. His current employer obviously values him as an employee, given the fact that it hired him within one month of learning of his termination, two and a half years ago. His wife wrote a supportive letter, indicating that their prior marital differences are resolving as they participate in an amicable divorce. All of these facts are given great weight in deciding this case.

For about two and a half years, 2006 to mid-2009, Applicant used his corporate credit card for personal expenses. Although he normally paid the credit card in full at the end of each month, his supervisor advised him once in 2007 and again in 2008 to pay his overdue bill or the card would be canceled. In spring 2009, Applicant, personally and candidly, informed the company's vice-president that he would not be able to pay the credit card in full, prior to the situation coming to the attention of his supervisor. When told that he could be terminated for his misuse, he borrowed money and paid it. He never misused the card again. That fact is also given some weight.

Applicant remorsefully admits his bad judgment and takes full responsibility for his conduct in misusing the corporate credit card. He acknowledged that he made a mistake in using the corporate credit card to hide personal expenses from his wife's attorney. He is a man devoted to this country, as evidenced by his long history of military service and patriotic attitude during the personal appearance. These facts are also given substantive weight.

Based on the facts referenced under the mitigating conditions for both guidelines, and the facts mentioned under this whole-person analysis, the likelihood of a recurrence is minimal. This man exercised poor judgment for about two-and-a-half years, but that conduct is outweighed by the above evidence, plus the fact that the last incident of credit card misuse occurred about three years ago.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

In light of all circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge