



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



In the matter of:)	
)	
)	ISCR Case No. 11-09321
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. Esq., Department Counsel
For Applicant: *Pro se*

12/11/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 31, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 24, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 22, 2012. DOHA issued a notice of hearing on November 5, 2012, scheduling the hearing for November 28, 2012. The case was reassigned to me on

November 26, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE C through E and admitted without objection. DOHA received the hearing transcript (Tr.) on December 7, 2012.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 2000. He seeks to retain his security clearance, which he has held since 2000. He has an associate's degree. He married in 1986 and divorced in 2008. He has two children from the marriage, ages 22 and 14. He remarried in 2010. He has a 16-year-old stepchild, and he and his wife have a child who is not yet two years old.¹

Applicant started struggling financially after his divorce. He admitted that "poor spending decisions" also contributed to his financial problems. In about September 2009, he contracted with a debt settlement company. He followed the company's advice to stop paying his debts, so that the company could negotiate settlements with his creditors. He enrolled four debts in the company's debt settlement program. He paid the company \$4,500 for their services. He settled a department store credit card account in about February 2010 for \$759. He had two accounts with the same bank, with balances of about \$9,950 and \$7,200. He settled the debts for \$4,500 and \$3,320. The settlement payments were completed in January 2011.²

Applicant discontinued the debt settlement program before the last debt, which had a balance of about \$31,186, was resolved. His wife went through a difficult pregnancy with their child and had to go on disability in August 2010. She stopped working after the birth to care for the child full time. Applicant could not afford the debt settlement program payments on his salary alone.³

In September 2012, Applicant contacted the law firm that was representing the creditor for the fourth debt. The law firm indicated that the balance had grown to \$41,909. Applicant agreed to pay the creditor \$500 per month for two months, followed by \$200 payments for four months. After six months, Applicant and the creditor will discuss additional settlement and payment options. Applicant made the required \$500 payments on October 30, 2012, and November 30, 2012.⁴

¹ Tr. at 16-18, 27-28, 32-33; GE 1, 3.

² Tr. at 14-21, 33, 37-39; Applicant's response to SOR; GE 3-8.

³ Tr. at 17-21, 33-36; Applicant's response to SOR; GE 3.

⁴ Tr. at 22-26, 33-36, 39-40; Applicant's response to SOR; AE A, C-E.

Applicant received advice from a financial counselor. He stated that he is now in better shape financially. His wife has returned to work. He credibly testified that he intends to continue to address the remaining delinquent debt, either through payment or settlement.⁵

Applicant submitted a number of character letters. The authors praised his conscientious handling of classified information, excellent job performance, work ethic, honesty, responsibility, determination, reliability, trustworthiness, leadership, dedication, professionalism, and integrity.⁶

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 list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in 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 "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

⁵ Tr. at 24, 28-30, 34-37, 40-44.

⁶ AE B.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 problems were caused by his divorce and "poor spending decisions." He realized he needed help, and he contracted with a debt settlement company. He followed the company's advice to stop paying his debts, so that the company could negotiate settlements with his creditors. He paid the company \$4,500 for their services. He settled three of his four debts for \$8,579. He had to drop out of the debt settlement program when his wife had a difficult pregnancy and had to stop working. She has returned to the workforce, and he has instituted a payment plan with the creditor. He still owes more than \$40,000, but he credibly testified that he intends to pay or settle the debt.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's divorce was beyond his control; his spending decisions were within his control. I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶ 20(a) is not completely applicable because Applicant is still in the process of resolving his last debt.

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.

Under 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence, his stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations security concerns.

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
Subparagraph 1.a:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge