



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



In the matter of:

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ISCR Case No. 11-11977

Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Robert B. Nealon, Esq.

06/06/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated security concerns raised under the guideline for financial considerations. His request for a security clearance is granted.

Statement of the Case

On December 12, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In his Answer to the SOR, notarized on January 17, 2013, Applicant admitted the 16 allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 9, 2013, DOHA issued a Notice of Hearing, and I convened the

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

hearing on April 30, 2013. I admitted five exhibits offered by the Government (GE 1 - 5), and seven exhibits offered by the Applicant (AE A - G). I granted Applicant's request to submit additional documents after the hearing. I timely received one document, which I admitted as AE H. Applicant's cover letter and Department Counsel's memorandum, noting no objection, are marked as Hearing Exhibit (HE) I. DOHA received the transcript on May 8, 2013.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 56 years old. He has been married for 35 years and has two adult daughters and four grandchildren. He graduated high school, and took about two semesters of college credits. He has been employed full-time with the same defense contracting company since 1978. Currently, his position is engineering designer. Applicant received his first security clearance in 1978, and believes he was most recently cleared at the secret level in 2009. (GE 1, 2; Tr. 21, 25-26, 59)

Applicant's daughters are 27 and 30 years old. His younger daughter is married and living on her own. His oldest daughter, along with her four children, lives with Applicant.² She has chronic pancreatitis, as well as emotional problems, and is on medication for both. She is unable to work and receives monthly financial assistance through a social services agency. Her four children range in age from 7 months to 14 years. Because of his daughter's issues, Applicant and his wife have legal custody of two of her children, Applicant's 14-year-old and 9-year-old granddaughters. Applicant has supported his daughter and grandchildren since about 2005 or 2006. Applicant's youngest daughter attended college from 2004 to 2008. Sometime after graduating in 2008, her loans were no longer deferred. Applicant pays several of these loans for his daughter. He pays \$440 monthly. (GE 1, 2; Tr. 21-25, 33-34, 59-60, 76-77)

In his security interview, Applicant stated that before 2006, he was financially stable. However, in 2006, his wife lost her full-time job and was unemployed for about seven months. She had worked a full-time job, and a second part-time job, and had contributed about \$40,000 to the family's annual income. Applicant estimates they lost about \$20,000 while she was unemployed. In about 2007, Applicant's company reduced the amount of overtime hours available, and then ended it, as the economy declined. Applicant had worked overtime hours regularly during his years at his current employer. It contributed about \$600 per week to his income, or about \$30,000 annually, and he relied on this additional pay to meet his expenses. Applicant lives in an area with a high cost of living. With his wife's unemployment, and the lack of overtime work, Applicant

² Applicant noted in his November 2012 interrogatory response that he supports "three live-in grandchildren" because he forgot to include his fourth grandchild, who had been born recently. Applicant currently supports four grandchildren. (GE 2; Tr. 21, 86)

lost approximately \$50,000 income between 2006 and 2007 or 2008, and his bills became delinquent. (GE 2; Tr. 27-31, 33-34, 73-76)

When the SOR was issued, 40% of Applicant's listed debts were past due, but had not been charged off or sold to a collection agency. Despite the downturn in his income, he has been paying on several debts, which do not appear in his SOR. Applicant paid \$75 monthly on a \$2,249 judgment filed in March 2009, until it was paid off in January 2012. His mortgage loans and two home equity loans are up-to-date, as well as the student loans he pays for his daughter. He has been paying on two automobile loans, and completed payment on one of them in about spring 2012. (Answer; GE 2; AE D, G; Tr. 36-38, 41, 61, 90-92)

In early 2013, Applicant consulted an attorney to evaluate his financial situation. He recommended filing for bankruptcy protection. In March 2013, as part of the bankruptcy process, Applicant completed in-person financial counseling conducted by a consumer credit counseling agency. The agency evaluated applicant's income and debts, including debts that appear in the SOR. The evaluation showed that the amount needed to cover monthly payments to each creditor would be \$865. The counselor also prepared a list of Applicant's expenses, and his remainder after expenses, and concluded Applicant did not have sufficient income to pay \$865 per month and still meet the living expenses for his family. The counselor recommended he file for bankruptcy protection under Chapter 7. (AE E; Tr. 31, 35-42, 63-64, 78-79)

In order to pay the bankruptcy filing fee, Applicant used his 2012 income tax refund. In 2012, Applicant had purchased legal insurance through his employer. He consulted several attorneys about his security clearance hearing, and was able to retain one using his legal insurance. (Tr. 43-47)

Applicant earns approximately \$86,000 gross per year. His November 2012 personal financial statement (PFS) shows that he and his wife earn \$7,523 net per month or approximately \$90,000 net annually. Applicant's monthly outlay includes expenses of \$3,694, and debt payments of \$3,344, leaving a monthly net remainder (MNR) of \$485. Among his monthly payments, Applicant listed his mortgage, two home equity loans, the SOR debts at 1.a, and 1.b/1.p, and his daughter's student loans. In his interrogatory response, Applicant noted, "If accounts not able to pay were shown my monthly remainder would be a negative amount." (GE 2; AE C; Tr. 31-33, 86-90)

The debts listed in the SOR total approximately \$48,000. Applicant is paying or has resolved three SOR debts, totaling \$27,801: the largest SOR debt, a \$15,000 judgment, which is now satisfied (1.b/1.p); and a judgment (1.a), on which he has been making payments. Applicant's delinquencies appear in his credit reports of May 2011 and September 2012. (GE 4, 5) The status of the SOR debts follows.

JUDGMENT: 1.a – PAYMENT PLAN. Applicant provided documentation that he has been paying \$50 per month on this credit card debt of \$2,717 since January 2010, when

the judgment was filed. As of December 2012, the debt had been reduced to \$1,698. (GE 2; AE A; Tr. 65-67)

JUDGMENT: 1.b (\$9,537, judgment; 1.p \$15,547, garnishment) - SATISFIED.

Applicant opened a personal loan account in 2006. The creditor filed for a judgment in 2008. Applicant stated in his Answer and his testimony that he had been paying regularly to this creditor since 2008. An attorney for the creditor was handling Applicant's payments at the creditor's local office. However, in 2010, Applicant learned that the creditor filed a request for garnishment of Applicant's pay. He contacted the attorney, who verified that he had been paying, and attempted to stop the garnishment. However, he was told the processing had been completed and the garnishment would remain in place. The record evidence supports Applicant's claim that allegation 1.b and 1.p refer to the same debt. Department Counsel provided a Judgment Creditor's Monthly Report showing the garnishment was composed of the judgment principal of \$9,527, plus added interest, attorney's fees, and court costs, for a total of approximately \$14,500. Applicant provided evidence that the debt was satisfied on October 18, 2012. His 2013 credit report does not list the judgment. (Answer; GE 2-5; AE B, F; Tr. 47-51, 66-67, 95-96)

MEDICAL: 1.d, 1.e, 1.n - The three medical debts in the SOR total \$602. Two debts for \$412 and \$95 (allegations 1.d and 1.n) are not in Applicant's bankruptcy paperwork. The remaining debt of \$95 (allegation 1.e) is included in Applicant's bankruptcy. (AE H; Tr. 68-69)

RETAIL: 1.f, 1.g, 1.h, 1.i, 1.k, 1.m - These debts relate to credit cards for retail purchases. They total \$14,715, and appear in Applicant's bankruptcy petition. (AE H; Tr. 69-71)³

COMMUNICATIONS ACCOUNT: 1.o - This \$185 bill is for a land line. In order to cut back on expenses, Applicant instructed the company to change to a minimal plan by eliminating his outgoing land-line calls. The company continued to charge him for full land-line service. The debt is included in Applicant's bankruptcy paperwork. (AE H; Tr. 71-72)

CREDIT CARDS: 1.j, 1.l - Allegation 1.j relates to a gasoline company card with a balance of \$2,238. Allegation 1.l is a bank credit card with a balance of \$2,432. Both debts are included in Applicant's bankruptcy petition. (GE 2, 5; AE H; Tr. 70)

MISCELLANEOUS: 1.c - Applicant failed to make the final payment to a pest control company because he disputed that the company provided the promised services. He did not dispute it formally, in writing. It is included in Applicant's bankruptcy petition. (AE H; Tr. 67-68)

³ Some of the accounts listed in the SOR appear in Applicant's bankruptcy petition under different creditors' names. For example, allegation 1.f, a retail store account, is listed in the bankruptcy under a collection agency's name with a new account number, --5574. (AE H)

Policies

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern 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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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. . .

Since about 2007, Applicant has accrued numerous delinquent debts. He has paid several, but many remain unpaid. Applicant's debts relate to the normal expenses of supporting a family, and do not reflect frivolous spending or other negative conduct. The record supports application of the following disqualifying conditions under AG ¶19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(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; and

(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.

Applicant's debts are both frequent and recent. However, they do not stem from negative conduct, but from his efforts to support a family of seven on a modest income. They do not cast doubt on his reliability, trustworthiness or judgment. AG ¶ 20(a) applies in part.

AG ¶ 20(b) concerns situations where applicants' debts become delinquent because of conditions that are beyond their control. A number of factors negatively affected Applicant's ability to meet his financial obligations. Applicant's oldest daughter has physical and mental problems that prevent her from maintaining employment. She and her four children moved in with Applicant in 2005 or 2006. As a result, Applicant and his wife have been supporting seven people. They also took legal custody of two of the four grandchildren. In 2006, Applicant's wife lost her job and their annual income decreased by about \$20,000. The following year, Applicant lost about \$30,000 in

annual income when his company reduced, and then eliminated, the overtime work he relied on to support his family. Because of these employment issues, Applicant lost \$50,000 in income between 2006 and 2007. His debts began to become delinquent. Applicant's youngest daughter's college loans, which had been deferred, became due in 2008. Despite this series of events, Applicant acted reasonably. He made regular payments on a judgment from 2009 until it was paid off in 2012. He has kept up payments on two automobile loans, and paid off one of them in spring 2012. He has made consistent timely payments on his mortgage loan, two home equity loans, and his daughter's student loans, and they are current. He was paying regularly on the largest debt in the SOR since 2008, and it only became a garnishment through the error of the creditor. That debt is now paid. AG ¶ 20(b) applies.

Applicant has taken steps to resolve his financial situation. He made payments and paid off several debts, and kept a number of significant obligations in a current status. He consulted an attorney about resolving his delinquencies. He also had a consumer credit counseling agency review his finances, and determine the amount that would be required to resolve his debts. However, the monthly payment would have left him without a monthly remainder. Both the attorney and the counseling agency recommended that he file for bankruptcy. Applicant provided evidence that he filed a petition for protection under Chapter 7. It includes the SOR debts, except for two debts that may have been omitted from his petition. They total about \$550 and are not a security concern. AG ¶ 20(c) applies.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was candid about his financial problems, and his testimony was credible and sincere. Despite a series of events that negatively affected his ability to pay his debts, he completed payments on several debts not in SOR. He kept his mortgage loans and student loan payments current. He sought help with his debts, but found that his income was simply not enough to support a family of seven in an expensive area of the country, and still pay the past-due debts. He followed professional advice to file for bankruptcy. In evaluating the whole person, I considered evidence of Applicant's good character, including his support of his adult daughter and four grandchildren, including the two for whom he was granted legal custody.

Overall, the evidence satisfies doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.p	For Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge