



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



In the matter of:)	
)	
)	
)	ISCR Case No. 12-02633
Applicant for Security Clearance)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On May 30, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 31, 2013. A notice of hearing was issued on August 5, 2013, scheduling the hearing for August 27, 2013. Government Exhibits (GX) 1-10 were admitted into evidence, without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant Exhibits (AX) A-T, which were admitted without objection. The transcript (Tr.) was received on September 4, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with the exception of ¶¶ 1.f, 1.h, 1.j, 1.l, and 1.n.

Applicant is a 48-year-old information analyst sponsored by a defense contractor. After high school graduation in 1982, he attended college for several years. Applicant served on active duty in the U.S. Navy from 1984 until June 2004 when he was honorably discharged. He first received a security clearance in 1984. (Tr. 48)¹ He started working on a project for a defense contractor in 2009, which lost funding in April 2011. He is currently unemployed.

Applicant and his wife married in 1985 and separated in 2008. The entire separation and divorce process was emotionally charged. The process proved to be very costly for Applicant. Applicant provided documentation from his attorney that supports the position that his wife's attorney exhausted all avenues to acquire as much financial support as she could, and any money that Applicant was paying to resolve debts, was redirected either to his wife or to legal fees. (AX K) The divorce was final in December 2011. (AX M) Applicant has four adult children from the marriage.

Since Applicant's retirement from the military, he has been unemployed on several occasions. His first unemployment lasted seven months right after his June 2004 retirement. (Tr. 51) Applicant was unemployed again from October 2007 until January 2008 and from November 2008 until February 2009, before his last position. (Tr. 52) The last unemployment occurred in April 2011. He was called back to work for about one or two months in 2012, but due to the security clearance investigation, he was released. In sum, since he retired from the Navy, Applicant has been unemployed for almost two years and three months.

Applicant credibly testified that the majority of the debts have resulted from the actions of his ex-wife during the marriage, separation and divorce, as well as periods of unemployment. According to his attorney: "Applicant's wife's inability to live within her financial means was a significant contributing factor to the dissolution of the marriage." (AX M) His wife refused to pay any marital bills. (AX K) During 2010-2011, Applicant was in court almost every month. During the same time frame, he was unemployed. Applicant credibly testified that he has applied for many positions and was even offered a position, but due to lack of a security clearance, he could not accept the position. (Tr. 107)

In 2006, when Applicant lived and worked in another location, he sent money home for his wife to pay the household bills, including the mortgage loan. He did not realize that she was not using the money to pay the bills. This resulted in Applicant's home going to foreclosure in 2007. (Tr. 65) Applicant's wife spent excessively, but did not pay any household bills. (AX M)

¹Applicant's security clearance was under investigation in 2007 for financial issues. The debts from the earlier period have been paid. (AX G)

The separation agreement and divorce decree provided that Applicant assume all marital debts. (AX L-M) He contacted the creditors at the time and began paying the debts. For instance, he made thousands of dollars in payments for the debt alleged in 1.a. until 2010. (AX B) His wife owed the debt for the boarding of her dogs, but would not pay. (Tr. 55) Finally, when he could not pay the debt, a judgment was filed for \$3,295 in late 2010. This judgment and other judgments from 2010 and 2011 remain unpaid because Applicant did not have any money to pay them. He exhausted his funds paying legal fees, and other debts. (Tr. 147)

Applicant made payments on the debts in the SOR from October 2009 until he lost his employment in 2012. He provided receipts and plan arrangements that he had agreed to honor. His debt consolidation plan (AX D) was in effect until his last unemployment. Applicant paid approximately \$5,000 to the debt consolidators that is still on account with them. He had to temporarily suspend the consolidation plan when his employment ended in 2012.

The SOR alleges 17 delinquent debts, including judgments, collection accounts and charged-off accounts totaling approximately \$50,000. Several allegations (1.l, 1.m, and 1.n) are duplicate accounts. (Tr. 94) The debt alleged in SOR 1.f (\$1,780) was paid in 2008. (AX A and E)

As noted, Applicant paid many other bills and legal fees during the period of 2007 and 2008. He paid spousal support of \$500 a month. He cosigned a car note for his daughter and she did not make the car payments (Tr. 60) When the car was repossessed and he learned of the situation, he agreed to add the deficiency amount of \$6,532 to his delinquent debt. (SOR 1.b) (AX C) He paid for two households. He provided for his one daughter.

The 2009 debt consolidation plan included the four largest debts that are alleged in the SOR. These are ¶ 1.b, 1.c, 1.e, and 1.k for a total of almost \$27,000. These debts were not old, but were reduced to judgments.. Applicant will resume the consolidation plan when he returns to work.

Some smaller debts that were the result of Applicant's ex-wife's irresponsible financial behavior have not yet been paid. These include SOR ¶ 1.d, 1.h, and 1.j.. Applicant has accepted responsibility for all the marital debts. When he thought that his ex-wife was going to file bankruptcy, he accepted responsibility. He wants to pay any legitimate bill that is in his name. Some of these debts were unknown to him until the security investigation.

Applicant has not yet paid the debts alleged in SOR ¶ 1.k, 1.o, 1.p, and 1.q. These will be addressed when Applicant starts employment. Applicant credibly testified that if he had not been unemployed, the debts would have been addressed and paid.

Applicant's net monthly income is approximately \$491. Before May 2012, he received a retirement pension of approximately \$1,500. (AX S and T) His ex-wife had the court garnish his retirement pay (she is awarded 46%) and a lien is on his bank

account, which has about \$3,000. (AX R) Applicant has incurred no new debts. He has no car. He has a proposed budget to use when he returns to work. He now lives with his fiancée, and due to unemployment, he is not able to contribute to household expenses. Applicant's last position paid him approximately \$101,878 annually. (Tr. 159)

Applicant acknowledges that he had delinquent debts after retiring from the Navy, but he has paid those debts from 2005 and 2006. (GX 2) The delinquent bills stemmed from his unemployment. His separation, in combination with the unemployment, exacerbated his financial status. At one time, he was paying for two households. He paid large legal bills for the court proceedings and legal advice. He had to be represented each time his wife made another motion to the court for spousal support. He believes that he paid almost \$25,000 in legal fees. He did not seek financial counseling because he never had delinquent debt until he lost his job in 2011.

Applicant's plan is to resume paying his debts and renew the inactive contract with the debt consolidation company. When he returns to work with the company that is sponsoring him, he can make payments to the four creditors that are listed in the agreement. They were the only delinquent debts at the time.

Applicant's former employer, who has known him for about three years, testified that Applicant is a stellar employee. He is a helpful, respectful, and knowledgeable person who is well liked by his peers and other employees. He has never received a reprimand. (Tr. 25) He considers him a truthful and candid person who has had some financial issues, but he is a man of ethics and integrity. Applicant has been a key employee on several projects. (Tr. 27) The witness stated that he had to release Applicant from his position due to a lack of funding. (Tr. 22) When Applicant returned to the company to work, Applicant's security clearance was under investigation for financial considerations security concerns, and Applicant was again released. His employer knows about the combative and costly divorce that Applicant experienced. (Tr. 26) His former employer stands ready to give Applicant a position on a new contract when the security issue is resolved. (Tr. 27)

Applicant's former hiring manager, who has known him for about nine years, describes Applicant's performance as exemplary. He presents well and works to the client's satisfaction. He was promoted several times for his accomplishments. Applicant is reliable, credible, and motivated. (Tr. 36)

A close friend, who was a human resources specialist, describes Applicant as a man whose character is outstanding. He considers Applicant a good friend who is aware of Applicant's nasty divorce and financial difficulties. He stated that Applicant was handling his financial difficulties until his recent unemployment. (Tr. 46)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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

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

Applicant admits that he has delinquent debts, his vehicle was repossessed, and that his home went to foreclosure in 2007. He assumed all the marital debt from his 2011 divorce. After experiencing unemployment, Applicant could not maintain payments on any debts. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

- (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;

⁷ *Id.*

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant owned a home and was gainfully employed. His wife did not pay the household bills or the mortgage loan. As a result of these actions, Applicant's home went to foreclosure in 2007. He and his wife separated in 2008. A protracted, expensive separation and divorce resulted in Applicant assuming the marital debts as well as his own. He paid his legal bills and focused on paying everything that he could. However, with the recurring unemployment issues, he had to stop paying on his 2009 consolidation plan. He also could not afford to pay on any other debts due to his limited income. Applicant acted responsibly given his limited financial resources by actively seeking employment and reducing expenses. When he was working, he made good-faith efforts to reduce the indebtedness toward the debts alleged in the SOR. He also paid almost \$25,000 in legal fees. When he was able, he paid his delinquent debts. He has a track record of paying his bills when he has employment. He has not acquired any new delinquent debt. AG ¶¶ 20(b), and (d) apply.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 48-year-old analyst with an excellent employment record. He served in the U.S. Navy and was honorably discharged in 2004. He obtained a security clearance in 1984. His former employer stands ready to offer him a position, and is aware of the financial issues. The debts are not a source of vulnerability for him.

Applicant has not paid on any of his debt or judgments in the past two years due to the divorce and unemployment. He does not have the income. Granted, he does have about \$50,000 in debt or judgments to repay. He credibly testified that he will resume the plan for repayment when he is employed. When he had earlier debts in 2006 and was investigated, he paid the delinquent debts. He paid one of his SOR debts in 2008. He paid many of his legal fees. His retirement has been garnished and a lien placed on his bank account. He is not required to be debt free. All that is required is that an applicant act responsibly given his circumstances, and develop a reasonable plan for repayment, accompanied by concomitant conduct. Applicant has made serious efforts to effectuate his plan. He has established a track record of payment that he can maintain comfortably when he is employed.

Applicant was candid at the hearing and credible in his testimony. His recurring unemployment, separation, and divorce were events beyond his control. He acted reasonably under the circumstances. I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. He disclosed his financial situation on his security clearance application. He has held a security clearance without incident. Applicant's financial problems are not the result of irresponsible, reckless, or negligent behavior. The debt is reasonable given the length of unemployment and the acrimonious divorce. Applicant has articulated a reasonable plan for dealing with the delinquent debt.

Applicant met his burden of proof in this case. Clearance is granted.

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-q:	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 grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge