



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-04665
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

June 16, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application, on June 1, 2004 (Government Exhibit 1). On July 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant filed an Answer to the SOR on August 2, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on August 24, 2007. The case was originally assigned to another Administrative Judge on August 29, 2007. I received the case assignment on December 13, 2007. Due to the fact that the Applicant is permanently located in a foreign country, the decision was

made to hold the hearing via video tele-conference. DOHA issued a notice of hearing on February 6, 2008, setting the hearing for February 25, 2008. Due to mechanical difficulties, the hearing was not held on that day.

The hearing was convened on March 13, 2008. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through K, without objection. The Applicant requested that the record remain open for the submission of additional documents. Given his location overseas, the record was held open until March 31, 2008, for the receipt of additional matters. The Applicant submitted Applicant's Exhibits L, M and N in a timely fashion, all of which were received without objection.¹ DOHA received the transcript of the hearing on March 24, 2008. The record closed on March 31, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 43, divorced and is a retired non-commissioned officer in the Armed Forces. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

Guideline F, Financial Considerations

The Applicant retired from the Armed Forces in May 2003 as an E-6. He began work as a full-time employee for a Defense contractor in June 2003.

The Applicant married his now ex-wife in August 2002. She turned out to be an ex-convict and a con artist. During their marriage, which ended in April 2004, she ran up the bills described in the SOR, as well as others. She also deceived the Applicant concerning an alleged pregnancy of hers. Eventually, she was arrested in one State on a parole violation from another State, was convicted, and her present whereabouts are unknown. (Transcript at 43-45; Applicant's Exhibit H.)

Beginning in February 2004, the Applicant began paying off his past-due indebtedness. That month he paid off NCO Financial. (Applicant's Exhibit G.) In December 2004, he paid Beneficial. (Applicant's Exhibit F.) Other available records, including the Applicant's most recent credit report, dated February 26, 2008, show at least ten additional paid collection accounts. (Government Exhibit 2 at 18, 21, 24, 26-33 and Government Exhibit 9.) Since 2004, the Applicant has paid at least \$8,209.14 towards these additional accounts.

¹The Applicant submitted additional documentation after the date the record closed. These documents are attached to the record as Applicant's Exhibit O for Identification. This exhibit was not admitted into evidence and the documents were not considered in making this decision.

The Applicant testified that these payments were pursuant to his plan for resolving his past due indebtedness. He did not have the funds to pay all of the debts at once, but as he got funds together, he would contact a creditor and make an arrangement that he could immediately fulfill. (Transcript at 65-67.) As of the date the SOR was issued, according to all the information available to the Government at that time, the Applicant still owed four creditors.

Subparagraph 1.a. The Applicant admits that he owed approximately \$12,862.00 for a repossessed automobile that was purchased by his ex-wife. He began paying down this account in July 2007. (Transcript at 40-43, 45-48; Applicant's Exhibit B.) The Applicant successfully paid this debt for a negotiated amount (\$12,115.00) on March 24, 2008. (Applicant's Exhibits L, M and N.)

Subparagraph 1.b. The Applicant admits that he owed approximately \$10,075.00 to a credit union. This debt was related to a loan he took out to pay his ex-wife's indebtedness. The Applicant has been making payments on this debt with an allotment from his military retirement pay. (Applicant's Exhibit A.) The available records show that the credit union began crediting his account in December 2004. He has continued to make payments on this account by allotment. As of the date of the hearing he had paid at least \$2,150.00 on this account and still owed \$8,008.05. (Government Exhibit 2 at 19-20; Applicant's Exhibit C.) The Applicant testified that, once the debt in subparagraph 1.a. was paid off, he would increase the payments on this debt to \$2,000.00 a month until it was resolved. (Transcript at 49-53.)

Subparagraph 1.c. The Applicant admits that he owed approximately \$15,574.00 to the same credit union as subparagraph 1.b. This debt was related to a loan he took out to pay his ex-wife's indebtedness. The Applicant has been making payments on this debt with an allotment from his military retirement pay. (Applicant's Exhibit A.) The available records show that the credit union began crediting his account in October 2004. He has continued to make payments on this account by allotment. As of the date of the hearing he had paid at least \$3,400.21 on this account and still owed \$11,434.90. (Government Exhibit 2 at 16-17; Applicant's Exhibit C.) The Applicant testified that, once the debts in subparagraphs 1 and 2 were paid off, he would increase the payments on this debt to \$2,000.00 a month until it was resolved. (Transcript at 53-55.)

Subparagraph 1.d. The Applicant admits that he owed approximately \$438.00 for a cable bill. He paid this debt in full on May 10, 2007. (Applicant's Exhibit E.)

As of the date the record closed, he had paid \$18,103.21 towards the four debts in the SOR. Since March 2004 the Applicant has paid at least \$26,312.35 towards all of his past due debts. His current indebtedness stands at \$19,442.95. Finally, the Applicant testified that he is able to pay all of his current debts in a timely fashion and pay his past due obligations as discussed above. (Transcript at 48-49.)

Mitigation

The Applicant had a successful military career. He submitted documents that showed he was a respected non-commissioned officer. (Government Exhibit 2 at 6; Applicant's Exhibit J.)

The Applicant also submitted letters from supervisors and co-workers. They describe the Applicant as "very honest," and a "consummate professional." (Applicant's Exhibit I.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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 relating to the guideline 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(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant admits that he owed the debts set forth in SOR subparagraphs 1.a., 1.b., 1.c. and 1.d. The evidence is sufficient to raise this potentially disqualifying condition, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g. . . . divorce or separation), and the individual acted responsibly under the circumstances."

The Applicant was involved in a disastrous marriage with a convicted con artist who left him thousands of dollars in debt. While obtaining his divorce he also immediately went to work paying his past due debts off. As described at length above,

the Applicant had a plan to pay off his past due indebtedness and, for over four years, has been successfully fulfilling it. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

AG ¶20(c) applies if “there are clear indications that the problem is being resolved or is under control.” Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶20(d). The Applicant is able to pay his current bills and also pay close to \$2,000.00 a month towards the older debts. His past due indebtedness has been reduced from over \$45,000.00 to less than \$20,000.00. He has control over his current indebtedness and, for several years, has paid a substantial amount of money towards the arrearage. I conclude these potentially mitigating conditions 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 the 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) 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. The Applicant was involved in a bad marriage with a bad person. She left him deeply in debt. Rather than avoid it, he immediately began to pay his debts once he knew their full extent and has already paid a substantial amount towards them. He has a plan to pay all of his debts and is fulfilling it. He has behaved reasonably and appropriately in trying to resolve his debts, thereby AG ¶ 2(a)(6) applies. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

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

