

DATE: December 21, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-05148
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns raised about Applicant's history of financial indebtedness are mitigated. The larger debts were incurred as a result of two periods of unemployment in 2000 and 2002. Applicant has demonstrated a good faith effort to resolve his delinquent accounts. Clearance is granted.

STATEMENT OF CASE

On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated September 10, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to me on October 25, 2007. On October 25, 2007, a notice of hearing was sent scheduling the hearing for November 8, 2007. The hearing was held as scheduled. The Applicant waived the 15 day notice requirement provided in the Directive.² The government motioned to amend the SOR to add ¶¶ 1.n, 1.o, and 1.p. The SOR was amended without objection.³ The government offered three exhibits which were admitted as Government Exhibits (Gov) 1-3 without objection. Applicant called one witness and admitted 15 exhibits which were admitted as AE A - O without objection. The record was held open until December 10, 2007, in order to allow Applicant to submit additional documents. Applicant timely submitted an 18 page document that was admitted as AE P without objection. The transcript was received on November 20, 2007.

FINDINGS OF FACT

In his SOR response, Applicant admits to all of the allegations in the SOR. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 48-year-old man employed with a Department of Defense contractor who is applying for a security clearance. He has been with his current employer for approximately a year and a half. He has a bachelor's degree in engineering. He has held a security clearance since 1982.⁴ He married his wife in 1998. He and his wife have a child, age 2. His wife has four children from a prior marriage. Three of the children, ages 18, 15 and 13, reside with Applicant and his wife. They occasionally provide support to his wife's adult daughter, who recently separated from her husband.⁵

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² Tr. at 9.

³ Tr. at 10-12,

⁴ Tr. at 5-6.

⁵ Tr. at 52, 69-70; Gov 1, Section 15.

Applicant's financial problems were caused by two periods of unemployment. He was first laid off in March 2000 for approximately three months as a result of a company merger. In October 2002, he was let go due to the company downsizing.⁶

After he found full-time employment in October 2003, he attempted to resolve his delinquent accounts but found most creditors uncooperative when attempting to work out a payment agreement. The creditors wanted the debts paid off as quickly as possible. Attempts to resolve the accounts were placed on hold because Applicant was unable to meet the creditor's demands.⁷

In March 2006, Applicant accepted a position with his current company at substantially more pay. He sold his home at his previous job location and attempted to pay off some of his creditors; but they still wanted the debt paid off immediately.⁸ He purchased a new home at his new job location. Applicant admits that they over-extended themselves on the new house.⁹

On December 1, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in relation to his employment with the defense contractor. He listed his delinquent debts in response to Section 28: Your Financial Delinquencies.¹⁰ His subsequent background investigation revealed 16 debts, an approximate total of \$54,518. The debts include an \$8,000 debt owed to the IRS for tax year 2003 (SOR ¶ 1.a); a \$2,222 credit card account that was charged off in August 2003 (SOR ¶ 1.b); a \$22,732 credit card account placed for collection in January 2004 (SOR ¶ 1.c); a \$19,043 credit card account placed for collection in February 2004 (SOR ¶ 1.d); a \$295 gas station credit card account placed for collection in February 2004 (SOR ¶ 1.e); an \$821 account placed for collection in June 2004 (SOR ¶ 1.f); a \$50 medical account placed for collection in August 2005 (SOR ¶ 1.g); a \$220 telephone account placed for collection in October 2005 (SOR ¶ 1.h); a \$261 telephone account placed for collection in November 2005 (SOR ¶ 1.i); a \$281 cable company account placed for collection in April 2006 (SOR ¶ 1.j); a \$217 utility bill placed for collection in June 2006 (SOR ¶ 1.k); a \$186 utility bill placed for collection in July 2006 (SOR ¶ 1.l); and a \$90 gas bill placed for collection in September 2006 (SOR ¶ 1.m).¹¹

The amendment to the SOR alleged the following debts: a \$750 gas station credit card placed for collection (SOR ¶ 1.n); a \$735 account placed for collection (SOR ¶ 1.o); and a \$224 charged off gas station credit card account (SOR ¶ 1.p).¹²

⁶ Tr. at 28; Gov 1, Section 22.

⁷ Tr. at 30-31.

⁸ Tr. at 31.

⁹ Tr. at 34; AE M.

¹⁰ Gov 1.

¹¹ Gov 2; Gov 3.

¹² Gov 2.

Applicant considered bankruptcy but thought there were other options other than filing for bankruptcy. He deeded his recently purchased home back to the mortgage company.¹³ He and his family now rent a house that is half the cost of his mortgage payment. His mortgage payments were \$2,668.¹⁴ He now pays \$1,300 in rent.¹⁵ His plans are to pay off the large debts first and then pay off the smaller debts.¹⁶

In August 2007, Applicant entered into a repayment agreement with the IRS related to the \$8,000 income tax debt. Applicant claims that he filed an extension in tax year 2003. The IRS claims they did not receive the extension. Applicant intends to dispute this in the future but is currently paying on the debt.¹⁷ The current balance on the account is \$4,660. He agreed to pay \$101 per month beginning October 1, 2007. He has shown proof that he has made the October and November 2007 payments.¹⁸

On August 30, 2007, Applicant entered into an agreement with a debt settlement company. The debts in SOR ¶¶ 1.b, 1.c, 1.f are included in the plan. He agreed to pay \$500 per month during the plan. Payment was made in September.¹⁹ A payment was not made in October due to a dispute with the debt settlement company.²⁰ Payments are to resume in November and the debt settlement company does not consider Applicant behind on his payments.²¹

A judgment was obtained against Applicant for the debt alleged in SOR ¶ 1.d. The total amount of the judgment was \$18,104.57 plus \$438.97 pre-filing interest. On October 18, 2007, Applicant agreed to pay \$520 per month until the judgment is paid in full. The debt settlement company was handling these payments.²²

After the hearing, Applicant discovered that his annual bonus was larger that he anticipated.

¹³ Tr. at 34; AE M.

¹⁴ Tr. at 34; AE L.

¹⁵ Tr. at 53.

¹⁶ Tr. at 34.

¹⁷ Tr. at 37-38, 65-66.

¹⁸ Tr. at 37-38; AE A; AE J; AE K and AE M.

¹⁹ AE E; AE F.

²⁰ Tr. at 22, AE E; AE N.

²¹ Tr. at 61-62.

²² Tr. at 40; AE G.

He was awarded a \$12,301 bonus. After taxes, he received \$8,308 in bonus money.²³ He used the money to settle and pay off the debts in SOR ¶¶ 1.b and 1.d. On December 7, 2007, he settled the debt in SOR ¶ 1.d for \$7,000.²⁴ On that same date, he also settled the debt in SOR ¶ 1.b for \$1,111.²⁵

The current status of the delinquent debts are as follows:

SOR Paragraph	Debt	Status	Record
1.a	\$8,000 income tax debt owed to the IRS. Current balance \$4,586.	Payment arrangement; \$101 per month.	Tr. at 24, 37-38; AEs A, H, J and K.
1.b	\$2,222 credit card account charged off as a bad debt in August 2003.	Included in Debt Repayment Plan. After hearing paid with annual bonus. Settled for \$1,111.	Tr. at 38-40; AE P at 5-6; AE A, AE E, and AE F; Gov 2 at 2; Gov 3 at 6.
1.c	\$22,732 collection account.	Included in debt repayment plan.	TR. at 40; AE A; AE E; and AE F; Gov 2 at 2; Gov 3 at 14.
1.d	\$19,043 judgment obtained by a credit card company.	Agree to pay \$520 per month. After hearing settled for \$7,000 with annual bonus.	AE P at 3-4; Tr. at 40-41, 43-44; AE A; AE E; AE F; and AE G; Gov 2 at 2; Gov 3 at 5, 17.
1.e	\$295 collection account.	Intends to start paying January 2008. SOR ¶ 1.p is a duplicate.	Tr. at 44-45; AE A; Gov 2 at 2.
1.f	\$821 account turned over for collection in June 2004.	Included in debt repayment plan. SOR ¶ 1.n is a duplicate.	Tr. at 45-48; AE A, AE E, AE F; AE C at 2, AE I; Gov 2 at 2; Gov 3 at 14.

²³ AE P at 7.

²⁴ AE P at 3-4.

²⁵ AE P at 5-6.

1.g	\$50 ambulance medical account placed for collection in August 2005.	Intends to pay January 2008. Claims paid earlier.	Tr. at 47; Gov 2 at 1; Gov 3 at 18, 19.
1.h	\$220 telephone bill placed for collection October 2005.	Intends to pay January 2008.	Tr. at 47-48; Gov 2 at 2; Gov 3 at 14.
1.i	\$261 telephone bill placed for collection in November 2005.	Intends to pay January 2008.	Tr. at 47-48; Gov 2 at 2; Gov 3 at 5.
1.j	\$281 cable bill placed for collection in April 2006.	Intends to pay January 2008.	Tr. at 48; AE A; Gov 2 at 1; Gov 3 at 6, 17, 18.
1.k	\$217 utility account placed for collection in June 2006.	Intends to pay January 2008.	Tr. at 48; AE A; Gov 2 at 1; Gov 3 at 11, 17, 18.
1.l	\$186 utility account placed for collection in July 2006.	Intends to pay January 2008.	Tr. at 48; AE A; Gov 2 at 1; Gov 3 at 11, 17.
1.m	\$190 gas bill placed for collection in September 2006.	Intends to pay January 2008.	Tr. at 48; AE A; Gov 2 at 1; Gov 3 at 10, 18.
1.n	\$750 gas credit card placed for collection.	Same debt as SOR ¶ 1.f.	Tr. at 45-48; AE A.
1.o	\$735 account placed for collection.	Paid when settled house.	Tr. at 26-27, 48-49; AE A; AE L.
1.p	\$224 account placed for collection.	Same debt as SOR ¶ 1.e.	Tr. at 44-45; AE A.

In January 2008, Applicant intends to start resolving the debts alleged in SOR ¶¶ 1.e, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, and 1.m.²⁶ The total balance of these accounts is \$1,700. The debt alleged in SOR ¶ 1.p is a duplicate of the debt alleged in SOR ¶ 1.e.²⁷ The debt alleged in SOR ¶ 1.n is a duplicate of the debt alleged in SOR ¶ 1.f.²⁸ The debt alleged in SOR ¶ 1.o was paid off when Applicant financed his new home.²⁹

²⁶ Tr. at 44, 47-48; AE A.

²⁷ Tr. at 44; AE A.

²⁸ Tr. at 45; AE A.

²⁹ Tr. at 48-49; AE A; AE L.

In his application with the debt settlement company, Applicant listed his net monthly income as \$5,809. His total monthly expenses were approximately \$4,900. The balance remaining is \$909.³⁰ In 2007, Applicant earned over \$112,000 (including the bonus).³¹ His wife gets \$671 bi-monthly in child support. They have two car payments of \$300 and \$368 monthly. The car loan with the \$300 payment will be paid off by the end of the year.³² Applicant took an on-line course on how to budget when he was considering filing for bankruptcy.³³

Applicant's former supervisor at his previous job testified. He has known Applicant since 2004. He was very pleased with his work performance. He recommended that his current employer hire Applicant based on his past performance. He works for the same company but in a different department. He said the current company they work for has better pay and better conditions at work. He states that Applicant is a good character. He is aware of his financial problems but believes he has proven himself capable to protect classified information.³⁴

Performance reviews in 2006 and 2007 with Applicant's current employer were favorable. His most recent performance review indicated that he is a valuable asset to the team.³⁵

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”³⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - 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

³⁰ AE N.

³¹ AE P at 7.

³² Tr. at 50-58.

³³ Tr. at 69.

³⁴ Tr. at 72-76.

³⁵ AE P at 8-18.

³⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.³⁷

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”³⁸ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (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.³⁹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁴⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.⁴¹ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”⁴²

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

³⁷ Revised AG, dated August 2006, ¶ 18.

³⁸ Revised AG, dated August 2006, ¶ 2(a).

³⁹ *Id.*

⁴⁰ Directive ¶ E3.1.14.

⁴¹ Directive ¶ E3.1.15.

⁴² Revised AG, dated August 2006, ¶ 2(b).

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Financial Considerations

Since 2002, Applicant has experienced financial difficulties. Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶ 19(c) (*a history of not meeting financial obligations*) applies. FC DC ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*) applies. Applicant admits that he purchased a home that he could not afford when he moved to his current location. At the time the SOR was issued, Applicant had approximately 13 delinquent debts with an approximate total balance of \$54,518. Some of the debts became delinquent as a result of two job layoffs Applicant suffered in 2000 and 2002. However, many of these debts became delinquent after Applicant obtained full-time employment. Four of the debts (SOR ¶¶ 1.j, 1.k, 1.l and 1.m) became delinquent after Applicant started employment with his current employer. The balance on each of these debts is under \$300. Applicant earns over \$100,000 annually. He is capable of paying these debts. His most recent delinquent debts appear to be related to financial irresponsibility as opposed to an unwillingness to pay.

The concern under Financial Considerations can be mitigated. Financial Considerations Mitigating Condition (FC MC) ¶ 20 (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*) does not apply. While Applicant has seriously started to address his delinquent debts within the past several months, he still has several unresolved delinquent accounts. He has taken significant steps towards resolving his financial problems, but at the close of the record, they were not fully resolved. For these reasons FC MC ¶ 20(a) does not apply.

FC MC ¶ 20(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*) applies in part. Applicant was laid off for three months in 2000 and for one year in 2002. However, he continued to incur delinquent debts after becoming employed full-time and Applicant continued to make poor financial decisions such as purchasing a home he could not afford. For these reasons, FC MC ¶ 20(b) is given less weight.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant has entered into a repayment agreement with the IRS pertaining to his 2003 tax debt (SOR ¶ 1.a). He has paid off close to half the debt. He entered into an agreement with a debt repayment company to make payments on the debts in SOR ¶¶ 1.b, 1.c, 1.d and 1.f. A larger than expected annual bonus allowed the Applicant to resolve the debts in SOR ¶¶ 1.b and 1.d after the hearing. Applicant's intends to resolve the debts in SOR ¶¶ 1.e, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, and 1.m beginning in January 2008. While a promise to pay in the future is not sufficient to mitigate the security concerns under financial considerations, the total balance on these debts is \$1,700 which is relatively minor compared to the other delinquent accounts that Applicant has paid or is actively paying on. He has demonstrated a good faith effort to resolve his delinquent accounts. He is

attempting to reduce his expenses as well. He deeded his home back to the bank and his rent is much lower than his mortgage payments. He is taking appropriate actions to resolve his financial problems.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's favorable employment history, the favorable recommendation of his friend and former supervisor, his 25 year history of holding a security clearance, and his current actions in attempting to resolve his financial delinquencies. The security concerns raised under financial considerations are mitigated. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant a security clearance. 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 2. Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant

DECISION

In light of all of the evidence presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Erin C. Hogan
Administrative Judge