



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



In the matter of:)	
)	
)	ISCR Case No. 07-13870
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

May 30, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigative Processing (e-QIP) on November 20, 2006. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations under Guidelines F for 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 acknowledged receipt of the SOR on January 4, 2008.

Applicant answered the SOR in writing on January 22, 2008. He denied the financial considerations allegation with explanation. He requested a hearing before an administrative judge. Department counsel was prepared to proceed on January 31, 2008. The case was assigned to another administrative judge on February 1, 2008, and

reassigned to me on February 13, 2008. DOHA issued a notice of hearing on March 19, 2008, for a hearing on April 30, 2008. I convened the hearing as scheduled. The government offered four exhibits, marked Government exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant submitted four documents, marked Applicant Exhibits A-D, which were received without objections. Applicant testified on his own behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted one document, marked Applicant Exhibit E. The document was admitted to the record without objection from Department Counsel. DOHA received the transcript of the hearing (Tr.) on May 9, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted

Findings of Fact

Applicant is 29 years old and has worked for the past three years as an electrician in a Navy shipyard. He now works in the same shipyard on electrical designs for ships. He served almost eight years on active duty in the Navy as an electrician, and held a security clearance while on active duty. (Applicant Exhibit A, Discharge Form 214, dated June 16, 2003) He was married but is now divorced and he has not re-married. There were no children born of the marriage. He receives a thirty percent Veteran's Administration disability as a result of his Navy service. (Tr. 22-24; Government Exhibit 1, Electronic Questionnaire for Investigative Processing (e-QIP), dated November 30, 2006)

Applicant and his wife divorced in December 2001 when Applicant was on active duty. Applicant took all of his personal items from their home and moved back to his ship which was about to deploy. Applicant's wife had the divorce papers drafted, and he signed them in a car dealer's parking lot for his wife. Applicant's agreement with his wife was for him to assume all credit card and furniture debts from the marriage. His wife was to keep their car and to assume payments on the vehicle. He does not know if the payment agreement was in the papers or if it was verbal.

Applicant paid the credit cards debt of about \$6,000, and the furniture bill of about \$2,000. Credit reports show that the debt for the car is delinquent for \$13,162. The original purchase price was about \$16,522. Applicant assumes his wife made some of the payments. He did not know the debt was delinquent until he purchased a condominium in November 2005, and when he received the SOR in November 2006. (Tr. 28-30; Government Exhibit 2, credit report, dated November 30, 2006; See also, Government Exhibit 3, Interrogatories, dated October 29, 2007, at 3)

Applicant's current credit report shows he pays his debts as agreed. The only delinquent debt listed is for the car payment noted above. (Government Exhibit 3, credit report, dated October 12, 2007, at 6-20; Government Exhibit 4, Credit report, dated April 23, 2008) Applicant has not been able to contact his wife since 2002. He requested copies of the divorce papers from the courts but only received a copy of a divorce

decree. (See, Government Exhibit 3, Interrogatories, dated October 29, 2007, at 5; Applicant Exhibit E, e-mail, dated May 28, 2008)

Applicant has not contacted the creditor because he does not believe he should pay the debt because of the agreement with his former wife. He acknowledges co-signing the loan agreement with his former wife. Applicant received a loan to purchase a condominium in 2005, and a car loan in September 2007. (Tr. 19-32; Applicant Exhibit B, Condominium receipt, dated November 10, 2005; Applicant Exhibit C, Loan agreement, dated September 7, 2007). Applicant also has extensive funds in his shipyard 401K account. (Applicant Exhibit D, account statement, dated March 25, 2008). Applicant's personal financial statement shows monthly income of \$3,165, with monthly expenses of \$1,785 leaving monthly discretionary funds of approximately \$1,100. This income does not include income from his Veteran's Administration disability. (Government Exhibit 3, Interrogatories, dated October 29, 2007, at 4).

Policies

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.

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. Decisions include, by necessity, consideration of the possible risk 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.

Analysis

Financial Consideration:

Under 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 overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent car debt is a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations),

Financial Considerations Mitigating Conditions (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. Applicant has one debt that is still past due. Since the debt has not been paid, it casts doubt on Applicant's current reliability, trustworthiness, or good judgment.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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 it applies. The debt arose from Applicant's divorce. He was to pay credit card and furniture bills and his former wife was to assume payment of the car debt. Applicant paid his part of the agreement

showing that he acted responsibly. It was his wife that did not fulfill her part of the agreement.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). Applicant does not believe he has an obligation to pay the debt. He has not made any arrangements to pay the debt so the mitigating condition does not apply.

Since Applicant signed the loan agreement with his wife for the car, he does have a legal obligation to pay the debt. Even though he does have a legal obligation for the debt, this obligation may not result in a security concern. There is a security concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations. Applicant has shown he is living within his means, that he satisfies his debts, and that he meets his financial obligations. He has a reasonable objection to paying a debt that should be paid by his wife. He may have a legal obligation to pay the debt but his failure to pay it under the circumstances does not show he is not living within his means, that he does not satisfy his debts, and does not meet his financial obligations. His refusal to pay the car debt does not show that he has poor self-control, that he lacks judgment, or that he has an unwillingness to abide by rules and regulations. His financial information shows that he is not financially overextended and that he is not at risk of having to engage in illegal acts to generate funds. His refusal to pay the debt under the circumstances does not show he is financially irresponsible, and does not raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant has presented sufficient information to mitigate security concerns for financial considerations.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall common sense 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 considered Applicant's almost eight years of active duty in the Navy during which he successfully held a security clearance. I considered that his one financial issue was caused by his wife's

failure to pay a car loan that she was obligated to pay by her divorce from Applicant. I considered that Applicant's other financial obligations are paid as agreed, that he has been granted loans from other financial institutions, and he has a positive balance in his retirement account. He manages his finances in a manner that does not create a security concern. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from financial considerations.

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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge