



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-17020 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

October 28, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 30, 2006. On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for Applicant for financial considerations under Guideline F. 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 June 30, 2008.

Applicant answered the SOR in writing on July 14, 2008. He admitted nine of the ten allegations, and denied one as being a duplicate of an admitted allegation. He provided detailed information concerning his financial situation, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 25, 2008. The case was assigned to me on August 26, 2008. DOHA issued a

notice of hearing on September 2, 2008, for a hearing on October 7, 2008. I convened the hearing as scheduled. The government offered four exhibits, marked government exhibits (Gov. Ex.) 1-4 received without objection. Applicant testified on his own behalf, and submitted two Applicant exhibits marked App. Ex. A-B received without objection. DOHA received the transcript of the hearing (Tr.) on October 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 48 years old and has worked as a technology systems administrator for a number of government contractors supporting government agencies. He has held a security clearance since 1985. He is now working two full time jobs for different defense contractors supporting the Department of Defense. He has been married and divorced twice and has two children and is paying child support. He is a high school graduate but has taken courses to receive technical certifications (Gov. Ex. 1, e-QIP, dated March 30, 2006).

Applicant was in and out of full and part time work for various defense contractors because of the nature of government contracts and the working of government contractors. When he completed the security clearance application in March 2006, he was working full-time for Q and part-time for L. Q lost a government contract in October 2006, and Applicant lost his employment with Q. He was still working part-time for L. He applied for and drew state unemployment because he was no longer employed full-time. He continued to work part-time for L and other contractors until December 2007 when he started full-time employment with C. C lost the government contract he was working on in March 2008. He only worked part-time again until May 2008 when he received a full-time position with L. Part-time employment meant that the number of hours he worked in a week varied depending on the needs of the employer. Some times he worked a full 40 hour work week, sometimes less. Applicant is now working two full-time jobs having started a full-time position with employer K on September 29, 2008 (Tr. 42-50; App. Ex. A, Employment Letter, dated September 28, 2008). His monthly pay with L is \$3,600, and he anticipates receiving about \$4,000 monthly with K (monthly base pay is \$7,083). He has about \$4,000 in monthly expenses which will leave him with discretionary or disposable income of about \$3,500 per month starting in October 2008 (Tr. 52-53, 63-65).

The SOR lists 10 allegations of delinquent debts of financial considerations security concern. These include a medical debt in collection for \$440 (SOR 1.a); a credit card debt charged off for \$4,388 (SOR 1.b); a jewelry store account charged off as a bad debt for \$4,937 (SOR 1.c); a bank credit card account charged off as a bad debt for \$10,500 (SOR 1.d); another credit card debt charged off as a bad debt for \$35,457 (SOR 1.e); another credit card account in collection for \$14,077 (SOR 1.f); a debt to a state government agency for unemployment insurance of \$2,082 (SOR 1.g); another credit card account in collection for \$12,804 (SOR 1.h); a credit union account

in collection for \$23,273 (SOR 1.i); and another credit union account charged off as a bad debt for \$2,696 (SOR 1.j). The total amount of the debt is about \$97,000 (Tr. 17-18; See, Gov. Ex. 3, Credit Report, dated March 8, 2008; and Gov. Ex. 4, Credit Report, dated April 21, 2006). Applicant admitted all the allegations in the SOR except 1.d which he stated is a duplicate of allegation 1.h.

Applicant married his first wife in 1989. They had two children who are now 16 and 18 years old. During their marriage, he was basically able to cover the family expenses by working two jobs. He and his wife separated in 2002. His wife became ill and could not keep up with her expenses. Applicant took out about \$40,000 in loans and credit cards to support his family. His wife received the family car, a Cadillac Escalade with a car loan note originally for \$65,000, which she has subsequently paid off. Applicant does not know how she paid the car off. Applicant and his first wife divorced in 2005 and he married again in December 2005. He has a step-child from his second wife and they have a two-year-old child together. Applicant and his second wife separated about one year ago. Applicant now lives with his father. He pays \$2,000 a month in child support as well as \$400 to his father for room and board (Tr. 31-35).

Applicant has a debt to a hospital for \$440. He reached an agreement with the hospital to pay the debt in two monthly installments of \$220. The hospital would not provide him with any documents on the agreement but told him just to pay. Applicant claims he made one payment of \$220 in September 2008 and the other payment is due on October 15, 2008. He did not provide any documentation of payment (Tr. 19-21, See Case file, Answer to SOR, dated July 14, 2008, at exhibit 3)

Applicant entered an agreement with a credit counseling company on March 20, 2008, to assist him with paying seven of his delinquent debts. Included in this agreement are the credit card debt of \$4,388 (SOR 1.b), the jewelry store debt of \$4,937 (SOR 1.c), the loan of \$12,804 (SOR 1d and duplicate 1.h), the bank loan of \$35,457 (SOR 1.e), the delinquent credit card account of \$14,077 (SOR 1.f), the credit union account for \$23,273 (SOR 1.i), and another credit union account of \$2,989 (SOR 1.j) (App. Ex B, credit counseling agreement, dated March 20, 2008 at 13). The agreement requires Applicant to pay the credit counseling agency \$937.24 monthly for five months which goes to the credit counseling agency for administrative expenses. These payments have been made. For the next year, Applicant pays the credit counseling agency \$846, of which \$585.77 is for administrative expenses and \$260.23 for debt relief. Applicant will continue to pay the credit counseling agency \$846 per month for 24 more months. All of these payments will go to debt relief (Tr. 26-30; App. Ex. B, Credit Counseling Contract, dated March 20, 2008 at 12). Applicant's total debt is approximately \$97,000. The total amount of payment for debt reduction under the plan with the credit counseling agency is about \$39,500. Applicant is not aware of any arrangement the credit counseling agency made with creditors to settle any debt for less than the amount of the debt (Tr. 30-31).

Applicant admits he owes a state unemployment commission \$2,082 for overpayment of unemployment insurance (SOR 1.g). Applicant was laid off from his full

time position in 2006 and claimed unemployment compensation. At the time, he was still working part-time. He neglected to inform the unemployment commission of his part-time employment. After learning of the part-time employment, the state placed in collection the amount of the difference. Applicant recently made an agreement to pay the state \$100 monthly until the debt is settled. He made his first payment in September 2008. The state agency did not send Applicant a written agreement but told him just to pay the debt. Applicant does not have a formal agreement with the agency to repay the debt at \$100 monthly (Tr. 23-25).

Applicant recently purchased a new car for \$32,000 increasing his monthly car payment to \$643. As previously noted, his wife had a five year car loan note for \$65,000 that has been paid. Applicant does not know how his wife paid the car loan (Tr. 37-40). Applicant just recently filed his 2005, 2006, and 2007 state and federal tax returns. He did not file for an extension. He did not file earlier because he did not have the resources to pay any taxes owed. Applicant states that his taxes were recently filed by an accountant. Applicant is not sure when the taxes were filed for him and if he owes taxes or will receive a refund. If he owes taxes, he does not have the resources to pay them (Tr. 55-62).

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. Credit reports and Applicant's admissions show that Applicant has significant delinquent debts. Applicant accumulated the debts because he was unable to pay his financial obligations. He has only recently addressed the debts but has not settled or completely resolved them. Applicant's delinquent debts are 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 presented no information to establish that any of the debts have been paid. He only recently entered payment

plans to pay the debts. All of the debts are current debts. There are a number of delinquent debts from various sources such as credit cards, jewelry purchases, bank loans, car loans, and medical bills so Applicant accumulates delinquent debts frequently. Other than the fact Applicant was divorced, he raised no unique circumstances causing the debts. The delinquent debts are likely to recur. The current unpaid debts cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

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" has to be considered under the circumstances. Applicant divorced and had to pay child support. He was not working full-time all of the time but was working part-time all of the time. Part-time employment meant the hours he worked depended on the needs of his employer. Sometimes it was full time, sometimes less than full time. Applicant has not established that the divorce and child support payments significantly increase his expenses. He was receiving some pay during this entire time and could have made some payments on his debts. He has not indicated any change in behavior because of the divorce and his only part-time employment. Accordingly, he has not established that he acted responsibly toward his debts under the circumstances. The mitigating condition has not been established by Applicant.

FC MC ¶ 20(a) "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" applies. Applicant sought and received counseling from a credit counseling agency and they assist him in managing the payment of his delinquent debts. He is following the plan.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" has limited application. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant recently entered three plans to pay all of his debts. He has been making payments for the last six months on seven of his debts using a credit counseling agency. He has made a payment each on the two debts not covered under the agreement. An applicant is not required to be debt free, but is required to act responsibly in regard to his finances. He is now making a good-faith effort to pay debts because of his payments to the credit counseling agency, the hospital, and the state unemployment commission.

"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 has held a top level security clearance for almost 30 years. Applicant recently made arrangements to pay debts and has been paying them. He is working two jobs to earn sufficient funds to pay his debts. If he continues on his plan, he will be able to pay his debts. However, Applicant has also been irresponsible towards his finances. At a time when his income is low and his expenses are high, Applicant purchased a new vehicle increasing the amount of monthly car payments. Applicant does not know if a tax accountant filed Applicant's state and federal tax returns funds for the last three years. He does not know if a request for extension was filed. Applicant did not have full knowledge of the status of his last three year federal and state income taxes. Applicant's irresponsible management of his finances does indicate he may be irresponsible toward the handling of classified information in spite of the fact he held a security clearance for over 30 years. On balance, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has not 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: | AGAINST APPLICANT |
|---------------------------|-------------------|
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |

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| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | For Applicant (Duplicate) |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge