



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



In the matter of:)	
)	
)	ISCR Case No. 08-01291
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) on August 15, 2007. On October 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns 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 July 28, 2008.

Applicant answered the SOR in writing on October 28, 2008. He admitted one of the debts but noted he was unaware of the debt, and denied six of the allegations under Guideline F. He provided proof of payment of two of the debts. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 14, 2008, and the case was assigned to me on November 19, 2008. DOHA issued a notice of hearing on January 13, 2009, for a hearing on February 4, 2009. 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 six documents, marked Applicant Exhibits (App. Ex.) A-F, which were received and admitted without objection. Applicant testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted five additional documents marked App. Ex. G-K. The government did not object to the admission of the documents (See Gov. Ex. 5, Department Counsel Letter, dated February 19, 2009), and the documents are admitted. DOHA received the transcript of the hearing (Tr.) on February 19, 2009. 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 been a property book logistics specialist for a defense contractor for over two years. He is married with three children. He served on active duty in the Army for approximately five years. His discharge was under Other Than Honorable Conditions in lieu of court-martial. The Army Board for Correction of Military Records upgraded his discharge to General under Honorable Conditions (App. Ex. H, DD 214). He did not hold a security clearance while on active duty. After he left the Army, Applicant enrolled in college and earned his Bachelor's degree in 3 and a half years. Applicant's wife handles the family finances. She especially managed the finances while Applicant was in Iraq for his employer in 2007 to 2008 (Tr. 32-37; Gov. Ex. 1, SF-86, dated August 6, 2007). When Applicant served in Iraq for his defense contractor employer, he earned a significant salary (See Gov. Ex. 2, Answers to Interrogatories at 72). Applicant completed this form while assigned in Iraq). Since Applicant's return to the United States, his salary has been reduced. His net monthly pay is now \$2,072. He receives \$593 per month in Veteran's Administration disability. His wife's net monthly pay is \$2,800 for a combined family income of approximately \$5,500. Their monthly recurring expenses are \$3,200, leaving a discretionary or disposable funds monthly remainder of \$2,200 to \$2,300 (Tr. 38-41).

A credit report (Gov. Ex. 4, Credit Report, dated April 2, 2008) shows Applicant had the following delinquent debts; an account in collection for student loans of \$1,440 (SOR 1.a); a charged off account for \$520 (SOR 1.b); a charged off credit card account for \$765 (SOR 1.c); a credit card account charged-off for \$6,016 (SOR 1.d); a charged off department store account for \$1,416 (SOR 1.e); a collection account on a credit card for a bank for \$943 (SOR 1.f); and a charged off bank loan for \$14,135 (SOR 1.g).

Delinquent debt SOR 1.a is a student loan in collection for \$1,440, from a college Applicant attended. Applicant completed his Bachelor's degree and started classes towards a Masters of Business Administration degree. After starting the fall semester, he took a position in Iraq for his employer and had to drop the course. He was not aware that he had incurred an expense for not completing the course. After learning of the debt, Applicant entered a payment plan with the collection agency for the university and has been paying \$100 per month on the debt. The balance on the debt is now less

than \$1,000 (Tr. 13-16, 20-21; Appellant Exhibits A and B, Bank Statements, dated December 23, 2008, and November 20, 2008).

Delinquent debt SOR 1.b is an account in collection for a retail store for \$520. Applicant had a payment plan with a credit organization and was informed by them that this account had been paid in full. However, he had not been able to verify the payment or receive a letter that the account was paid. After the hearing as requested, Applicant contacted the retail store and requested payment information on the account. He was informed the account had been paid and was closed. He was informed twice that documents verifying this information would be sent to him. Applicant had not received the documents from the store at the deadline imposed for him to forward documents (Tr. 20-22; App. Ex. G, Letter, undated).

Delinquent debt SOR 1.c is an account in collection for a credit card for \$765. Applicant's wife paid this debt by electronic transfer, but he does not have a receipt for the payment (Tr. 18-19). After the hearing, Applicant called the credit card company and was informed the account had been sold to a law firm (App. Ex. G, Letter, undated). The law firm was placed in receivership and is no longer in business. The credit card company cancelled all debts to them that were being collected by the law firm. Because of the action of the law firm, Applicant cannot verify payment (App. Ex. K, Article, November 26, 2008). However, the receivership has verified that all accounts being collected by the law firm have been forgiven by the credit card company (App. Ex. E, Letter, dated October 15, 2008).

Delinquent debt SOR 1.d is for a charged off debt to a bank for \$6,016. Applicant's wife paid this account in full and Applicant, as an authorized user on the account, no longer has responsibility for the account and debt (Tr. 18, App. Ex. D, Letter, dated October 20, 2008; App. Ex. J, Check, dated April 25, 2008).

Delinquent debt SOR 1.e is an account for a department store. Applicant claims his wife paid the account but there is no documentation to show payment. Applicant contacted the department store and was informed that the account was sold and charged off for so long there is no reason to try to pay the account (Tr. 21-22).

Delinquent debt SOR 1.f is a bank loan in collection for \$943. Applicant paid this account in full (Tr. 19; App. Ex. F, Letter, dated October 22, 2008).

Delinquent debt SOR 1.g is a bank loan for a car charged off for \$14,135. Applicant settled this account for \$7,000 and paid the account (Tr. 17; App. Ex. C, Letter, dated January 22, 2009).

Since leaving active duty with the Army, Applicant has had three children, graduated from college, purchased a house, is employed, and meets his financial obligations. His company rates his performance as above average to outstanding. Applicant and his wife used the extra money he made while stationed in Iraq and his tax refund to pay their debts in early 2008. He has over \$4,500 in cash in his house to use

for contingencies (Tr. 34-36, 43-47; App. Ex. I, Evaluation, dated February 2, 2009). Applicant and his wife do have student loans to pay but they are current on these loans (Tr. 29-30).

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. The delinquent debts on the credit report 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".

Applicant raised mitigating circumstances for his debts by his testimony. I considered 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" and find it has some application. Six of the seven debts listed in the SOR have been paid or resolved. Four of the debts were paid at least a year ago and are not current debts. Two of the debts were paid or forgiven within the last six months. The remaining debt is being paid under a payment plan. He used extra money earned in Iraq and his tax refund to pay his debts. Applicant took measures to resolve his debts and his financial problems should not recur. His present financial situation does not cast doubt on his 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." Applicant did not list any conditions that were beyond his control that caused his financial problems. However, he did act responsibly towards his debts under the circumstances by using the extra funds earned for serving in a combat zone and his tax return to pay most of his past due obligations.

I considered FC MC ¶ 20(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 under control" does not fully apply. There are some indications Applicant received financial counseling since he indicated he employed a credit service company to help him pay his debts. He did not provide additional information concerning any counseling the company provided him. However, his financial problems are being resolved and are under control meeting this prong of the mitigating condition.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" partially applies. 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 has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant paid or resolved six of the seven delinquent debts listed in the SOR. While he did not have complete documentation of payment of all of the debts, he made a concerted effort to obtain the documents, but could not because of the lack of records or response from the collection agencies. His statement that debts have been paid where no documentation could verify the payment is credible. The one remaining debt is being paid under a payment plan and Applicant provided documentation of payment under the plan. Applicant has not incurred additional delinquent debts and is paying his student loans as agreed. Applicant acted responsibly towards his debts, and established his good-faith efforts to resolve his debts. He mitigated security concerns for his financial situation.

"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) 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 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 five years

of active duty in the Army and the upgrade of his discharge to General under Honorable Conditions. Applicant lives within his means and meets his present personal financial obligations including his student loans. He paid or resolved his past due obligations except for one debt that is being paid under a payment plan. His actions do not indicate poor self control, lack of judgment or unwillingness to abide by rules and regulations. He is not financially overextended, and his finances do 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

Subparagraphs 1.a - 1.g: 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