



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



In the matter of:)	
)	
)	ISCR Case No. 08-01417
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

December 3, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 18, 2006 (Item 3). On July 9, 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 (Item 1). 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 answered the SOR in writing on July 30, 2008, admitting all of the allegations. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 30, 2008. Applicant received a complete file of relevant material (FORM) on September 17, 2008, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM or provide additional material. The case was assigned to me on November 19,

2008. Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 46 years old and has been a senior janitor maintenance employee of a defense contractor since December 2005. Prior to his employment with the defense contractor, he was employed for over 18 years as a warehouse manager. After leaving employment as a warehouse manager, he was unemployed for a month and worked as a farm hand for a month before starting with the defense contractor. He is married with two teenager children. He also served on active duty with the Air Force for four years (Item 3, e-QIP).

When employed as a warehouse manager, Applicant stated his salary was about \$70,000 per year. He left where he was employed as the warehouse manager to move to a new area which he and his wife believed was the best place for his family. He had a tentative job offer that was not guaranteed. He placed his house for sale and purchased another house in the new location before his old house sold. His former residence did not sell and he could not afford to make payments on both houses. The old house has been foreclosed (See Item 4, Credit Report, dated January 28, 2008 at 2). The tentative job offer did not materialize and he eventually found employment with the defense contractor at half the salary that he had received as a warehouse manager. In response to interrogatories, Applicant stated that he and his wife now take home about \$3,900 per month with monthly expenses of \$3,589, leaving discretionary or disposable funds of approximately \$311 per month (Item 8, Interrogatories, at 6).

Applicant filed for Chapter 7 bankruptcy in 1997 and his debts of about \$25,000 were discharged in March 1998. Applicant stated he lost track of his bills and he got over his head in debt. He used credit cards for Christmas presents and every day expenses. He paid only the minimum on his credit cards and became financially delinquent because of high interest rates on the credit cards. This financial irresponsibility caused him and his wife to file for bankruptcy (SOR 1.a; Item 8, Interview statement, dated November 28, 2006, at 2, and interview statement, dated June 19, 2007 at 5-6).

The SOR lists four delinquent debts that became delinquent after the bankruptcy discharge totaling approximately \$49,267. Applicant admits these debts. The debts include a line of credit loan from HFC for \$32,529, charged off in December 2005 (SOR 1.b); a loan from Washington Mutual for \$13,137, charged off in May 2006 (SOR 1.c); a line of credit account with Equity One, charged off in August 2006 for \$3,373 (SOR 1.d), and a debt of \$228 placed for collection in August 2007 (SOR 1.e; See Item 4, Credit Report, dated January 28, 2008; Item 5, Credit Report, dated January 23, 2007; and Item 6, Credit Report, dated January 26, 2006). Applicant admits he has taken no action to make any payments on these debts (Item 7, Answer to Interrogatories, dated March 19, 2008).

In response to interrogatories, Applicant stated that after the bankruptcy discharge he managed his finances without incurring delinquent debt until September 2005 when he and his family moved, he could not sell his old house, and had a new house mortgage to pay. When Applicant moved, the real estate market was good and Applicant believed he could sell his old house. He purchased a new house in the area he moved to at a price less than the asking price on his old house. The housing market downturned and he was not able to sell the former residence and it has been foreclosed for the amount of the old mortgage. He is current with the mortgage on the new house since it is where he and his family are living. Applicant notes that he incurred a \$45,000 reduction in yearly salary affecting his ability to pay his delinquent debts. He has been advised by his lawyer to focus on keeping his present mortgage current since the old debts can be discharged in bankruptcy later. Appellant is making every effort to repay his debts and to avoid a second bankruptcy. However, he is starting over with his finances due to the problem of selling his old residence and the reduction in his income. He stated his financial situation is slowly recovering (item 7, Interrogatories, dated March 19, 2008, at 1 and 2

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 four delinquent debts are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) "inability or unwillingness to satisfy debts"; FC DC ¶ 19(b) "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt"; and FC DC ¶ 19(c) "a history of not meeting financial obligations". Applicant accumulated delinquent debts because he made no effort to pay his financial obligations. The debt was accumulated after his previous debts had been discharged by bankruptcy. While the debts were on lines of credit and loans, the funds he received appear to be used for normal consumer items which indicate Applicant may be spending beyond his means. He incurred a mortgage on a new home before his old home was sold indicating irresponsible spending. When his financial resources changed because of a move to a new location, it does not appear that Applicant changed his spending priorities or life style.

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". Applicant took no action to pay the four delinquent debts so the debts are current. The debts are from various sources, lines of credit, loans, and credit cards, so they are not infrequent. The debts may have been incurred because Applicant voluntarily moved from one area to another, had a lower paying job, and could not sell his former residence, but these are not unusual circumstances since Applicant acted voluntarily. Since the debts are current and not paid, they cast 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". Applicant claims he was unemployed for a month after he moved, and took a pay cut when he had new employment. He presented no information on how or why these events impacted his ability to make some payments on his debts. In fact, Applicant and his wife have been and are gainfully employed and they have a monthly positive cash flow. There has been no attempt to pay past due obligations indicating that he is not trying to resolve his indebtedness. He did not establish that he acted responsibly under the circumstances. Applicant made a voluntary decision to move his family. This was not a condition beyond his control. He then purchased a new house before he sold his old one creating a severe financial hardship. His actions were within his control. He has not acted responsibly in managing his finances.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". 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 presented no information to show he has a plan to pay the debts or any action that he has taken to pay his debts. Applicant has sufficient income to make some payments on his delinquent debts but has not attempted to do so. His and his wife have a combined income of about \$48,000 a year, with a net remainder each month of over \$311 that could be used for debt reduction. Applicant's debts were discharged in bankruptcy in 1998 and he started accumulating delinquent debts again in 2005. Bankruptcy is a legal and permissible means of resolving indebtedness. However, the circumstances of the bankruptcy action can be examined to determine any security significance. The filing of the bankruptcy action in itself does not create a security concern. Applicant admitted he incurred financial problems because he was irresponsible towards his finances necessitating the bankruptcy filing. Applicant accumulated delinquent debt after the bankruptcy discharge indicating a continual irresponsible and indifferent attitude towards his finances. There is no indication Applicant acted responsibly towards his debts or that the situation is under control. In fact, the opposite seems to be true, his finances are not under control and he has not

acted responsibly. Applicant has not presented sufficient information to indicate a good faith effort to pay creditors or resolve debts. He has not 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.

Applicant has not taken action to resolve his past due debts. His indifferent attitude and lack of actions shows he is not trustworthy, responsible, or exercises good judgment. Applicant has been irresponsible towards his delinquent debts and financial obligations. This is an indication that he might be irresponsible towards the protection and handling of classified information. I conclude Applicant has not mitigated the security concerns arising from his finances. Clearance is denied.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b-1.e:	Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge