



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



In the matter of:)
)
) ISCR Case No. 08-01814
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 17, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance on May 30, 2007. On July 24, 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 August 16, 2008. He admitted five and denied two of the allegations under Guideline F. He provided proof of payment of the two debts he denied. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 27, 2008, and the case was assigned to me the same day. DOHA issued a notice of hearing on November 3, 2008,

for a hearing on November 20, 2008. I convened the hearing as scheduled. The government offered six exhibits, marked government exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant submitted 5 documents, marked Applicant Exhibits (App. Ex.) A-E, which were received and admitted to the record without objection. Applicant testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted one additional document marked App. Ex. G. The government did not object to the admission of the document (See Gov. Ex. 7, Department Counsel Letter, dated December 9, 2008), and the document was admitted into the record. DOHA received the transcript of the hearing (Tr.) on December 2, 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 35 years old and has been an electronics technician for a defense contractor for about 18 months. He is single and has an associate's degree in electronics. Applicant entered active duty with the Navy in 1992 directly from high school. He served on active duty until 2000 in information technology, and left active duty with an honorable discharge as a petty officer second class (E-5). After leaving the Navy, he worked for various defense contractors for short periods of time. He was unemployed for times when the defense contractors ended or lost contracts. He has held a security clearance for the last 18 years since entering the Navy (Tr. 23- 26; Gov. Ex. 1, e-QIP, dated May 30, 2007). Applicant's monthly net pay, depending on the amount of overtime, is \$3,400 to \$4,000, with monthly expenses of approximately \$2,000, leaving \$1,400 to \$2,000 monthly in discretionary or disposable funds. Applicant's father has been ill lately and Applicant is assisting him with his needs. Most of Applicant's present discretionary funds are used to assist his father. This leaves him most months with about \$500 in disposable funds (Tr. 37-40, 48-50). Applicant has not received any financial counseling, even after filing a bankruptcy petition in 2004 (Tr. 35-36).

Credit reports show that Applicant had the following delinquent debts; a judgment to an insurance company for \$5,614 (SOR 1.a); a judgment on a personal loan debt for \$5,540 (SOR 1.b); a collection account for a rental car agency for \$843 (SOR 1.c); a credit card account charged-off for \$418 (SOR 1.d); a judgment on a personal loan for \$425 (SOR 1.e); a collection account for a cell phone of \$79 (SOR 1.f); and a Chapter 7 Bankruptcy filed on April 2, 2004, and discharged on May 9, 2005 (SOR 1.g). Applicant denied the debts in SOR 1.a, and SOR 1.e since they were paid (Gov. Ex. 2, Credit Report, dated July 4, 2007).

Delinquent debt SOR 1.a is a judgment for \$5,614 in favor of an insurance company. Applicant provided sufficient information in response to the SOR to show payment of the debt (See Response to SOR, Letter, dated August 5, 2006).

Delinquent debt SOR 1.b is for a judgment on a personal loan for \$5,540. When he left the Navy and started working for defense contractors, Applicant had periods of

unemployment and difficulty meeting his financial obligations. He volunteered at his church and met a woman who was also a volunteer. She offered to assist him financially a number of times but Applicant at first did not accept the offer. When his financial problems become acute, Applicant did accept the offer. He and the woman were not romantically involved but Applicant believed the woman wanted to be involved with Applicant romantically. When this did not happen, he and the woman became estranged. He did not know how to repay the loan and did not know the woman had filed a judgment until he received the SOR. He had moved and the notice of judgment was sent to a former address. After learning of the judgment from the SOR, Applicant tried to contact the woman to make arrangements to pay the loan. He has not been able to contact her since she does not return his phone calls. He is sending her \$20 per pay period at her last known address as a good-faith effort to pay the loan. He is continuing his efforts to contact the woman and will make larger payments when he can contact her (Tr. 26-33, 43-44; App. Ex. D, Money Orders, dated September 23, 2008, October 20, 2008, and November 19, 2008; App. Ex. F, Money Order, dated December 5, 2008).

Delinquent debt SOR 1.c is an account in collection for a car rental fee of \$843. Applicant rented a car for an individual who was to pay the rental fee. The individual did not pay the rental charges and the rental car company entered a judgment for \$843 against Applicant as the individual responsible on the rental agreement. Applicant did not know of the judgment until he received the SOR. He is making \$20 bi-weekly payments as requested by the rental car company. He plans to increase payment when he receives his year-end bonus and tax refund (Tr. 19-20, 44-45; App. Ex. C, Money Orders, dated September 23, 2008, October 20, 2008, and November 19, 2008; App. Ex. F, Money Order, dated December 5, 2008).

Delinquent debt SOR 1.d is for a charged off credit card account of \$418 (Tr.33-34). Applicant tried to contact the company but could not reach an individual to help him. He has an address for the company and is making \$20 good-faith payments on the debt. He will increase payments when he can finally talk to a representative of the company. He intends to continue to contact the company and pay off the remainder of the debt as soon as he can using his year-end bonus and tax refund (Tr. 45-46; App. Ex. App. Ex. E, Money Orders, dated September 23, 2008, October 20, 2008, and November 19, 2008; App. Ex. F, Money Order, dated December 5, 2008).

Delinquent debt SOR 1.e is a judgment on a personal loan for \$425. Applicant paid this judgment in 2004 (Tr. 18; Case File, Response to SOR, dated August 16, 2008; App. Ex. B, Letter. Dated August 6, 2004 and Bank Cancelled Check, dated September 13, 2004).

Delinquent debt SOR 1.f is for cell phone account in collection for \$79. Applicant contacted the company for information on the account and was informed that they were unable to document the account. The company waived any debt and ceased collection action (Tr. 16-18; App. Ex. A, Letter, dated August 19, 2008).

Delinquent debt SOR 1.g is for a bankruptcy filed on April 2, 2004. After leaving active duty in the Navy, Applicant started working for defense contractors. Applicant was laid off from employment with the defense contractors as they finished or lost contracts with the government. He was unable to pay his debts because of the lack of steady employment and filed for Chapter 7 bankruptcy. His debts were discharged in May 2005 (Tr. 35-36; Gov. Ex. 3, Bankruptcy discharge, dated May 9, 2005).

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 that Applicant admits and are listed 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 it has some application. Two of the debts were paid off years ago and are not current debts. Three of the other four debts are being paid. The remaining debt of \$79 was just waived by the creditor. Since there are debts still being paid, there are current debts. Applicant's debts were discharged by bankruptcy in 2004. Applicant frequently encountered delinquent debts since there are a variety of debts from a credit card, personal loans, a car rental, and a cell phone bill. Applicant initially encountered financial difficulty, but he is now solidly employed in the civilian workforce and his debts are under control. His financial problems should not recur.

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" applies. Applicant encountered financial

problem when first entering the civilian workforce. He has taken positive steps to resolve those issues. He paid some of the debts and he filed a bankruptcy petition to resolve his debts. Applicant did not know about the judgment against him on a personal loan. He did not know of a charged-off debt for a rental car he rented for someone else who was to pay the rental bill. He did not know of the charge-off credit card debt but has attempted to contact the creditor. Once he learned of the existence of these debts, he contacted the creditors the best he could and started payment plans on his own. He acted responsibly under the circumstances to control and manage his debts.

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. Applicant has not received any financial counseling, even as part of his bankruptcy action. However, his financial problems are being resolved and are under control meeting this prong.

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 two of the six delinquent debt years ago. He has a payment plan and is paying under that plan on three of the other debts until he can make better plans with the creditors. He contacted the creditor for another debt and the debt was waived because there is no record of the debt. When he first encountered financial problems, he filed a Chapter 7 bankruptcy and the debts were discharged in 2004. Bankruptcy is a legal and permissible means of resolving indebtedness. Applicant has not incurred additional delinquent debts since the bankruptcy discharge. 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 eight years of active duty in the Navy and that he has successfully held a security clearance for over 18 years. Applicant encountered financial problems when leaving active duty and entering the civilian workforce. He paid two of the debts year ago. He filed a bankruptcy action and his debts were discharged in 2005. He was not aware of his other delinquent debts until the SOR, but acknowledges his legal obligation to pay them. He has payment plans for three of them and the fourth for \$79 was waived for lack of a record of the debt. Applicant lives within his means and meets his personal financial obligations. 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