



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



In the matter of:)	
)	
)	ISCR Case No. 08-03187
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

December 18, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance on July 3, 2007. 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 and personal conduct under Guideline E. 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 August 19, 2008.

Applicant answered the SOR in writing on September 8, 2008. He admitted all of the allegations under Guideline F with some explanations, but denied that he intentionally falsified his security clearance application as alleged under Guideline E. 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 that day.

DOHA issued a notice of hearing on November 3, 2008, scheduling a hearing for 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 four documents, marked Applicant Exhibits (App. Ex.) A-D, which were received without objection. Applicant and one witness testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted four additional documents marked App. Ex. E-H. The government did not object to the admission of the documents (See Gov. Ex. 7, Department Counsel Letter, dated December 10, 2008), and the documents are 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

Procedural Issues

Department Counsel moved to amend SOR paragraph 1.n to reflect that the debt is a delinquent debt and not a judgment. Since, the debt was not a judgment, Department Counsel moved to delete SOR allegation 2.a. SOR 1.n was amended and a finding "For Applicant" was entered for SOR allegation 2.a.

Findings of Fact

Applicant is a 42-year-old high school graduate who worked as a spray painter in a shipyard for over 23 years. He held a security clearance for over 15 years. He has four children, one living at home, one living with her mother for whom he pays child support, and two no longer at home. He is married and his wife is also employed at the shipyard. However, she is now on sick leave because of an injury. He and his wife are required to maintain separate households because of family matters even though they are married. Prior to his marriage, Applicant was a single parent raising the one daughter that lived with him. During this time, he also had to care for his elderly and sick parents. Applicant's monthly pay is between \$2,400 and \$3,400 depending on the amount of overtime he works. His monthly expenses are about \$2,400, leaving him with discretionary or disposable funding dependent on his overtime pay. While his wife has monthly income of about \$1,600, since she is maintaining her own household, these funds were not counted in Applicant's income (Tr. 33-36, 45-52; Gov. Ex. 1, e-QIP, dated July 3, 2007; Gov. Ex. 3, Answer to Interrogatory, dated May 30, 2008).

Applicant submitted a security clearance application in July 2007 to update his security clearance. In response to question 28(a) asking if in the last seven years he had been more than 180 days delinquent on any debts, Applicant answered "NO". Applicant was given the security clearance application at work to complete at home. He and his wife spent a few nights after work completing the form. He did not know at the time he had debts that were more than 180 days delinquent since he had not seen his credit report. He had not purchased much in his life since he had to raise his children. He was making payments to the Internal Revenue Service on a tax debt so he did not

believe that the debt was past due. He did know that his wages were garnished to pay a debt (Tr. 41-45; Gov. Ex. 1, e-QIP, dated July 3, 2007).

Credit reports show and Applicant admits that he filed for Chapter 7 bankruptcy in April 1990 and the debts were discharged in August 1990 (SOR 1.r; Gov. Ex. 6, Bankruptcy documents, August 1990). Credit reports show and Applicant admits he has the following 17 delinquent debts. Thirteen of the debts are small medical debts in collection including two for \$25 (SOR 1.a and 1.b); five for \$50 (SOR 1.c, 1.g, 1.i, 1.j, and 1.m); one for \$556 (SOR 1.d); one at \$162 (SOR 1.e); one at \$195 (SOR 1.f); one at \$89 (SOR 1.h); one at \$97 (SOR 1.k); and one at \$34 (SOR 1.l). There is also a delinquent cell phone debt in collection for \$191 (SOR 1.n); a federal tax lien for \$15,895 (SOR 1.o); a credit card debt in collection for \$1,684 (SOR 1.p); and another credit card in collection for \$2,195 (SOR 1.q); See Gov. Ex. 2, Credit Report, dated August 29, 2007; Gov. Ex. 4, Credit Report, dated June 16, 2008; Gov. Ex. 5, Credit Report, date September 22, 2008;

Applicant used a recent credit report to determine the creditors for his delinquent debts and the status of those debts (Tr. 30-32; App. Ex. D, Credit Report, dated October 27, 2008). The medical delinquent debts are for co-pays from Applicant receiving medical treatment. All of the medical co-pay debts were paid by Applicant after he learned of them from the SOR (Tr. 22-26; App; Ex. A, 11 money orders, various dates; App. Ex. C, four money orders, various dates). SOR allegation 1.n for a cell phone has been paid in full (Tr. 24-26; App. Ex. B, Receipt, dated November 14, 2008). Applicant is making payments on his credit card debt of \$1,684. His latest payment was returned by the creditor for insufficient account information for processing the payment (Tr. 29; App. Ex. C, Money Order, undated; App. Ex. Letter, dated December 1, 2008). Applicant is also making payments on his credit card debt of \$2,195 (Tr. 29-30; App. Ex. G, Letter, dated December 3, 2008).

Applicant did not file his federal income taxes for three years because he did not have dependents to claim since his children did not live with him, he was laid off when the shipyard had a strike so he was short of funds, and he was caring for his family and parents. He has filed his returns and has a payment plan with the IRS to pay his past due taxes. He has been paying the IRS \$150 a month on his taxes since 1998. He is current with his payments (Tr. 26-29; App. Ex. E, IRS Monthly Statement, dated November 12, 2008).

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 in credit reports 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 accumulated delinquent debts for medical payments, a tax lien, and credit cards because he had difficulty meeting his financial obligations as a single parent. Applicant credibly testified concerning his financial situation. Through his testimony, Applicant showed he was unsophisticated in financial matters but was responsible in attempting to manage his finances under the circumstances. The bankruptcy action was filed over 18 years ago. Bankruptcy is a legal and permissible means of resolving debts. Since the bankruptcy was so long ago, it is no longer a factor to consider in Applicant's financial situation.

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 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 incurred a number of small medical co-pay debts because he did not pay sufficient attention to the requirement to make the co-pays for medical treatment for himself. He was also struggling with being a single parent and caring for his sick and elderly parents. When he received the SOR and understood the extent of his medical debts, he immediately took steps to pay all of them. He has a federal tax lien but he has been making payments on his taxes according to an agreement with the IRS since 1998. He is also making payments on his two credit card debts. Of the 17 debts, fourteen have been paid, and three are being paid according to payment plans. Since some debts are still being paid and the other debts were only paid recently, his debts are considered current. Applicant had delinquent debts but has paid or is paying them. He is solidly employed in the shipyard and his debts are under control. His financial problems should not recur.

I also considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" 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 14 of the 17 delinquent debts listed. He has payment plans on the remaining three debts and is current with his payments. Applicant acted responsibly towards his debts, and

established his good-faith efforts to resolve his debts. He mitigated security concerns raised by his financial situation.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answers on his security clearance application concerning financial issues of judgments and past due debts raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness".

Applicant denied intentional falsification. He responded to the financial questions on the application as best he could. He knew of a garnishment and he listed that on the application. He did not know of the small medical debts for co-pays so they were not listed. He was making payments on other debts and did not think he was over 180 past due on the debts. Applicant is unsophisticated in financial matters and completed the security clearance application to the best of his knowledge. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. The falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Since Applicant listed the financial concerns as he knew them when completing the application, his failure to list all the delinquent debts was not knowing and willful. Applicant established he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct.

"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 23 years of service in the shipyard and that he has held a security clearance for about 15 years. He acknowledges his legal obligation to pay his outstanding debts. Applicant is not sophisticated financially but he took immediate action when advised of his delinquent debts. He had been paying the IRS tax debt. He paid all of the small medical co-pays. He is making payments on his two credit card debts. Applicant lives within his means and meets his personal financial obligations. His actions do not indicate poor self-control, lack of judgment irresponsibility, or unwillingness to abide by rules and regulations. He is not financially overextended, and his finances do not create a security concern. He did not provide incomplete information on his security clearance application with the intent to deceive. He provided the information to the best of his knowledge. 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 and personal conduct.

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 to 1.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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