



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



In the matter of:

ISCR Case No. 08-03629

Applicant for Security Clearance

Appearances

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

April 14, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86) on June 15, 2007. On November 28, 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 December 3, 2008.

Applicant answered the SOR in writing on January 9, 2009. He admitted all twenty-five allegations of delinquent debt under Guideline F. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 10, 2009, and the case was assigned to me on February 23, 2009. DOHA issued a notice of hearing on February 24, 2009, for a hearing on March 20, 2009. I convened the hearing as scheduled. The government offered five exhibits, marked

government exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant submitted four documents, marked Applicant Exhibits (App. Ex.) A through D, which were received without objection. Applicant testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted six additional documents marked App. Ex. E through J. The government did not object to the admission of the documents (See Gov. Ex. 6, Department Counsel Letter, dated December 9, 2008). The documents were admitted into the record. DOHA received the transcript of the hearing (Tr.) on March 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all of the allegations under Guideline F. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 33-years-old and has been a warehouse technician for a defense contractor for about two years. He is not married but has a child. He and the child's mother had joint custody but he now has shared custody and pays child support of \$350 per month. He is current on his child support payments (Tr. 23-24). He was working towards a degree in psychology (Tr. 31-32; Gov. Ex. 1, SF 86, dated June 15, 2007). He does not have an extravagant life style. He rents an old family house from his father and drives a 15-year-old car. Applicant's monthly net income is \$1,276 with monthly recurring expenses of \$1,150, including his child support payments. He has approximately \$100 in discretionary funds each month (Tr. 28-31; App. Ex. D, Statement of Earnings, dated October 12, 2008; App. Ex. G, Statement of Earnings, dated March 1, 2009).

Credit reports show that Applicant had the following delinquent debts; medical collection accounts for \$254 (SOR 1.a), \$842 (SOR 1.b), \$16 (SOR 1.c), \$20 (SOR 1.d), \$14 (SOR 1.e), \$20 (SOR 1.f), \$20 (SOR 1.g), \$36 (SOR 1.h), \$434 (SOR 1.i), \$38 (SOR 1.j), \$675 (SOR 1.k), \$150 (SOR 1.l), \$873 (SOR 1.m), \$2,568 (SOR 1.n), \$2,568 (SOR 1.t, duplicate of SOR 1.n), \$842 (SOR 1.u), \$434 (SOR 1.v), \$9,238 (SOR 1.w), \$1,219 (SOR 1.x), and \$2,277 (SOR 1.y); a credit card debt in collection for \$901 (SOR 1.o); a cable company debt in collection for \$101 (SOR 1.p); a credit card in collection for \$1,605 (SOR 1.q); a credit card in collection for \$640 (SOR 1.r), and a department store credit account in collection for \$1,145 (SOR 1.s; Tr. 34-37; Gov. Ex. 4, Credit report, date November 4, 2008; Gov. Ex. 5, Credit report, dated June 16, 2007). Applicant acknowledged all of the debt (Gov. Ex. 2, Answers to Interrogatories, dated May 21, 2008; Gov. Ex. 3, Answer to Interrogatories, dated August 13, 2008; Gov. Ex. 4, Credit report, dated November 4, 2008; Gov. Ex. 5, Credit report dated June 16, 2007).

Applicant had a position for over seven years with a defense contractor that provided medical benefits. A condition of employment with the contractor was the ability to work overtime and on weekends when required. Applicant was able to work overtime when required through much of his employment with the company. The company usually provided a few days notice of required overtime work. Applicant lived with his girlfriend and she worked nights and weekends. In early 2002, Applicant and his girlfriend had a baby. In November 2002, Applicant was told late on a Friday afternoon that he was required to work overtime on that Saturday and Sunday from about 3 pm until 2 am. His girlfriend was already scheduled to work and could not take care of the child. His son had been sick for about a week and even had been taken to the hospital. Applicant did not have anyone available to provide child care for the infant. Since he was unable to work the overtime, Applicant was terminated (Tr. 19-21).

After being terminated, Applicant was unable to find steady employment that also provided benefits. From November 2002 until February 2004, Applicant was unemployed or worked as a security guard which did not have health benefits. In February 2004, Applicant had congestive heart failure and received extensive medical treatment and hospitalization. The medical debts listed as delinquent debts in the SOR are a result of this medical issue and treatment (Tr. 21-23; See Response to SOR, Doctor's Letter, dated February 20, 2004).

After being released from the hospital, Applicant was unable to work for about two years and only drew unemployment insurance. In January 2006, he found work as a security officer. He worked as a security officer without benefits until February 2007. when he started working for his present employer who provides health benefits (Tr. 22-23; Gov. Ex. 1, SF 86, dated June 15, 2007). He is rated by his employer as an excellent worker who exceeds or meets expectations (App. Ex. F, Performance review, dated February 26, 2007). His present supervisor stated that Applicant is one of his most trusted and dependable employees. His work ethic is a model for others and he is willing to assist others at work. He is a great and valuable employee because of his high integrity (App. Ex. I, Letter, undated).

Applicant attempted to get a debt consolidation loan from his bank to pay his delinquent debts but was rejected (Tr. 14-15, App. Ex. A, Loan request, dated March 14, 2009). He also consulted an attorney to consider filing a bankruptcy petition. After reviewing his financial situation with the attorney, Applicant decided against bankruptcy. He discussed his finances with his father who may assist him in paying some of his debts (Tr. 15-17, App. Ex. B, Letter, dated December 22, 2008; App. Ex. B, Statement of Finances, undated).

Applicant has approximately \$9,000 in student loans that are not delinquent because they are in forbearance for financial hardship. He submitted a request to the creditor for a new payment plan (Tr. 24-26; App. Ex. H, Application for Repayment, dated January 26, 2009). Of the 25 delinquent debts, 20 were medical debts from his congestive heart failure treatment in 2004. He made two small payments on the medical debts from the hospital (App. Ex. J, Receipt, dated April 7, 2009; App. Ex. K

Receipt, dated April 7, 2009). The other five debts are for a telephone bill (SOR 1.o); a cable bill (SOR 1.p); a credit card used to purchase books when he was in school (SOR 1.q); a credit card (SOR 1.r); and a store credit card (SOR 1.s). Applicant has not been able to make payments on these accounts. He does not have sufficient disposable income to permit more debt payment. He has the information concerning the debts and will be attempting to make payments soon (Tr. 35-36).

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 reports are a security concern. He was unable to pay his debts because of his medical condition and employment in low paying jobs with no benefits. This raises 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). He has a history of not meeting financial obligations because of an inability to satisfy debt.

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. Only two of the debts were paid recently and the remaining debts are unpaid. Since debts are not being paid, there are current debts. Most of the debts are medical debts but there are also credit card, store credit, cable, and telephone debts, so Applicant has numerous delinquent debts. The majority of his debt was incurred as a result of losing his job, being unemployed or employed in a lower paying job without health insurance, and having a severe medical problem. His medical problem and lack of good employment affected his ability to pay his debts. Applicant is now solidly employed in the civilian workforce. 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 did not have financial problems until he was terminated by his former employer when he could not work overtime because of child care issues. He lost his health insurance and only worked low paying jobs without benefits. He had congestive heart failure which required extensive and expensive medical care. Without health insurance, he could not pay his medical debts. He was unemployed for almost two years before finding low paying jobs without benefits. His medical problems and lack of good employment prevented him from paying his other delinquent debts. He is now employed with good pay and benefits. He has contacted creditors and is working with them to establish payment plans. He made small payments on some of his debts. He acted responsibly under the circumstances.

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 apply. Applicant has not received any formal financial counseling. He did consult an attorney concerning bankruptcy. He also talked to his father and sought assistance from him to pay some of his debts. This is not considered financial counseling. However, he has taken the best actions he could under the circumstances to resolve his financial problems and his present finances are under control.

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 only limited ability to pay the debts, but he has shown a strong desire to pay his debts, and is making some effort to pay them. Applicant paid two of the debts recently. He has not incurred additional delinquent debts. Applicant acted responsibly towards his debts, and established that he is taking good-faith efforts to try 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 debts were caused when he was terminated from steady employment with benefits when he was unable to work overtime. He worked low paying jobs and he did not have health insurance. He had congestive heart failure incurring large medical bills. He was unable to pay his debts because of the congestive heart failure and periods of unemployment and underemployment. He recently paid two of the debts. Applicant lives within his means and meets his present 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.y: 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