



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



In the matter of:)	
)	
)	ISCR Case No. 08-07419
)	
)	
Applicant for Security Clearance)	

Appearances

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

April 22, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 11, 2008. On December 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 January 6, 2009.

Applicant answered the SOR in writing on February 3, 2009. He admitted seven and denied ten of 17 allegations. He provided detailed information concerning his financial situation and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 17, 2009. 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 nine exhibits, marked government exhibits (Gov. Ex.) 1 through 9. Applicant objected to five of the exhibits. All exhibits were admitted as noted below. Applicant testified on his own behalf. Applicant submitted 15 exhibits marked Applicant Exhibits (App. Ex.) A through O, which were admitted without objection. The record was kept open for Applicant to submit additional documents. Applicant timely submitted 12 additional documents marked App. Ex. P through AA. Government Counsel did not have any objections to the documents (Gov. Ex. 10), and they 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 denied.

Procedural Issues

Applicant objected to Gov. Ex. 1, 2, 3, 6, and 7 as not relevant since they were old documents and there are current documents. Gov. Ex. 1 is a security clearance application, dated October 14, 2004; Gov. Ex. 2 is Applicant's statement dated February 6, 2002; Gov. Ex. 3 is bankruptcy proceedings documents from May through December 1997; Gov. Ex. 6 is a credit report dated March 18, 2005; and Gov. Ex. 7 is a credit report dated December 1, 2006. The Government also introduced Applicant's recent answers to Interrogatories (Gov. Ex. 4 and 5), and credit reports of July 10, 2008 (Gov. Ex. 8), and October 28, 2008 (Gov. Ex. 9). Applicant introduced his most recent security clearance application, dated March 11, 2008 (App. Ex. M). Applicant's objections were overruled and the government exhibits were admitted as being authentic and relevant and material to a determination of Applicant's security worthiness (Tr. 14-22).

The Government's motion to withdraw SOR allegation 1.g to conform to the evidence was granted (Tr. 80). There was also a typographical error on SOR allegation 1.g which was corrected to read \$1,155 (Tr. 12-13).

Findings of Fact

Applicant is a 49-year-old college graduate who has worked for about a year as a systems engineer with his present defense contractor employer. He has been working for various defense contractors for about five years. He was married in 1981 but he and his wife separated in 1997. Their divorce was final in 2004. He has two grown children. Applicant has prior service on active duty in the Air Force (App. Ex. N, DD 214, dated October 15, 1992), and service in the Air National Guard (Tr. 10-11, App. Ex. O, e-QIP, dated March 11, 2008). Applicant completed a personal financial statement in September 2008 listing net monthly income of \$5,195 with monthly recurring expenses of \$2,783 leaving a monthly discretionary remainder of \$2,412. He also listed savings of \$1,500 and a \$500 retirement account (Gov. Ex. 4, Answer to Interrogatories, dated September 4, 2008). Applicant updated the information at the hearing and provided a new Personal Financial Statement. He lists savings of \$3,500, and a retirement account of \$1,100 (App. Ex. C, Bank Statement, dated March 20, 2009; App. Ex. D,

Account Statement, dated March 9, 2009; App. Ex. E, Retirement Account statement, dated March 31, 2009). His monthly updated net salary is now \$6,643 with \$3,103 in monthly expenses leaving his disposable income at about \$3,000 monthly (Tr. 74-76, App. Ex. A, Personal Financial Statement, dated March 20, 2009; App. Ex. B, Earnings statement, dated March 5, 2009).

The SOR lists 17 allegations of financial considerations security concern. These include a medical debt in collection for \$148 (SOR 1.a); a charged off credit card debt to a bank for \$617 (SOR 1.b); a clothing store account past due more than 90 days for \$1,520 (SOR 1.c); a department store account charged off for \$2,567 (SOR 1.d); a jewelry store account charged off of \$973 (SOR 1.e); student loans charged off for \$18,834 (SOR 1.f); a medical debt in collection for \$1,155 (SOR 1.g); a Chapter 7 Bankruptcy filed on May 20, 1997 with debts discharged on September 10, 1997 (SOR 1.h); a medical debt in collection for \$66 (SOR 1.i); a delinquent phone debt in collection for \$1,139 (SOR 1.j); two delinquent debts for the same creditor in collection for \$847 and \$1,859 (SOR 1.k, and 1.l); a cable debt in collection for \$119 (SOR 1.m); a credit card debt charged off for \$1,780 (SOR 1.n); child support payments in collection for \$61,000 (SOR 1.o); a credit card debt charged off for \$1,972 (SOR 1.p); and a telephone debt charged off for \$1,394 (SOR 1.q). The total amount of the debt is about \$96,000, the majority which is student loans of \$18,834, and child support of \$61,000 (Tr. 10-12; See, Gov. Ex. 3, Bankruptcy documents, dated May 19, 1997; Gov. Ex. 4 and 5, Answers to Interrogatories, dated September 4, 2008, and October 25, 2008, and Gov. Ex. 6, 7, 8, and 9, Credit Reports, dated March 2005, December 2006, July 2008, and October 2008).

Applicant and his wife had significant debt and filed for Chapter 7 bankruptcy in April 1997. Their debts were discharged in December 1997. Shortly after filing the bankruptcy petition, Applicant's wife left him. Applicant worked for the local school district as a teacher and software evaluator from August 1997 until February 2001. He left that position because of complaints by his wife to his employer. He was briefly employed by a local university from April 2001 until November 2001. He served in the Air National Guard as a drilling reservist from November 1999 until June 2002. He was on full time duty with the Air National Guard from November 2001 until July 2002. He was unemployed from July 2002 until he worked at a Wal-Mart store from June to August 2003 for \$8 an hour. He then worked for an attorney friend at the same rate of pay from August 2003 until January 2004. Since then he has been employed by various defense contractors (Tr. 35-39; App. Ex. M, e-QIP, dated March 11, 2008).

Delinquent debt SOR allegation 1.a is a medical debt. Applicant does not know what the debt is for. He has not made any inquires about the debt because of the lack of information on the debt in the credit reports (Tr. 33-34, 61).

Delinquent debt SOR allegation 1.b is a credit card debt of \$617. Applicant acknowledges the amount of the debt as \$358.63 when he made his last payment in June 2002. Applicant has not made further payments on the debt and states it will soon be removed from his credit report as barred by the statute of limitations. He does not

believe it is still a valid debt because legally the creditor cannot seek restitution (Tr. 34-35, 61-63; App. Ex. Q, Bank Statements, dated July 3, 2002, and August 3, 2002).

Delinquent debts SOR 1.c and 1.d are credit card debts. The debts were incurred by Applicant's girlfriend who shared living arrangements and expenses. The cards and the bills are in the name of his girlfriend. Applicant may also have used the cards since he is an authorized user and had these cards in his possession. He made payments on the cards until he and the girlfriend separated. Applicant states these are the girlfriend's debts and not his debts and he has "no obligation to repay, absolutely not" (Tr. 40-41, 63-66; App. Ex. R, Statement, dated September 5, 2007; App. Ex. S, Statement, dated September 3, 2007).

Delinquent debt SOR 1.e is an account charged off in 2002 by a jewelry store. Applicant acknowledged he was the user of the card. He has not made any payments on the card since 2002. This account has not been paid (Tr. 41-42, 66; App. Ex. T, Statement, dated July 28, 2002)

Delinquent debt 1.f is for student loans incurred by Applicant when he was furthering his education. Applicant had the student loans incorporated into one federal loan of approximately \$32,969. He has a payment plan for the loans and is current with his monthly payment of \$194 (Tr. 32-43, 66-67; App. Ex. F, Account Statement, dated April 19, 2007; Federal Student Aid Account, dated March 20, 2009).

Delinquent debt SOR 1.g was withdrawn by the government. SOR 1.h is the bankruptcy action initiated by Applicant and his former wife in May 1997 with debts discharged in December 1997. The amount of debt discharged was approximately \$40,000. The debts accumulated because of only part-time work and full-time college, as well as excess spending. Applicant claims the majority of the debts were incurred by his former wife's excess spending using about seven credit cards (Tr. 44-47).

Delinquent debt SOR 1.i is a medical account in collection for \$66. Applicant believes the medical treatment was for him in 2006. The entire bill was for \$150.60 and was paid in three installments by check. He does not have copies of his checks, but the creditor acknowledged payment in full (Tr. 47-48, 67; App. Ex. U, Paid in full letter, dated April 9, 2007).

Delinquent debts SOR 1.j was a bill of \$1,139 for a house phone. Delinquent debt 1.q was a cell phone from another provider for \$1,394 on a different phone. The phones were used by Applicant, his former wife, and other family members. Applicant disputed the debts on-line with the credit reporting agencies as not his debts. However, the bills are in his name. He has not heard from them about the dispute (Tr. 49-50, 67-70; App. Ex. V, Bill, dated August 16, 2000; App. Ex. Z, Statement, dated February 14, 2001; App. Ex. AA, Statement, dated March 23, 2001).

Delinquent debts SOR 1.k for \$847, and 1.l for \$1,859 were for two credit cards used by Applicant after he and his wife separated. SOR 1.p is the same debt as SOR

1.i. The credit cards were used in mid 2001 when Applicant was employed by a university driving three hours round trip to work. He was earning about \$35,000 per year and had monthly child support payments of approximately \$1447. He did not have sufficient funds to pay the debts owed. He has not made any payments on these cards since 2002 (Tr. 50-51, 70-71; App. Ex. W, Statement, dated June 18, 2001; App. Ex. Y, Statement, dated June 11, 2001).

Delinquent debt SOR 1.m for \$119 is for cable service. Applicant disputed this account but never heard from the creditor or the collection agency. He does not have a copy of the letter sent concerning the dispute. He has not made any payments on the account (Tr. 51, 71).

Delinquent debt SOR 1.n is another credit card of \$1,780 incurred by Applicant after separating from his former wife. He was unable to pay the debt and still has not made any payments on the debt (Tr. 51-52, 71-72; App. Ex. X, Statement, dated May 15, 2001).

Delinquent debt SOR 1.o is for child and spousal support payment arrearages of approximately \$61,000. In 2002, Applicant was ordered to pay approximately \$1,400 monthly in spousal and child support. He was unable to make payments so he accumulated support arrears. When he went to work for defense contractors in 2004, his pay was initially garnished to pay the support due but not arrears. After changing employers, the garnishment stopped. Applicant made some payments towards the arrears using income tax refunds. He intends to apply this year's tax refund to the support arrears. Applicant claims over the last few years he paid between \$15,000 and \$20,000 in support. He pays the current child support but still has significant arrearage (Tr. 52-60, 72-73).

Applicant has three credit cards that are current. Two are active cards (App. Ex. H, Statement, dated March 4, 2009; App. Ex. I, Statement, dated March 13, 2009). One card has been closed but still has a balance of \$321 that is being paid (Tr. 26-29; App. Ex. J, Statement, dated February 20, 2009). Applicant also has a credit union loan that he is current on payments (Tr. 29-30; App. Ex. K, Statement, dated April 20, 2009). His credit union account also shows a positive balance and positive cash flow (Tr. 30; App. Ex. L, Statement, dated March 8, 2009). He has a contract to purchase the house he is now renting (Tr. 30; App. Ex. M, Contract, undated).

Applicant states that not counting his child support arrears, he owes about \$7,000. He has not made any payments towards these debts. Most of the creditors for these debts will be prevented by the statute of limitations from collection on the debts. He has debt issues because of the period of his life from 1997 to 2004 when he and his former wife were divorcing. He moved so he could start his life over and leave the past behind him. He made a conscious decision not to pay the debts based on advice of an attorney and a friend who is also an attorney. They advised him to not pay the debts because the creditors would soon be barred by the statute of limitations from collecting the debts. If he made payments, the time for debt payment would start running again.

He has focused his effort on maintaining a good credit score. He was able to purchase a house but it took a long time from May 2007 until December 2008 (Tr. 76-79; See, App. Ex. P, Applicant's post hearing statement, dated April 9, 2009).

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 credit reports and Applicant's admissions show that Applicant has delinquent debts that have not been resolved, addressed, paid, or otherwise settled. Applicant's delinquent debts 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 and his former wife had their debts discharged in bankruptcy in 1997. While the bankruptcy action was proceeding, his wife left him. Applicant accumulated delinquent debts from about 2000 to 2003 when he incurred credit card, medical, student loan, and child and spousal support debt.

The bankruptcy discharge itself is not a security concern since bankruptcy is a legal and permissible means of resolving debts. The bankruptcy discharge released him of the burden of paying the debts that arose during his marriage. However, the debts that arose after the bankruptcy discharge should be examined to determine financial responsibility and the impact on security worthiness. After the bankruptcy discharge, Applicant continued to accumulate significant delinquent debts. The debts he accumulated after the bankruptcy do create a financial consideration security concern and raise the disqualifying conditions.

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) does not apply. Applicant is paying or has paid some of his debts so these debts are not current delinquent debts (SOR 1.f, 1.i) He is making his current child support payments and has made some periodic payments on the arrears for support (SOR 1.o). Applicant presented no information to establish that

he is now or has made any payments on ten of the delinquent debts (SOR 1.b, 1.c, 1.d, 1.e, 1.j, 1.k, 1.l, 1.m, 1.n, 1.q). Applicant does claim that some of these debts are not his but his girlfriend's. Since he admits to having used the credit cards leading to the debts at some time, they are considered his debts also (SOR 1.c, 1.d). He also claims he disputes some of the debts but he has not followed up with creditors about the debts (SOR 1.j, 1. m). Since these debts have not been paid, they are current debts. There are a number of delinquent debts from various sources such as credit cards, telephone bills, and medical bills indicating that Applicant accumulates delinquent debts frequently. Applicant claims he was unable to pay the debts because of his divorce and periods of unemployment or under employment. He admits that the debts he is not paying amount to about \$7,000. Applicant has been gainfully employed for almost five years and has not established that he cannot repay these debts. He did establish that he decided not to pay the debts since the creditors will be barred by the statute of limitations from enforcing the debts. These unpaid debts cast doubt on Applicant's current reliability, trustworthiness, or good judgment. This mitigating condition does not apply.

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) has some application to Applicant's situation. Applicant's divorce and periods of underemployment and unemployment had an impact on his finances so that he accumulated delinquent debts. However, he has been gainfully employed for over five years. His current debts are being paid as agreed and he has a positive cash flow, but he has not made any payments on his delinquent debts. While Applicant's divorce and employment situation in the early 2001 era may have caused some debt, he has not been prevented from paying something on his delinquent debts since 2004. He did not act responsibly under the circumstances so the mitigating condition does not apply.

FC MC ¶ 20(a) (the person has received or is receiving counseling for the problem and/or there is clear indications that the problem is being resolved or is under control) does not apply. There is no evidence Applicant sought or received counseling for his financial issues. He may have had some counseling when he filed bankruptcy but that was early in the process. He indicated he spoke with an attorney who advised to wait for the statute of limitations to run. Other than this advice, there is no indication that he received any financial counseling. This mitigating condition does not apply.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) does not apply. 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 had the means and ability to make some payments on his delinquent debts, but he has not paid any of the debts or made any plans to pay the debts. He stated his intentions not to pay the debts but wait for the statute of limitations on the debts to run. He does not have a systematic concrete plan of debt payment or reduction. An applicant is not required to be debt free, but he is required to act

responsibly in regard to his debts. Applicant's payment of current financial obligations but refusal to pay past delinquent debts and wait for the running of the statute of limitations is not a good-faith effort to pay debts or an indication of acting responsibly towards the debts. Applicant 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) 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 underwent a bitter and protracted divorce proceeding and then had periods of underemployment or unemployment. I considered his service in the Air Force and Air National Guard. I considered that his current debts are paid as agreed and that he has a positive cash flow and savings accounts. I considered he is current with his student loan payments and is making his current support payments. However, Applicant accumulated delinquent debts in the past that he now refuses to pay. It is not unusual that he accumulated delinquent debt from a divorce and periods of underemployment and unemployment. But after three years of accumulating debt, he started steady and lucrative employment in the defense industry. He has refused to pay about \$7,000 in delinquent debts accumulated before becoming gainfully employed. He now has the ability to repay his debts but refuses to do so letting the statute of limitations run so the creditors are unable to enforce their debts. Applicant has the financial means to make payments but has not done so. He has been irresponsible toward his finances by refusing to pay delinquent debt when capable of doing so. This irresponsible financial conduct indicates Applicant may be irresponsible in managing classified information. On balance, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant (Duplicate of 1.l)
Subparagraph 1.q:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge