



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



In the matter of:

ISCR Case No. 08-08493

Applicant for Security Clearance

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro Se*

August 12, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) as part of his employment with a defense contractor on April 8, 2008. On February 12, 2009, 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 April 14, 2009.

Applicant answered the SOR in an undated written response. He denied four and admitted ten of the allegations under Guideline F with explanations. He claimed most of the delinquent debts were caused by a business failure and an inability to work because of sickness and injury. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 15, 2009, and the case was

assigned to me on May 18, 2009. DOHA issued a Notice of Hearing on May 20, 2009, for a hearing on June 11, 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 testified on his behalf, and offered 14 exhibits, marked Applicant Exhibits (App. Ex.) A through N, which were received without objection. The record was held open at Applicant's request so he could submit additional documents. Applicant timely submitted nine documents marked Applicant Exhibits O through W, which were received without objection except for App. Ex. U, a handwritten statement to Department Counsel by Applicant. The information in App. Ex. U restates information in other documents or from Applicant's testimony at the hearing. His comments will be considered (Gov. Ex 6, Memorandum, dated July 9, 2009). DOHA received the transcript of the hearing (Tr.) on June 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Applicant signed for the Notice of Hearing on May 29, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of June 11, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 14 days prior to the hearing. He waived the 15 days notice requirement (Tr. 6).

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 42 years old and has been a cable inspector for a defense contractor since February 2009. He started working for the defense contractor in February 2008 as an electronics technician in Iraq. Applicant served for almost three years on active duty in the Air Force as an aircraft maintenance specialist. He was honorably discharged as an airman first class in May 1988. Applicant was married in December 2004 and divorced in March 2006. There were no children from the marriage, and he has not remarried.

Applicant completed a Personal Financial Statement in response to interrogatories. He noted that he receives \$1,200 monthly in salary, \$1,200 monthly in workman's compensation, and \$782 monthly in Veteran's Administration disability for a total monthly net compensation of \$3,182. His expenses are approximately the same as his income so he has no discretionary funds available at the end of the month (Tr. 41-50; Gov. Ex. 1, SF 86, dated April 9, 2008; Gov. Ex. 3, Answers to Interrogatories, dated December 2, 2008 at 19; App. Ex. C, DD Form 214, dated May 1988).

Applicant stated he owned at least two businesses at different times in the past and that he is a good business man. He sold the businesses for little profit but had no debt left over. After these businesses were terminated, Applicant worked for a company as an engine technician. He became sick in April 2006 with a gastrointestinal issue. Prior to becoming sick, his performance at the business was good (App. Ex. D, Letter, dated December 3, 2006). After extensive testing, the doctors were unable to reach a diagnosis. He was unable to work for approximately ten months. He did not receive workman's compensation or other payments during this time. His lack of work and income caused financial issues and debt problems for Applicant. He was unable to pay the first and second mortgage on his house and it was subsequently foreclosed (Tr. 25-26; 41-44; 51-53; App. Ex. I, Medical records, dated September 12, 2006).

Applicant moved to another location after sufficiently recovering from his illness. Since he owned businesses in the past, he tried to start a silk screen printing business. He arranged purchase of equipment and supplies from an acquaintance that already had a silk screen printing business. Applicant states that he used approximately \$30,000 of his own funds for the business and borrowed over \$80,000. Applicant did not present any information to show the amount of his own funds used for the business. Applicant was never able to establish a profitable silk screen printing business.

Applicant's attempt at the silk screen business failed so he entered into an employment contract with his defense contractor employer to work in Iraq as an electronics technician on a government contract (App. Ex. L, Memorandum Contract, dated February 22, 2008). Applicant's salary was over \$77,000 yearly (App. Ex. J, Pay statement, dated April 25, 2008; App. Ex. K, Hourly earnings statement, undated; App. Ex. S, Time sheet, dated June 6, 2008). Applicant's performance for his defense contractor employer has been good. He received a letter of appreciation for his work on a government project (App. Ex. F, Letter, dated May 6, 2008).

After being in Iraq for about 90 days, Applicant was injured in a fall. He was returned to the United States for treatment, and is still recovering. He was cleared to work half days for the contractor in February 2009 (Tr. 25-27, 41-45, 51-59; Gov. Ex. 2, Answer to SOR, dated January 2, 2009; App. Ex. G, Medical Report, dated April 26, 2008).). His performance of duty was rated as professional and proficient and he was recommended for pay increases (App. Ex. M, Performance review, dated February 2009).

Credit reports examined during a security investigation after Applicant submitted his SF 86 show the following delinquent debts: a credit card debt placed for collection by a bank for \$15,575 (SOR 1.a); a leasing account placed for collection for \$21,837 (SOR 1.b); a credit card debt charged off for \$2,248 (SOR 1.c); a credit card debt charged off for \$9,984 (SOR 1.d); a credit card debt charged off for \$3,414 (SOR 1.e); a furniture store account charged off for \$5,630 (SOR 1.f); a credit card debt charged off for \$3,697 (SOR 1.g); a credit card debt charged off for \$10,297 (SOR 1.h); another credit card account charged off for \$28,427 (SOR 1.i); a credit card debt placed for collection for \$944 (SOR 1.j); a second mortgage on a house past due for \$5,026 on a

balance of \$29,716 (SOR 1.k); the first mortgage on the same house placed for collection or foreclosure for \$118,000; a debt for a motorcycle past due for \$2,577 on a balance of \$14,301 (SOR 1.m); and a store charge past due for \$250 on a balance of \$820 (SOR 1.n; Gov. Ex. 4, Credit report, dated December 23, 2008; Gov. Ex. 5, Credit report, dated May 8, 2008).

The credit card at SOR 1.a was used by Applicant for expenses after he moved and was trying to establish the silk screen business. He made some payments on the card but does not remember the number of payments or amount. He contacted the bank for a settlement but the bank required a lump sum payment. He was unable to make the payment (Tr. 28-31).

A friend of Applicant's had a silk screen printing business in his basement. Applicant purchased the business from the friend, and agreed to lease the machine from a supplier. He used funds obtained from credit cards to purchase the business. The friend was to permit Applicant to continue to house the machine in his basement and train him in the business. The debt at SOR 1.b is with the supplier for the lease of the machine and some supplies. SOR debts 1.c, 1.d, 1.e, 1.g, 1.h, 1.i, and 1.j are credit card debts also used to purchase supplies and equipment. Applicant worked at the business and it was starting to develop. He made some payments to the supplier and to creditors for credit cards. After six or seven months, the friend would not permit Applicant to use the machine or remove it from the house. The supplier was to retrieve the equipment, but his friend would not let the supplier into the house to inspect or remove the machine. None of these accounts have been paid (Tr. 31-37, 53-55; App. Ex. B, Invoice, dated November 15, 2006). Applicant claims he talked to some of the creditors, but he presented no information to show he discussed the debts with them (Tr. 35-36, 54-55).

The debt at SOR 1.f is for furniture Applicant purchased for his house when he moved to the location of his silk screen business and where he is now employed. There are no indications of any payment on this debt.

The mortgage debts at SOR 1.k, and 1.l are mortgages on the house he purchased in 2005 at his former location. He left the house in 2007 when he moved. He stated he made payments on the mortgages prior to moving. Applicant sought forbearance of his loan. The information he presented is an application for forbearance and does not indicate that an agreement was reached. However, his attorney noted that the forbearance was executed on May 1, 2008. Applicant was in Iraq at the time. He was unable to make the forbearance payments when he lost his job because of injury. The house was foreclosed in January 2009. His attorney notes there is no deficiency on the loan after the foreclosure (Tr. 35-38, 58-59; App. Ex. H, Forbearance Documents, undated; App. Ex. W, Attorney's letter, dated July 7, 2009).

SOR debt 1.m is for a motorcycle. The motorcycle was sold by a friend for Applicant while he was in Iraq. The debt has been paid (Tr. 39-40, 59-61; App. Ex. V,

Paid in full letter, dated June 11, 2009). SOR debt 1.n is a store credit account debt. Applicant has not inquired about the debt or paid it (Tr. 40-41, 60).

Applicant has a workman's compensation claim against his employer based on his injury in Iraq (App. Ex. O, Attorney Letter, dated June 12, 2009; App. Ex. P, Memorandum of Informal Conference, dated January 8, 2009; App. Ex. Q, Labor Department pre-hearing statement, dated February 6, 2009; App. Ex. R, Request for compensation, undated; App. Ex. T, Statement of contested issues, dated April 22, 2009). Applicant expects to file a complaint against the friend who was to assist him in opening the silk screen business. Applicant's intent is to use the funds from his workman's compensation claim and the proceeds, if any, from the claim for the silk screen business to pay his delinquent debts (Tr. 50-51, 63-66).

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 commonsense 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 Considerations

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 delinquent debts from credit cards, loans, and past due mortgage debt as admitted by Applicant and listed on the credit reports are a security concern raising financial consideration disqualifying conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). These delinquent debt problems started as early as 2006 and still have not been resolved. Applicant has taken little action to learn about or resolve the debts. This shows that Applicant has a history, inability, or unwillingness to meeting financial obligations.

I considered the financial considerations mitigating conditions (FC MC) that were raised by Applicant's testimony. FC MC AG ¶ 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 has taken no action to pay the delinquent debts, so the debts are current. There are a number of debts from credit cards and other loans, so Applicant has extensive delinquent debt issues. The circumstances of how the debts arose are not unusual and they can recur. Since the debts are not paid, they cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

I considered FC MC AG ¶ 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's financial problems started when he became ill with gastrointestinal problems in 2005. He was unable to work for ten months, could not pay his mortgage, and had to move to start a business. His financial problems continued when his new business did not succeed. His problems were exacerbated when he took a job in Iraq, was injured, and had to return and could work only part time. Applicant's illness, injury, and failed business contributed to his financial problems. However, there are indications he did not act responsibly under the circumstances. Applicant indicated he opened the silk screen printing business with \$30,000 of his own funds and borrowed about \$80,000 using credit cards. However, just before opening the business, he was unemployed for ten months and unable to pay his mortgage. He could not have had \$30,000 of his own money to open the business. More likely, he borrowed all of the funds required for the business. In addition, Applicant presented no information to show he had experience and ability to operate the business and that it was a viable business opportunity. He had two previous business ventures that were not successful. He did not present any marketing survey or business plan to establish that the silk screen printing business would succeed. He did not present any information to show he had a sustainable agreement with his friend to teach him the aspects of the silk screen printing business as well as the friend's role in the purchase and leasing of equipment. Applicant is given partial credit under this mitigating condition for the circumstances beyond his control but not for acting responsibly under the circumstances.

I considered FC MC AG ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". For FC MC AG ¶ 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. The applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that he paid off each debt listed. The entirety of an applicant's financial situation and his actions can reasonably be considered in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. All that is required is that the applicant demonstrated he has established a plan to resolve his financial problems and taken significant actions to implement that plan.

Applicant sold a motorcycle and the proceeds paid the remaining debt. His house was foreclosed and the sale resulted in no mortgage deficiency. The allegations concerning these debts are resolved for Applicant. However, Applicant has not paid any of the other debts. His only plan to pay the remaining significant debt is to await the outcome of his workman's compensation claim and the potential claim against his friend

for the silk screen printing business. The outcome of both actions is not clear. A stated future intention to pay debts is not sufficient to establish a good-faith effort to pay debts. Applicant has not presented sufficient information to indicate a good-faith effort to pay creditors or resolve debts. His finances are not under control and he has not acted responsibly. 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's service in the Navy, and his willingness to go to Iraq to support the war effort.

To overcome financial considerations security concerns, an applicant must show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Available, reliable information about the Applicant, past and present, favorable and unfavorable, should be considered in reaching a determination. Applicant must demonstrate that he has a plan to resolve his financial problems and has taken significant actions to implement that plan. The entirety of Applicant's financial situation and actions must establish that Applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

Applicant does not have a meaningful track record of debt reduction or payment. The three debts in the SOR that have been paid were paid through little action by Applicant. His house was foreclosed but sufficient funds were recovered to pay the two mortgages. Likewise, his motorcycle sold for a sufficient price to pay the debt on the vehicle. The resolution of these debts does not establish a meaningful track record of paying debts. All other debts attributed to Applicant have not been paid nor addressed

so there is no meaningful track record. His decision to open a silk screen business by borrowing heavily to open the business and his lack of a business plan shows irresponsibility towards his finances.

Applicant was irresponsible in managing his business and finances. His finances are not sound in that most of his accounts have not been paid, he has no means of paying the debts, and his income is only sufficient to meet his current needs. Applicant has not established he is suitable for a security clearance since he has been irresponsible toward his finances indicating he will be irresponsible towards the safeguarding of classified information. He has not established he is reliable, trustworthy and exercises good judgment. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Overall, on balance the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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
Subparagraphs 1.a - 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against 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