



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



In the matter of:)	
)	
)	ISCR Case No. 08-08599
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Lachau Peake, Personal Representative

January 29, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) as part of his employment with a defense contractor on April 23, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated June 22, 2009, to 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 June 27, 2009.

Applicant answered the SOR in writing on July 15, 2009, admitting the 19 allegations under Guideline F with a detailed explanation and exhibits. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 1, 2009, and the case was assigned to me on October 7, 2009. DOHA

issued a Notice of Hearing on October 7, 2009, scheduling a hearing for October 22, 2009. I convened the hearing as scheduled. The government offered eight exhibits, marked Government Exhibits (Gov. Ex.) 1 through 8, which were admitted without objection. Applicant and one witness testified on his behalf. While Applicant did not offer any exhibits, he referred during the hearing to exhibits that were included with his response to the SOR. DOHA received the transcript of the hearing (Tr.) on November 6, 2009. I kept the record open for Applicant to file documents. Applicant timely filed three documents marked Applicant exhibits A through C, which were received without objection. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Applicant received the Notice of Hearing on October 14, 2009. Applicant is entitled to 15 days advance notice of the hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of October 20, 2009, before the Notice of Hearing was issued on October 7, 2009. Since Applicant discussed the hearing date with Department counsel before the Notice of Hearing was issued, actual notice was given more than 15 days before the hearing. However, Applicant signed for the Notice of Hearing only eight days prior to the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 4-10).

Findings of Fact

Applicant admitted all of the factual allegations in the SOR. I included Applicant's admission in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 31 years old and has worked as a materials handler for a defense contractor for approximately two years. He received a bachelor's degree in December 2002. He is married with three children. Applicant's monthly pay is approximately \$2,800. His wife is employed and contributes \$1,400 monthly to the family income for a total monthly income of \$4,200. Their monthly expenses are approximately \$3,800, leaving \$400 in monthly discretionary funds (Tr. 72-75; Gov. Ex. 1, e-QIP, dated April 23, 2008).

Credit reports (Gov. Ex. 5, Credit report, dated May 2, 2008; Gov. Ex. 6, Credit report, dated September 11, 2008; Gov. Ex. 7, Credit report, dated January 12, 2009; and Gov. Ex. 8, Credit report, dated April 21, 2009) show the following delinquent debts for Applicant: a medical debt for \$447 (SOR 1.a); another medical debt for \$47 (SOR 1.b); a debt in collection for \$88 (SOR 1.c); a medical debt for \$4,825 (SOR 1.d); a credit card debt for \$391 (SOR 1.e); a debt for telephone service for \$657 (SOR 1.f); a debt for furniture for \$3,013 (SOR 1.g); a debt for \$6,328 (SOR 1.h); a debt in collection for telephone service for \$116 (SOR 1.i); a debt in collection for a credit card for \$575 (SOR 1.j); a student loan account for \$36,694 (SOR 1.k); another student loan account for \$3,406 (SOR 1.l); a medical account in collection for \$28 (SOR 1.m); another

medical account in collection for \$278 (SOR 1.n); a loan account in collection for \$350 (SOR 1.o); a medical account in collection for \$270 (SOR 1.p); and an account on a credit card in collection for \$175 (SOR 1.q). There are also reports of Applicant uttering two fraudulent checks (SOR 1.r, and SOR 1.s; Gov. Ex. 4, Criminal justice report).

The delinquent debts at SOR 1.a and 1.b are medical debts for the same creditor. Applicant incurred the bills when he was a college student. He was initially included on his father's health insurance plan, but lost coverage when he was not taking sufficient credit hours. He became ill and had to go to the emergency room. He contacted the creditor and was told to pay as much as he could whenever he could make a payment. He is making some payments on the debt at SOR 1.a, and the balance is now \$229. The debt at SOR 1.b is paid in full (Tr. 35-36; Response to the SOR, Exhibit B, Money order, dated July 15, 2009; App. Ex. C, Payment receipt, undated).

The delinquent debt at SOR 1.c is paid in full (Tr. 36-37; Response to SOR, Exhibit C, Money order, dated July 15, 2009). The delinquent debts at SOR 1.d and 1.p are for medical expenses Applicant incurred when he was a student and not included on his father's health insurance plan. Applicant has a payment plan with the creditor and they deduct payment of \$50 each month from his bank account. Applicant is not sure of the balanced owed on either debt because the creditor does not provide such information (Tr. 26-27, 37-39; App. Ex. B, Bank statement, dated January 25, 2010).

The delinquent debt at SOR 1.e was settled for \$102 and paid in full (Tr. 39, 48-53; Response to SOR, Exhibit E, Letter, dated July 6, 2009). The delinquent debt at SOR 1.f for telephone service has been paid (Tr. 27-28, 39; App. Ex. C, Paid letter, dated May 2, 2009).

The delinquent debt at SOR 1.g is for furniture Applicant's wife purchased before they were married. After they were married, Applicant's name was added to the account. Applicant's wife lost her job and she continued to not work because of a pregnancy and having a young child at home. They were unable to make payments on the furniture and it was repossessed. Applicant makes small payments on this debt when he has funds, and the debt has been reduced (Tr. 53-55; Response to SOR, Exhibit G, Receipt, dated July 1, 2009).

Applicant and his wife are not aware of the delinquent debt at SOR 1.h. The debt is being reported by only one of the three credit reporting agencies. Applicant attempted to contact the company but to no avail. He protested the debt to the one credit reporting agency and it has been removed from their credit report as not verified (Tr. 24-25; Response to SOR, Exhibit H, Letter, dated July 8, 2009).

The delinquent debt at SOR 1.i is for telephone service and is paid in full in December 2008 (Tr. 28; Response to SOR, Exhibit I, Letter with receipts, dated June 30, 2009). The delinquent debt at SOR 1.j is to a bank on a loan. Applicant makes \$20 monthly payments on the debt (Tr. 40).

The delinquent debt at SOR 1.k is for student loans. The loans are now in deferment and considered current (Tr. 40). The delinquent debt at SOR 1.l is also for student loans. The loans were consolidated with other student loans and are in deferment. However, Applicant has made some payments on the loans (Tr. 41-42; Response to SOR, Exhibit L, Money Order, dated July 15, 2009).

The delinquent debt at SOR 1.m is paid in full (Tr. 42-43; Response to SOR, Exhibit M, Money Order, dated July 15, 2009). The delinquent debt at SOR 1.n was settled for \$55 and paid in full (Tr. 42-43, Response to SOR, Exhibit N, Money Order, dated July 15, 2009).

Applicant and his wife called the creditor for the delinquent debt at SOR 1.o, but did not receive an answer. They have sent small amounts in payment of the debt. They are not sure the money orders are being cashed (Tr. 43; Response to SOR, Exhibit O, Money Orders, dated July 15, 2009). The delinquent debt at SOR 1.q was settled and paid in full (Tr. 44; Response to SOR, Exhibit Q, Letter dated July 7, 2009).

The SOR allegations at 1.r and 1.s pertain to checks returned for insufficient funds by the bank. Applicant did not initially know of the dishonored checks. When he was advised of the returned checks, he redeemed them and the charges were dismissed (Tr. 45-46; Response to SOR, Exhibits R and S, Case Disposition, dated April 14, 2000).

Applicant's pastor testified that she has known Applicant for a few years and sees him regularly. She considers him honest, reliable, and trustworthy. He is always willing to do whatever she asks him to do. She knows he has financial problems because of his youth and immaturity. But she also knows that he is trying to resolve his financial problems to the best of his ability (Tr. 79-82).

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 must be considered 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 overarching 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:

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 listed in credit reports for Applicant 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). Applicant incurred delinquent debt as a college student for medical expense, student loans, and living expenses. Applicant assumed his wife's delinquent debts when they married.

I considered Financial Considerations Mitigating Conditions (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), and 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). These mitigating conditions partially apply. Applicant's financial problems started as a college student without health insurance. He required student loans to finance his education. His wife also brought some delinquent debts to the marriage. Some of the debts have been paid, but most of the debts are still outstanding and so are current debts. There were no unusual circumstances beyond Applicant's control that led to the debts. The debts were incurred in the normal course of financial activities. However, Applicant is paying his delinquent debts and is acting responsibly toward his debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). 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 method of handling debts is needed. 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 each and every 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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. 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. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. All that is required is that Applicant demonstrates he has established a plan to resolve his financial problems and taken significant actions to implement that plan.

Applicant has paid 8 of his 17 delinquent debts. He is paying another six debts according to agreed plans. In addition, his largest single debt, his student loans, are considered current since the loans are in deferment. He disputed one debt and it has been removed from his credit report as not verified. Applicant's actions paying and

resolving his delinquent debts is significant and credible information to establish a meaning track record of debt payment, and shows that he acted reasonably under the circumstances.

I considered FC MC ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provided documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue). Applicant disputed one debt that he had no knowledge of and was only reported by one of the credit reporting agencies. The debt was not verified and was removed from his credit report.

Applicant has acted responsibly towards his debts and finances under the circumstances. Applicant presented sufficient information to mitigate security concerns for financial considerations by establishing that he has or is paying his delinquent debts. His finances do not indicate a security concern.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all the circumstances. The 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 eligibility for access to classified information must be an overall commonsense 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 that Applicant has a reputation in the community for reliability, honesty, and trustworthiness.

Applicant established a meaningful track record of debt payment of his delinquent debts. He has or is paying all of his debts except for student loans, which are in deferment. He established that he acted reasonably and responsibly towards his finances indicating he will act reasonably and responsibly to protect classified information. The management of his finances indicates he will be concerned, responsible, and not careless concerning classified information. Overall, the record

evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

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
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Subparagraphs 1.a - 1.s:	For Applicant
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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 access to classified information. Clearance is granted.

THOMAS M. CREAN
Administrative Judge