



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



In the matter of:)
)
) ISCR Case No. 08-09141
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

November 23, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) May 14, 2008, as a requirement for his employment with a defense contractor (Item 5). On February 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F (Item 1). 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 March 26, 2009.

Applicant answered the SOR in writing on both April 22, 2009 (Item 2), and June 24, 2009 (Item 3). Applicant denied the first allegation (SOR 1.a), but admitted the second allegation (SOR 1.b). He provided an explanation for his answers and attached a receipt for payment of the debt listed at SOR 1.a. Applicant did not indicate in his response whether he wanted the case decided on the record or in a hearing before an

administrative judge. On August 7, 2009, he elected to have the matter decided on the written record in lieu of a hearing (Item 4). Department Counsel submitted the Government's written case on August 19, 2009. On September 4, 2009, Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide additional material. The case was assigned to me on November 9, 2009. Based on a review of the case file and pleadings, eligibility for access to classified information is granted.

Findings of Fact

I thoroughly reviewed the case file, and the pleadings. I make the following findings of fact.

Applicant is 59 years old and has been employed as an equipment repair mechanic for a defense contractor for over 31 years. He has been married for over 40 years and has three adult children. He has held a security clearance for at least ten years (Item 5, e-QIP, dated May 14, 2008). In response to Interrogatories from security adjudicators, Applicant provided a personal financial statement. He reported monthly income of \$5,391.36, verified by an earnings statement from his employer (Item 6 at 4). He has monthly recurring expenses of \$1,641.89. The mortgage on his house is paid, so he reports additional monthly expense of \$795.38 for property taxes, homeowner's insurance, and a car payment. He has a net monthly remainder of \$2,954.09. He listed assets of \$322,300, for the equity in his house, savings bonds, and stock (Item 6).

Credit reports (Item 7, Credit report, dated July 15, 2009; Item 8, Credit report, dated February 6, 2009; Item 9, Credit report, dated November 17, 2008; Item 10, Credit report, dated May 28, 2008) show a charged off delinquent debt for \$48,000 (SOR 1.a), and a house foreclosure on a mortgage default of \$187,000 (SOR 1.b). There is no indication in the file of the origin of the debt at SOR 1.a. Applicant provided a receipt showing that the debt was settled for \$4,801.11 and paid. The debt is not listed on the latest credit report (Item 7). Applicant's house, that he lived in for over 30 years, is mortgage free having been paid in full. Applicant states that the mortgage in SOR 1.b is for his son's house. Applicant co-signed the mortgage on the house for his son. His son was not able to continue to make the mortgage payments so it will be foreclosed. Applicant also stated that his son was negotiating with the lender for a more affordable mortgage (Items 2 and 3).

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 two delinquent debts reported in credit reports raise Financial Considerations 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).

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation) and the individual acted responsibly under the circumstances). There are only two delinquent debts for Applicant listed in credit reports. Even though there is no indication of the origin of the debt at SOR 1.a, Applicant has provided sufficient information to establish that this debt is settled and paid. The debt at SOR 1.b is attributed to Applicant because he co-signed for his son's mortgage and the son defaulted. This event will not likely recur since Applicant's co-signing the mortgage was a one time event. Applicant acted responsibly towards his personal finances. He paid all debts directly attributed to him, and pays his present debts as agreed. He has a significant savings safety net.

I considered FC MC AG ¶ 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 is under control). There is no indication Applicant received financial counseling or that he even needed financial counseling. However, he does not have a financial problem since his finances are under control.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay any overdue creditors or otherwise resolve debts". Applicant has no debt except for the mortgage attributed to him because he co-signed his son's mortgage. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant presented information to show that his management of his personal finances is reasonable, prudent, and honest. He has managed his finances in an excellent fashion that he has no debt except for his financial liability from his desire to assist his son by co-signing a mortgage for his son. Applicant presented sufficient information to establish he is making a good-faith effort to pay creditors and resolve his debts. His finances are under control and he acted reasonably and responsibly in regard to his finances. He mitigated 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Appellant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant established a "meaningful track record" of debt payment by presenting sufficient information to show he is current with his debts except for one that is basically a debt for his son. He is taking sufficient, consistent, reasonable, and responsible action to properly manage his finances. He basically has no debt except for one debt more attributed to his son than to him. Applicant demonstrated by his lack of personal debt reasonable and responsible management of his finances. It is apparent Applicant has a debt for the co-signed mortgage that he must resolve with mortgage creditor. The fact he has this debt does not show he should not be granted access to classified information. The circumstance of this debt does not indicate Applicant's finances show poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant lived within his means for many years as indicated by the facts he has no delinquent debt and has substantial discretionary funds available each month. He paid off the mortgage on his own house and accumulated a savings in the form of stocks and bonds. Applicant's overall financial picture shows he does meet his financial obligations. The way he managed his finances over the years indicates that he will be concerned, responsible, and not careless in regard to classified information. Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment, reliability,

and trustworthiness. He established that he is suitable for a security clearance. For all these reasons, I conclude Appellant has mitigated the security concerns arising from his financial situation. Clearance is granted.

Formal Findings

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge