



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



In the matter of:)
)
) ISCR Case No. 08-10801
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys., Esquire, Department Counsel
For Applicant: *Pro Se*

February 18, 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 July 8, 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 July 10, 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 July 31, 2009.

Applicant answered the SOR on August 5, 2009, denying all nine allegations under Guideline F. He provided a detailed explanation for his denials, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 2, 2009, and the case was assigned to me on November 17, 2009. DOHA issued a Notice of Hearing on November 20, 2009, scheduling a hearing for December 8, 2009. I convened the hearing as scheduled. The government offered six exhibits,

marked Government Exhibits (Gov. Ex.) 1 through 6 which were admitted without objection. Applicant and three witnesses testified on his behalf. Applicant offered 15 exhibits marked Applicant Exhibits (App. Ex.) A through O which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 24, 2009. I kept the record open for Applicant to submit additional documents. Applicant timely filed five additional documents marked App. Ex. P through T, which were received without objection (Gov. Ex. 7, memorandum, dated December 31, 2009). 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 December 8, 2009, the day of the hearing. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with Department Counsel the hearing date of December 8, 2009, before the Notice of Hearing was mailed so actual notice was given more than 15 days before the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 6-7).

Findings of Fact

Applicant denied the nine factual allegations in the SOR with explanation. I included Applicant's explanation 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 48 years old, and has worked as a business developer for a defense contractor since July 2008. He is a college graduate, and served over ten years on active duty in the Navy as a helicopter pilot. He received an honorable discharge. He is married with three children (Tr. 60-61; Gov. Ex. 1, e-QIP, dated July 8, 2008). Applicant's monthly pay is approximately \$6,440. His wife's monthly income is approximately \$2,200, for a combined monthly total income of \$8,640. Their combined monthly expenses are approximately \$6,400 leaving over \$2,200 in monthly disposable income (Tr. 68-72; Gov. Ex. 3, Answers to Interrogatories, date June 8, 2009 at 72). His mortgage has been modified and his payments are on schedule (App. E, Cancelled checks, October, November, December 2009; App. Ex. S, Forbearance agreement, dated August 25, 2009). He paid other debts that were questioned during the investigative phase but not included in the SOR (App. Ex. F, Bank transactions, dated April 29, 2009). Applicant provided a current status of his delinquent debts (App. Ex. K, Debts, undated).

Applicant worked at various businesses doing business development after leaving the Navy. He also assisted in managing a family insurance business. His income fluctuated from 2006 to 2008, from \$22,129 in 2006, to \$71,917 in 2007, and \$45,495 in 2008, depending on the business he was able to develop (App. Ex. A, Income tax return for tax years 2006, 2007, 2008). He used investment accounts in early 2006 to support himself and his family while developing business opportunities

(App. Ex. B, Investment snapshot, dated January 31, 2006). He received limited credit and financial counseling during this time (App. Ex. C, Counseling application, undated). His latest credit report shows that his current debts are paid as agreed (App. Ex. L, Credit report, dated December 3, 2009).

One of Applicant's business enterprises was developing a concept for a potential government contract (App. Ex. D, Contract, dated March 1, 2008). The work required Applicant to move to another state where he rented a small apartment. His family remained in their home area, and Applicant commuted weekly from his home to where he was working. Applicant stayed in this position for about six months, but the government was not able to award the contract. Applicant left the apartment before the end of the lease and moved back to his home area. Applicant states that when he left the apartment was clean and in excellent condition. Applicant did not receive the pay he was promised for his work (Tr. 18-44).

Some of Applicant's business ventures were only marginally successful (App. Ex. N, Letter, dated April 8, 2003). Other business ventures were unsuccessful. He terminated one venture because he did not trust his business partner and considered his actions unscrupulous (App. Ex. M, Letter, dated October 19, 2004). Another venture he terminated because he considered his employer to be dishonest, selfish, and greedy. Again, Applicant was not paid what he was promised by his potential employers (App. Ex. O, Letter, dated November 12, 2002).

Credit reports (Gov. Ex. 4, Credit report, dated December 4, 2009; Gov. Ex. 5, Credit report, dated December 9, 2008; and Gov. Ex. 6, Credit report, dated August 5, 2008) show the following delinquent debts for Applicant: a judgment in favor of an apartment landlord for \$179 (SOR 1.a); a cable company debt in collection for \$1,695 (SOR 1.b); another debt for the same apartment complex listed in SOR 1.a in collection for \$240 (SOR 1.c); a credit card debt in collection for \$812 (SOR 1.d); four debts owed to the same time share company in collection for \$1,954 (SOR 1.e), \$2,409 (SOR 1.f), \$1,868 (SOR 1.g), and \$1,651 (SOR 1.h); and property rental past due for \$640 (SOR 1.i) The balance owed on these accounts is \$10,800 (Tr. 11-12).

The delinquent debt at SOR 1.a and SOR 1.c are the same debt for a cleaning fee incurred when Applicant moved out of the apartment he rented while working on a potential government contract. Applicant contested the charge since he only occupied the apartment about four nights a week and left it in good condition. The landlord sought a judgment against Applicant (Gov. Ex. 2, Judgment, dated April 14, 2008). Even though he protested the bill, Applicant paid the debt in full (Tr. 28-32; App. Ex. H, Bill and bank check, dated June 8, 2009).

The delinquent debt at SOR 1.b is a debt to a cable company. Half of the debt is for equipment and the other half is for the monthly rental. Applicant returned the equipment and paid the monthly charges (Tr. 32-37; Answer to SOR, dated August 5, 2009, at 9 and 10; App. Ex. G, Bank statement, dated August 19, 2009). The debt is paid in full (App. Ex. R, Statement, dated December 17, 2009).

The delinquent debt at SOR 1.d is a credit card debt. The credit card was used by Applicant and his wife when he was living in an apartment away from his family. Applicant is paying this debt under a payment plan. He made two payments, and has two more payments of approximately \$200 each to resolve the debt (Tr. 37-39; App, Ex. I, Bank statement, dated August 6, 2009, and cancelled check, dated August 14, 2009).

The delinquent debts at SOR 1.e, 1.f, 1.g, and 1.h are various charges from a time share Applicant and his wife invested in starting in 2005. At the time, he did not know that there were various lawsuits against the time share management company. He received letters from other time share owners commenting on the various problems with the time share. In addition to the annual fees, Applicant started to receive maintenance and other home owner assessments that he was unaware he was responsible for. These fees are the subject of ongoing litigation against the time share management company. Applicant and his wife never used the time share, and tried to sell it, but were not successful. The time share initially cost \$500. The debts are for maintenance fees, delinquency charges, and late charges, and total over \$8,000 (App. Ex. J, Letter, dated August 14, 2009). Applicant was told by the president of the time share company that he could settle his debt for \$8,000. Applicant is disputing this debt but acknowledges he does own some amount on the time share. He sends the company \$250 per month and plans to continue sending the company the monthly payments until he has paid what he believes is the amount of the debt that he owes (Tr. 41-45; App. Ex. P, Applicant's letter, dated December 31, 2009; App. Ex. T, Cancelled check, dated December 21, 2009).

The delinquent debt at SOR 1.i is for rent of a storage space for a camper and a boat. Applicant paid the debt in full (Tr. 45-46; App. Ex. Q, paid in full letter, dated December 16, 2009).

A government employee testified that he held a security clearance for over 25 years. He has known Applicant for over three years. He was aware of Applicant's business and professional experience, so in 2007, he convinced Applicant's employer to assign him to support the witness's government staff. He saw Applicant on a daily basis until his clearance was suspended. He now sees him on a weekly basis. Applicant's work performance has exceeded the witness's expectations because of Applicant's experience and skill (Tr. 76-81).

Another government employee testified that he has held a security clearance for over 40 years. He has known Applicant for over two years, and has seen and interacted with him on a daily basis for over a year. He considers Applicant in the top 2% of people he works with as to knowledge, competency, and capability. Applicant is absolutely essential to his group in the entire process of their work for the government. He stated Applicant is extremely trustworthy, diligent, and capable of handling classified documents. He considers Applicant to be reliable with impeccable judgment (Tr. 75-92),

Applicant's supervisor, a former government employee who held a security clearance for over 30 years, testified that he hired Applicant in August 2008. He sees

and works with Applicant on a daily basis. He stated Applicant has good character and is a capable, creative, and diligent employee. He finds Applicant to be trustworthy, reliable, very smart, very competent, trustworthy, and exercises good judgment (Tr. 92-97).

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 to obtain 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 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. Applicant's delinquent debts 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 debts while developing employment opportunities, changing jobs, and to look for better employment.

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). The mitigating conditions apply. Applicant's delinquent debts occurred as he sought business and employment opportunities. These business ventures were unsuccessful through no fault of Applicant. He also did not receive the pay he was promised. These circumstances were beyond his control. The failed business opportunities and lack of sufficient pay caused him to be unable to keep his debts current. Now that he is steadily employed and highly regarded by his employer, the circumstances of his negative job search should not recur and he should not again incur delinquent debts. His present credit report shows he is paying his debts as agreed. He acted responsibly under the circumstances by paying most of his past due debts and staying current with his present financial obligations. Since his debts have been or are being paid, his finances do not cast doubt on his current reliability, trustworthiness, or good judgment.

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. Applicant has sufficient discretionary funds to pay his delinquent debts. He presented sufficient information to show that four of the nine delinquent debts have been paid in full. One debt is being paid under a payment plan and Applicant has only two small payments remaining. The other four debts are to the same creditor for fees on a time share. Applicant is contesting the fees. He acknowledges that he does owe some debt to the creditor and he started paying the creditor \$250 per month pending a resolution of the dispute. Applicant's action in contacting his creditors and arranging to make payments on the debts demonstrates a good-faith effort to repay his creditors.

I considered FC MC AG ¶ 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 provides documentation to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue). Applicant disputes the time share fees. He presented information to establish the fees charged are an ongoing issue with the time share owners. While the dispute has not been resolved, Applicant has a reasonable basis for his dispute and is making payments on the debt in anticipation of the dispute being resolved.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is a highly regarded employee and is considered by his friends, supervisors, and employers to be trustworthy, reliable, honest, competent, capable, and exercises good judgment.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid each and every debt listed in the SOR. 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 actions to reduce his outstanding indebtedness are credible and realistic. Available, reliable information about the person's behavior, 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.

Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant presented sufficient information to show he is taking reasonable and responsible action to resolve his financial issues. He paid four of the nine delinquent debts, and has two small payments remaining on a fifth debt. He has a reasonable basis for his dispute of four time share debts. Applicant is making some payments on the timeshare amount he considers appropriate. Applicant's management of his finances and payment of past obligations indicates he will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on his finances.

Overall, on balance the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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.i: For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge