



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



In the matter of:)
)
) ISCR Case No. 08-11643
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Donna Roth, Personal Representative

February 26, 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 24, 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 August 24, 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 August 27, 2009.

Applicant answered the SOR in writing on October 5, 2009, admitting six and denying one of the allegations under Guideline F. He also denied with explanation the

security concern based on his finances. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 4, 2009, and the case was assigned to me on November 17, 2009. DOHA issued a Notice of Hearing on November 23, 2009, scheduling a hearing for December 11 2009. I convened the hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant and two witnesses testified on his behalf. Applicant offered four exhibits, marked Applicant Exhibits (App. Ex.) A through D, which were received without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 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 November 28, 2009, 14 days before 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 11, 2009, before the Notice of Hearing was issued on November 23, 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. At the hearing, Applicant waived the 15 days notice requirement (Tr. 3-4).

Findings of Fact

Applicant admitted all but one of the factual allegations in the SOR. I included Applicant's admissions 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 been employed as the facilities security officer and procurement agent for a defense contractor for approximately seven years. He served 22 years on active duty with the Air Force, retiring in 2003 in the grade of master sergeant (E-7) with an honorable discharge. He has held a security clearance since 1981. He received two associate's degrees while in the Air Force. Applicant married in 1984, separated in March 2006, and divorced in March 2007. There were two children from the marriage (Tr. 13-14, 41-43; Gov. Ex. 1, e-QIP, dated July 24, 2008; Gov. Ex. 2, Answers to Interrogatories, dated May 21, 2009, DD 214 at 5). Applicant's monthly salary is approximately \$2,200 and he receives another \$1,170 monthly in military retired pay and disability. Child support payments of \$1,094 have been taken from his salary before he receives his net monthly income. His former wife's share of his military retirement has already been deducted before he receives his military retired pay. His total monthly net income is approximately \$3,300. His monthly expenses are approximately \$2,300 leaving approximately \$1,000 monthly in discretionary funds. Applicant has \$1,700 in saving and another \$25,000 in his 401(K) account (Tr. 33-50).

Credit reports (Gov. Ex. 4, dated July 29, 2008; Gov. Ex. 5, dated June 22, 2009; and Gov. Ex. 6, dated November 4, 2009) show the following delinquent debts for

Applicant: a debt for a computer for \$507 (SOR 1.a); two credit card debts to the same creditor for \$4,988 (SOR 1.b) and \$2,797 (SOR 1.c); a debt in collection on a credit card for \$2,623 (SOR 1.d); a debt in collection for a bank of \$22,400 (SOR 1.e); a debt in collection for telephone service for \$1,627 (SOR 1.f); and another debt to the same bank listed in SOR 1.e for \$7,701 (SOR 1.g). The total delinquent debt listed in the SOR is \$42,000. The delinquent debts arose from 1998 to about 2008 (Tr. 8-9).

Applicant's wife managed the family finances while Applicant was on active duty. She did not pay their bills when they became due. Applicant was not aware of the details of the family finances since he was on deployment or working. He periodically asked his wife about the state of their finances, and she always informed him that their finances were good and debts were being paid. However, Applicant learned that their finances were deteriorating when he received notice of late or past-due payments from creditors. His wife quit her well-paying job and did not immediately seek employment while the debts mounted. Applicant encouraged his wife to seek work, but his wife did not work for many months. She finally found another job but quit after a few months because she did not like the work. She continued to use credit cards for purchases and not pay the family bills. She again went without work for a few months until she started another job. A few months later she was fired from that job for embezzling funds from her employer to use to pay some of her debts. Applicant inquired into their finances and learned that their house was in danger of foreclosure, his cars were about to be repossessed because they were months behind on car payments, and credit card debts had not been paid. He also learned that his wife had taken money from accounts she was managing for his elderly father and used the funds for herself and not his father. Applicant and his wife attempted a debt consolidation but it did not continue after his wife lost employment. When Applicant separated from his wife, he realized that they were \$52,000 in debt and his wife was continuing to incur debt in his name (Tr. 13-16; 56-60; Gov. Ex. 2, Answers to Interrogatories, dated May 21, 2009, Report of Investigation, at 5-6; App. Ex. A, Affidavit, dated March 2006).

Applicant and his wife separated in March 2006. Applicant continued to pay the family debts as best he could while also providing support to his former wife and children. Since then, Applicant has paid off both his car and his wife's van, and other accounts, and continued to pay support for his former wife and his children. However, his wife continued to incur debts. Applicant pressed for their house to be sold after the divorce in 2007, so the profit could be used to pay debts. Applicant's wife was reluctant to sell the house. She delayed signing the sales documents, and Applicant had to continue paying the mortgage from March 2006, when he moved out, until it was sold, because he did not want the house foreclosed. The house was placed on the market in September 2007, and sold in April 2008. Applicant and his wife realized \$27,515.45 from the sale of the house (Tr. 14-16, 56-59).

Applicant agreed to use his wife's divorce attorney to assist with settlement and payment of the marriage debts from the proceeds of the sale of the house. When the house was sold, the attorney used \$6,437 of the proceeds to pay debts. The delinquent debt at SOR 1.a for the purchase of a computer was paid from the proceeds of the sale

of the house (Tr. 25-28; Gov. Ex. 3, Answers to Interrogatories, dated April 8, 2009, at 13-14). Other debts were paid that are not listed in the SOR. Seven debts, that Applicant thought would be paid in full or part from the sale of the house, were not paid. The attorney noted that while these debts were outstanding, they would not be paid off because the statute of limitations had run, or the actual owner and the amount of the debt could not be ascertained. The delinquent debts at SOR 1.b, 1.d, 1.e, and 1.g are included in this list of debts not to be paid. The delinquent debts at SOR 1.c and 1.f are not included in the list but are included in those debts affected by the statute of limitations and inability to determine the creditor. Applicant's attorney tried to contact all of the creditors but was not successful. Even as late as December 2008, when checks from the proceeds of the sale of the house were being mailed to potential creditors, the attorney was receiving information from creditors that they no longer held the debt and could not accept payment. Applicant made no attempt to contact the creditors or to make payments on these debts. He was acting on the advice of an attorney who informed him if he contacted the creditors or made any payments, the timelines for enforcing the debts would start to run again (Tr. 16-21, 28-33, 66-67; Gov. Ex. 3, Answers to Interrogatories, dated April 8, 2009, at 13-14; App. Ex. B at Exhibit A, Letter, dated October 10, 2008). The \$6,437 in debts paid by the attorney left \$21,078.45 from the sale of the house which was split evenly between Applicant and his wife. Applicant used his share of the proceeds to pay other debts, pay for medical care for his fiancée's daughter, and repair his car. He also put \$1,700 in savings (Tr. 28-32).

Applicant is considered an excellent employee by his company. His immediate supervisor noted that he has known Applicant for several years. Applicant is a hard working and dedicated employee who is consistently reliable. He is one of their most trusted employees. He considers Applicant as ethically strong and a patriotic individual who is loyal to the United States. He recommends Applicant be granted access to classified information (Gov. Ex. 3, Answers to Interrogatories, at 21).

Applicant's fiancée testified that she worked closely with Applicant for about five years when she also worked at the same company as Applicant. There never were any questions in the company about Applicant's integrity and ability to maintain confidential information (Tr. 53-56). Applicant's friend testified he has known Applicant for over five years. He sees Applicant socially but they do not work together. Applicant has an outstanding reputation for personal and professional conduct. There is no question concerning his integrity and ability to maintain confidential information (Tr. 71-74).

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 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. 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 during his marriage when he permitted his wife to manage the family finances without his adequate involvement. His wife did not pay their debts, instead spending money on luxuries. Since his divorce, Applicant paid some of his debts but some still remain.

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. The debts were incurred because of his wife's misconduct and failure to use their family funds to pay debts when due. His financial problems are partially beyond his control because the delinquent debts arose through his wife's action that he was not aware of. He asked his wife about their finances, and she left him with the information that they were not in financial trouble. However, Applicant could have been more fully involved in the family finances, and, if he did, he would have learned earlier of their financial issues. Since then, Applicant has been acting responsibly under the circumstances. He separated from and divorced his wife, took charge of his finances, pressed to have their house sold to get funds to pay debts, and paid as many of the debts as his finances permitted.

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. The concept of good-faith action requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. An applicant must do more than merely show that he or she relied on a legally available option (such as the statute of limitations) in order to claim the benefit of the "good-faith" mitigating condition. Applicant has the funds to pay his debts since he has money in savings and a 401K account. Applicant paid some of his delinquent debts. The SOR lists only those debts that are still outstanding. The proceeds from the sale of his house paid one of these debts. However, he has not paid the other debts because he does not know the background and reasons for some of the debts, cannot clearly identify the creditor to be

paid, and has followed the advice of an attorney not to contact creditors or pay debts that are close to being unenforceable because of a statute of limitations.

Applicant's state of residence has a three-year statute of limitation provision for enforcements of debts. The statute has the societal, judicial, and public policy rationale to stimulate activity, punish negligence, and promote stability to human affairs. It is intended to promote and achieve finality in litigation. The statute of limitations provides potential defendants with certainty that after a set period of time, they will not be taken to court to defend time-barred claims. The statute of limitations clearly and unequivocally ends an applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. However the application of a state statute of limitations on debt collection does not automatically mitigate financial considerations concerns under AG ¶ 20(d). An Applicant may be relieved of legal and financial responsibility for a debt not paid because the timeline for enforcing the debts had run, but the debt may remain a security concern even though not collectible. His actions show some good-faith but his failure to pay the debts because of the potential lack of enforcement by the statute of limitation is not a good-faith effort.

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 Applicant served 22 yeas on active duty in the Air Force, he received an honorable discharge, and successfully held a security clearance for over 30 years. I considered that Applicant has a reputation in his company as well as the community for reliability, honesty, and trustworthiness.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. The issue is not simply whether all of Applicant's debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant's wife managed the family finances. She did not pay the family bills and used the funds for other purposes. She also was involved in fraudulent financial activities with Applicant's father's funds and the funds from her employer. Applicant did not know the debts were not paid even though he asked his wife about their finances. Applicant has some culpability in regard to the delinquent debts because he did not exercise sufficient interest in the finances. However, once he learned of the financial issues, he separated from and eventually divorced his wife. He entered a property agreement to use the proceeds from the sale of their house to pay some of their debts. He continued to pay other debts from his own resources. These actions establish a track record of debt payment of his delinquent debts. Delinquent debts remain and are listed in the SOR. He has not paid them because enforcement of the debts under the state statute of limitations is or will shortly be barred.

Applicant anticipated, most if not all, delinquent debts would be paid from the proceeds of the sale of their house. However, some were not and are listed of security concern in the SOR. The debts were not paid for a variety of reasons. The attorney managing the property settlement from the divorce could not identify some of the creditors, did not have accurate information on the amount of each debt, and the debts were or would shortly be barred from enforcement under the statute of limitation. Applicant relied on the advice and guidance of the attorney in not inquiring about the debts or making payments. He was relying on the debts not being collectible by the passage of time under the statute of limitations. Reliance on the statute of limitation to not pay debts is not a good-faith effort to pay debts and normally is not considered as acting reasonably and responsibly concerning delinquent debt. However, under these circumstances, Applicant demonstrated he acted reasonably and responsibly. The remaining unpaid delinquent debts are not the type indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. He did not cause the financial problems even though he should have been more active in the management of the family finances. He paid some of the debts from his own resources, and pressed for the sale of the house to generate funds to pay the delinquent debts. He is living within his means and continues to pay his current debts as agreed. His reliance on the statute of limitation is based on the advice of the attorney managing the dissolution of the marital property and payments of marital debts. Applicant established that he acted reasonably and responsibly towards his finances. His actions indicate 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

Subparagraphs 1.a - 1.g: For Applicant

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