



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



In the matter of:)	
)	
)	ISCR Case No. 08-11782
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

November 20, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on August 21, 2008, as part of his employment with a defense contractor. On June 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns about 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 1, 2009.

Applicant answered the SOR in writing on July 15, 2009. He admitted all 17 Guideline F allegations, and provided a detailed explanation for his financial problems. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 6, 2009, and the case was assigned to me on August 12, 2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on

September 2, 2009. Applicant signed for the Notice of Hearing on August 19, 2009. I convened the hearing as scheduled. The government offered nine exhibits, marked Government Exhibits (Gov. Ex.) 1 through 9, which were received without objection. Applicant testified on his behalf. He offered five letters of recommendations, marked Applicant Exhibits (App. Ex.) A to E, which were received without objection. DOHA received the transcript of the hearing (Tr.) on September 9, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

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

Applicant is 35 years old and has worked as an engineering technician for a defense contractor for approximately two years. He is married with one child. He also has approximately two years of college credits (Gov. Ex. 1, e-QIP, dated August 21 2008).

Applicant and his wife worked in the entertainment and service industry in Nevada prior to September 11, 2001. Applicant's parents and in-laws also lived and worked in the same area. Applicant and his wife had at the time a combined income of over \$80,000 a year. Their income consisted of a set salary and tips. After September 11, 2001, the travel and entertainment industry declined and Applicant and his wife lost income. Their income initially dropped from \$80,000 yearly to about \$40,000 yearly because they worked less and did not receive as much in tips. Gradually over five or six months, the entertainment industry started to rebound, and their income rose to about \$70,000 yearly (Tr. 73-79).

Shortly after September 2001, Applicant's mother became ill and Applicant had to take time from work to assist her. He also took time off to assist with an extensive renovation of his parent's home to accommodate his mother's illness. His income was diminished because he worked less hours. In February 2002, Applicant's father passed away and he took further time off to assist his mother and settle his father's affairs. In addition, his wife became pregnant so she did not work as many hours and also received less in tips. Their son was born in October 2002, and his wife initially stayed home to care for the infant. She returned to work after four months, but Applicant took an absence from his job to care for his son. The loss of income of both Applicant and his wife affected their ability to pay the family's debts. Applicant and his wife filed for a Chapter 13 bankruptcy in July 2003, mainly to protect their interest in their house. They were unable to maintain payments required by the Chapter 13 bankruptcy so the bankruptcy action was dismissed in July 2004.

In 2004, Applicant's mother decided to return to where she was raised on the east coast. Applicant and his wife decided to also move to be near his mother on the east coast. Applicant and his wife sold their home in Nevada and realized a profit of

over \$40,000. Some of the profit was used to pay some small debts and moving expenses. Applicant did not apply any of the profits to pay outstanding debts listed in the 2003 bankruptcy petition (Tr. 78-79).

After moving to the east coast, Applicant was initially unable to find employment. After about four months, he found part-time employment as a bartender. He worked for about ten months as a car salesman, and then for two years as an account executive in the telecommunication industry. He started working for the defense contractor in September 2007. In addition, Applicant had shoulder surgery in 2006. He was out of work for some time and incurred medical debts from co-pays and procedures not covered by his health insurance.

Credit reports and Applicant's admissions reveal financial issues and delinquent debts for Applicant: a Chapter 13 bankruptcy filed in July 2003 (SOR 1.a); a medical debt in collection for \$711 (SOR 1.b); a direct television account in collection for \$193 (SOR 1.c); a telephone account in collection for \$345 (SOR 1.d); a hospital medical account from his shoulder surgery in collection for \$2,768 (SOR 1.e); a department store credit card charged off for \$471 (SOR 1.f); a discount store debt in collection for \$647 (SOR 1.g); a bank credit card debt in collection for \$658 (SOR 1.h); a credit card debt in collection for \$945 (SOR 1.i); a bank credit card debt charged off for \$4,676 (SOR 1.j); a credit card debt in collection for \$9,445 (SOR 1.k); a bank credit card debt in collection for \$7,572 (SOR 1.l); a credit card account in collection for \$5,380 (SOR 1.m); a credit card account in collection for \$3,845 (SOR 1.n); a credit card account in collection for \$4,160 (SOR 1.o); a medical debt in collection for \$75 (SOR 1.p); and another medical account in collection for \$43 (SOR 1.q; Answer to SOR, dated July 15, 2009; Gov. Ex. 7, Answers to Interrogatories, dated March 23, 2009; Gov. Ex. 8, Credit report, dated September 9, 2008; Gov. Ex. 9, Credit report, dated March 20, 2009). The delinquent debt totals \$33,434.

SOR allegation 1.a is the Chapter 13 bankruptcy filed in July 2003. Since Applicant could not maintain the required payments, the bankruptcy was dismissed in July 2004 (Tr. 35-36; Gov. Ex. 2, Bankruptcy petition, dated July 3, 2003; Gov. Ex. 3, Notice of Default, dated June 3, 2004; Gov. Ex. 4, Dismissal order, dated July 29, 2004; Gov. Ex. 6, Bankruptcy Docket, dated July 29, 2004).

SOR allegation 1.b is a medical debt from Applicant's 2006 shoulder surgery. He did not pay the debt at the time of the surgery and it was sent for collection. He has not made any payments or arrangements to pay the debt (Tr. 54-55).

SOR allegation 1.c is for a direct television account incurred after Applicant moved to the east coast. SOR allegation 1.d is for either a telephone account or a credit card from a telephone company. Applicant is not sure of the origin of the debt but acknowledges he does owe the debt. He was unable to pay these two debts because of payments on other debts and his wife's inability to work full-time. He never contacted the creditors, made payment plans, or made any payments on the debt (Tr. 55-58).

SOR allegation 1.e is a hospital debt relating to his 2006 shoulder surgery. Applicant has not made arrangements to pay the debt and it remains unpaid (Tr. 58-59).

SOR allegation 1.f is for a store credit card from 2006. Applicant believes the original debt was less than \$200 but it now is more because of interest and fees. SOR allegation 1.g is a debt to a discount store incurred in 2006 and now in collection. SOR allegation 1.h is a credit card debt from 2006 in collection. Applicant has not contacted the creditors, made any payments, or made any payment arrangements with creditors on these accounts (Tr. 59-61).

SOR allegations 1.i and 1.k are for a credit card debt to the same creditor for the same amount of debt on a card opened on the same day in June 2005. I find that these two allegations are the same debt in spite of the fact that they have different account numbers. Applicant has not contacted the creditor, or made any payment or payment arrangements on the debt (Tr. 60-66, 80-81).

SOR allegation SOR 1.j is for a line of credit opened in May 2001 prior to the July 2003 bankruptcy filing. SOR allegation 1.l is a debt to an electronics department store incurred prior to the bankruptcy filing. SOR allegation 1.m is for a credit card debt incurred prior to the 2003 bankruptcy filing. SOR allegation 1.n is another credit card debt incurred prior to the bankruptcy filing. SOR allegation 1.o is the remainder of a debt from a car repossessed in 2001. These accounts were included in the bankruptcy filing but not paid since the bankruptcy action was dismissed for non-payment of the wage earner plan. The debts remain unpaid (Tr. 65-68).

SOR allegation 1.p is a medical debt in collection. Applicant's health insurance company was supposed to pay the medical debt. It was not paid, and the account was sent for collection. After Applicant's inquiry, his insurance company paid the debt. The collection agency charged Applicant a fee which is listed as SOR allegation 1.p. Applicant believes he does not owe this debt since it was not his error that caused the debt to be sent to the collection agency. He has not disputed the debt with the collection agency or taken other steps to resolve the debt. However, I find for Applicant since the collection agency charge was not caused by Applicant's action or lack of action (Tr. 68-69, 81-82).

SOR allegation 1.q is a medical debt from Applicant's shoulder surgery. Applicant has not paid the debt or made any payment arrangements (Tr. 69-70).

Applicant presented five letters of recommendation. His immediate supervisor noted that Applicant was promoted based on his work ethics, dependability, and willingness to learn and take responsibility. Applicant is a valued member of his staff (App. Ex. A, Letter, dated August 20, 2009). Another supervisor noted that Applicant is a dedicated and motivated employee. Applicant has an outstanding and professional attitude. Applicant is his go-to guy for projects (App. Ex. B, Letter, dated September 1, 2009). The facility security officer for Applicant's employer noted that Applicant showed genuine concern to fix his financial problems and qualify for a security clearance (App.

Ex. C, Letter, dated August 21, 2009). A friend of Applicant's family who has known Applicant for over 25 years noted that Applicant has an excellent character. Applicant has always been willing to help him in teach martial arts to children (App. Ex. D, Letter, dated September 1, 2009). A patent attorney, who is Applicant's family friend, stated that he has known Applicant for over ten years. He noted that Applicant sacrificed much to care for his mother and father. He considers Applicant to be honest and dependable and he would trust Applicant explicitly (App. Ex. E, Letter, dated August 28, 2009).

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 required to 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:

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 as listed on credit reports and admitted by Applicant are a security concern raising 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). There are 17 allegations listed. One of the allegations involves a 2003 bankruptcy filing. Two of the allegations (SOR 1.i and 1.k) are duplicates. The remaining allegations show delinquent debts totaling over \$32,500.

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony concerning the delinquent debts. 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. The debts are from numerous sources and remain unpaid so the behavior of having delinquent debts is current. Applicant did not present any information indicating that the circumstances leading to delinquent debts were such that it could not recur.

I considered 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). This mitigating condition has some application to Applicant's circumstances. Applicant's finances were in order before the business downturn in the entertainment and travel industry resulting from the

tragedy on September 11, 2001. Applicant immediately experienced financial problems from lost wages and tips. However, he did not establish that he acted responsibly under the circumstances. While he did initially lose income, within a few months his income was back to 80% to 90% of what it was prior to the events of 9/11. He also sold his house at a considerable profit but used only a small amount to pay off some previous debts. He has been gainfully employed since moving to the east coast in 2004, but he has not made any payments on his debts. He has not even made contact with creditors to establish payment plans. Applicant states that he does not have sufficient income to pay his debts. However, some are small and some action can be taken to start to make payments. He has not demonstrated that under these circumstances he acted responsibly towards his finances.

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, 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. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant has not made payments on any of his debts whether incurred prior to filing bankruptcy in 2003 or recently after moving to the east coast. He does not have payment plans established for the payment of his delinquent debts. He does not have a systematic concrete method of managing his delinquent finances. He has not shown a reasonable, prudent, honest course of action to manage his debts. Accordingly, he has not established a good faith effort to resolve his debt. Applicant has not mitigated security concerns based on his finances.

“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 Applicant's good reputation, as noted by letters of recommendation, at work and in the community for trustworthiness, professionalism, and reliability.

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 off 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 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. 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 has not established a meaningful track record of debt payment. He has not presented a concrete systematic plan for resolving his debt problems. He has no payment plans in place, and no methods of saving to pay debts. He has sufficient monthly income to not only meet his present obligations, but to make some payments on delinquent debts. Applicant's management of his past obligations indicates he may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions or doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established he is suitable for a security clearance. I conclude Appellant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b - 1.j:	Against Applicant
Subparagraphs 1.k:	For Applicant (duplicate of 1.i)
Subparagraph 1.l - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant

Conclusions

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