



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



In the matter of:)
)
) ISCR Case No. 09-00728
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 27, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86) for a periodic update of his security clearance with a defense contractor on March 27, 2007. 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 November 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 adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on November 30, 2009.

Applicant answered the SOR in writing on December 15, 2009, admitting 13 and denying one of the allegations under Guideline F. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 6, 2010, and the case was assigned to me on January 14, 2010. DOHA issued a Notice of Hearing on January 25, 2010, scheduling a hearing for March 10, 2010. 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 testified on his behalf. Applicant offered four exhibits, marked Applicant Exhibits (App. Ex.) A through D, which were admitted without objection. I held the record open for Applicant to submit additional documents. Applicant timely submitted six additional documents marked App. Ex E through J, which were admitted without objection (See, Gov. Ex. 9, Memorandum, dated march 26, 2010). DOHA received the transcript of the hearing (Tr.) on March 19, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted 13 of the 14 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 34 years old and has worked as a security guard force supervisor for a defense contractor providing security at a large government facility for over six years. He served nine years on active duty in the Air Force from February 1994 until March 2003. After leaving active duty he continued to serve in the Air Force Reserve for four additional years until March 2007. He received a number of medals and awards, to include the Good conduct Medal. He was honorably discharged. Applicant married in 1999 but divorced in 2006. He had one child from this marriage who lives with Applicant's former wife. He pays child support for this child. Applicant married again in August 2006 and has two children with his second wife and a step-son. He is a high school graduate with some credit for college. (Tr. 9-11, 25-27; Gov. Ex. 1, SF 86, dated March 27, 2007; Gov. Ex. 5, DD 214, dated March 11, 2003)

Applicant and his wife are both employed. Applicant's monthly net pay is \$2,800 and his wife's monthly net pay is \$1,600, for a combined family income of \$4,400. Their recurring monthly expenses are \$4,000, leaving \$400 monthly in discretionary or disposable income. Applicant's student loans are paid, and he and his wife are current with their taxes. (Tr. 43-44)

Credit reports (Gov. Ex. 6, Credit report, dated August 21, 2001; Gov. Ex. 7, Credit report, dated May 3, 2007; and Gov. Ex. 8, Credit report, dated August 7, 2009) show the following delinquent debts for Applicant: child support arrears in the amount of \$4,917 (SOR 1.a); a telephone debt in collection for \$1,625.74 (SOR 1.b); a debt for a car repossession for \$12,974 (SOR 1.c); a furniture account in collection for \$2,450.05 (SOR 1.d); an apartment rent account in collection for \$3,698 (SOR 1.e); another car repossession debt for \$4,382 (SOR 1.f); two medical accounts in collection for \$228 (SOR 1.g), and \$75 (SOR 1.h); an internet service debt for \$257 (SOR 1.i); a returned check debt in collection for \$240 (SOR 1.j); a cable debt in collection for \$166 (SOR 1.k); another medical account in collection for \$50 (SOR 1.l); another telephone account in collection for \$32 (SOR 1.m); and an account past due for \$1,682 (SOR 1.n).

The delinquent debt at SOR 1.a is based on the garnishment of wages for monthly child support payments of \$336.05 and \$4,917 in child support payment arrears. Applicant's child support arrears have been paid and he is current with the child support payments. Applicant filed a petition to get custody of his son that is the subject of the child support. If custody is granted, Applicant's child support obligation will end. (Tr. 17-19; App. Ex. A, Family court Case History, dated December 18, 2009; App. Ex. D, Motion, Filed February 10, 2010)

The delinquent debt at SOR 1.b is for a family telephone debt. Applicant and his former wife had the account from November 1999 until April 2005 at a military duty station. When they separated, his wife used the phone service and incurred a significant phone bill that she did not pay it. Applicant tried to close the account but since they were not divorced, the phone company would not close the account. Applicant was finally able to close the account. In their divorce settlement, Applicant and his wife were to evenly split the marital debts. Applicant's wife has not paid her part of the marital debts, to include the phone bill. The telephone company is seeking to collect the debt from Applicant. Applicant has not paid this debt. Applicant will pay the debt if he can reach a settlement with the creditor. (Tr. 26-27, 50-51)

The delinquent debt at SOR 1.c is for a car Applicant purchased for his former wife that was repossessed. Applicant settled this account for \$1,500 and the debt has been paid. (Tr. 27-29; App. Ex. E, Letter, dated March 25, 2010; App. Ex. G, Bank Statement, dated March 26, 2010)

The delinquent debt at SOR 1.d for \$1,625.74, is for furniture Applicant and his former wife purchased when he entered the military and was at his first duty station. The furniture was eventually donated to help other military members in need of furniture. The debt was settled for \$232.65 and has been paid. (Tr. 20, 29-30; App. Ex. B, Settlement offer, dated February 6, 2010; App. Ex. G, Bank statement, dated March 26, 2010 at 2)

The delinquent debt at SOR 1.e is for an apartment Applicant leased for about seven months but terminated early because of issues raised by his neighbors concerning noise from his son. Applicant had problems with his neighbors and he and the property manager agreed to the lease termination. There was even a walk-through of the apartment to note there was no damage before Applicant left. The monthly lease was \$700, and Applicant paid a \$1,500 security deposit. When he moved, the property manager did not return the security deposit. There is no explanation of the \$3,698 charge. Applicant is disputing this debt. (Tr. 30-36)

The delinquent debt at SOR 1.f is for a car Applicant purchased in 1996 for \$17,000. He made the monthly payments until June 2000 when the car was voluntarily returned to the creditor. Applicant has not been in contact with the creditor on this debt. He plans to contact the creditor and reach a settlement as soon as he has sufficient funds to pay a settlement. (Tr. 36-39, 50-51)

The delinquent debts at SOR 1.g, 1.h, and 1.i are medical debts to unspecified creditors. Applicant attempted but has been unable to learn the names of the creditors or the specific nature of the debts. He has not made payments on the debts because of the lack of information. He disputed the debts with the credit reporting agencies. (Tr. 39-40; App. Ex. F, Letter, dated March 24, 2010)

The delinquent debt at SOR 1.i for \$257 is for a telephone debt. The account was paid in February 2002. The creditor verified that the account was closed. (Tr. 40-41, App. Ex. E, Applicant's Letter, dated March 25, 2010)

The delinquent debt at SOR 1.j is for a check returned for insufficient funds. While on active duty, Applicant had the requirement to arrange a dinner event for members of his unit and their spouses. Each unit member was to pay for their meals. At the end of the evening, the restaurant owner informed Applicant that not all of the participants paid for their meals. Applicant provided him a check for \$50 to cover the unpaid bill. The check did not clear the bank. With fees and charges, the debt is now for \$240. Applicant is willing to pay the debt. He contacted the creditor and collection agencies in an attempt to pay the debt. However, no one has any information on the account. He disputed the debt with the credit reporting agency since there is no information on which to pay the debt. (Tr. 41-42; App. Ex. F, Letter, dated March 24, 2010)

The delinquent debt at SOR 1.k is a cable service debt his former wife was to pay. Applicant paid the debt in full. (Tr. 42; App. Ex. E, Applicant's Letter, dated March 25, 2010; App. Ex. G, Bank Statement, dated March 26, 2010)

The delinquent debt at SOR 1.m is for a telephone debt of \$32. Applicant contacted the creditor and collection agency, but they were unable to find any debt owed by Applicant. Applicant disputed the debt with the credit reporting agency. (Tr. 42, App. Ex. F, Applicant's Letter, dated March 24, 2010)

The delinquent debt at SOR 1.n is for a loan. The debt has been paid in full. (Tr. 20; App. Ex. C, Statement, dated March 4, 2010)

Applicant's watch commander has known Applicant for over six years. Applicant's duty performance is professional and exemplary. Applicant is an asset to the organization and has been exceptional as the security supervisor. He recommends that Applicant be granted access to classified information. (App. Ex. H, Letter, undated) Another supervisor notes that he has known Applicant since 2004. Applicant has been professional, responsible, and conscientious. He recommends that Applicant be granted access to classified information. (App. Ex. I, Letter, dated March 11, 2010)

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 as well as admitted by 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 young married military member. He and his first wife had delinquent debt as Applicant started in the military. His former wife also incurred some debt after they separated without his knowledge. His former wife did not pay some of the debts the decree required her to pay.

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 young married member of the military with a family to support. Most of his debts were for cars and furniture that he purchased for his family. These debts were incurred in the normal course of life and financial activities. There were no unusual circumstances beyond Applicant's control that led to the debts. However, some of the debts were incurred by Applicant's former wife without his knowledge. These debts were beyond his control. Applicant has paid some of the debts, contacted creditors as to other debts, and has plans to pay his remaining delinquent debts. He 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 demonstrate he has established a plan to resolve his financial problems and taken significant actions to implement that plan.

Applicant has paid five of his 14 delinquent debts. He is current with his child support payments. He is contacting the creditors to establish payment plans on two of his other debts. He has disputed six of the debts. Applicant's actions paying and disputing his delinquent debts are 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 he issue). Applicant provided documentation of his dispute with six of the delinquent debts. He has no knowledge of the debts, and the creditors cannot provide him information on the accounts.

Under the circumstances, Applicant has acted responsibly towards his debts and finances. Applicant presented sufficient information to mitigate security concerns for financial considerations by establishing that he has or is paying his delinquent debts, and is actively disputing some of his 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.

