



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



In the matter of:)
)
) ISCR Case No. 09-01083
)
)
Applicant for Security Clearance)

Appearances

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

July 29, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) to obtain a security clearance as part of his employment on October 15, 2008. On April 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F for financial considerations. 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 April 21, 2009.

Applicant answered the SOR in writing on April 26, 2009. He denied one and admitted 22 of the allegations under Guideline F with explanation. He also provided information why the financial considerations security concern should be mitigated. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 13, 2009, and the case was assigned to me on May 21, 2009.

DOHA issued a Notice of Hearing on May 22, 2009, for a hearing on June 11, 2009. I convened the hearing as scheduled. The government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant testified on his behalf. Applicant offered six exhibits, marked Applicant Exhibits (App. Ex.) A through F, which were received without objection. The record was held open at Applicant's request so he could submit additional documents. Applicant timely submitted one document with six attachments marked App. Ex. G, which was received without objection (See, Gov. Ex 5 Memorandum, dated July 9, 2009). DOHA received the transcript of the hearing (Tr.) on June 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

Applicant signed for the Notice of Hearing on May 28, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of June 11, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. Applicant signed for the Notice of Hearing only 14 days prior to the hearing. He waived the 15 days notice requirement (Tr. 5-6).

Findings of Fact

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

Applicant is 37 years old and has been a knowledge management analyst for a defense contractor since September 2008. He is single and a college graduate. He is working on his master's degree and only has to complete his thesis for award of the degree. Applicant completed a financial statement as part of counseling with a debt management firm. He listed on the form that his monthly income at his new position is \$3,682, with monthly expenses of \$3,408, leaving a monthly remainder of \$274. Applicant stated at the hearing that his income is accurate but his monthly expenses are now significantly less at about \$2,600, leaving monthly discretionary funds of approximately \$1,100. Applicant moved to another state to accept his current job. When he moved, he could not break the lease for his apartment so he had to continue to pay that rent until April 2009. In addition, he initially leased a car for his transportation need at the new location. He purchased a car in January 2009 to cut expenses. With only one rent payment and a lower car payment, his expense are now less each month (Tr. 24-25, 32, 34, 44-46, App. Ex. E, Debt Management Plan, dated May 13, 2009 at 12-14).

There is no security allegation against Applicant for criminal conduct. However, the government presented a criminal justice information report showing that Applicant was convicted and fined for uttering a check against insufficient funds in 1992. He was again convicted and fined for uttering another insufficient funds check in 1997. The government contends that while the uttering of insufficient funds checks in 1992 and

1997 were not criminal conduct for security clearance purposes, this conduct does indicate financial problems for Applicant as early as 1992. Applicant noted that both checks were for less than \$30 to the same merchant. He did not learn the first check was dishonored until three years later when he was stopped for a traffic offense. For the second offense, he received a warrant. He immediately paid both checks and court costs when he became aware of the offenses. These were the only insufficient funds checks he uttered in over 27 years of having a checking account (Tr. 12-15, 23-24, 44-46; Gov. Ex. 2, criminal justice report, dated October 15, 2008).

Applicant graduated from college in 2001. He was employed in two different jobs until March 2003 when he started working as a knowledge analyst. He was laid off from that job in 2005 when the company downsized. He was unemployed for about three months before he found similar employment at another company as a knowledge manager at a higher salary. He was laid off from that job in April 2006 when the company lost a contract and did not have the resources to keep him employed. He returned to his home state, lived with his parents to preserve resources, and sought employment. After three months, he was employed by a government agency at about a third of his former salary. His previous salary was \$65,000 yearly, and this new job paid only \$19,000 yearly. He continued to look for employment in his field until he was hired by his present employer in September 2008. Tax returns for the period show total tax income going from \$55,762 in 2005, to \$29,056 in 2006, to \$18,811 in 2007. His present salary is about \$70,000 per year. Applicant's performance evaluation for his first few months with his present employer is that he exceeds expectations (Tr. 15-18; Gov. Ex. 1, Questionnaire for Sensitive Position, SF 86, dated October 15, 2008; See. App. Ex. B, Form 1040, Federal tax return, 2005; App. Ex. C, Form 1040, federal tax return, 2006; App. Ex. D, Form 1040, federal tax return, 2007; App. Ex. F, Performance Evaluation, dated December 2008).

When Applicant started employment in his field in 2003, he opened credit card accounts and store credit accounts to purchase items and take advantage of store sales and deals. He felt he was living within his means and his salary would cover his expenses. Unfortunately he was laid off and lost employment, and was unable to make his credit card payments (Tr. 25-34). Prior to the layoffs, his bills were current (Tr. 42-43). Credit reports (Gov. Ex. 3, credit report, dated March 4, 2009; and Gov. Ex. 4, credit report, dated October 15, 2008) show that Applicant had the following delinquent debts; a bank credit card account in collection for \$185 (SOR 1.a); a store credit card charged off for \$450 (SOR 1.b); a credit card account charged off for \$1,444 (SOR 1.c); a major credit card account charged off for \$3,232 (SOR 1.d); a store credit card account past due for \$137 on a balance of \$997 (SOR 1.e); A store credit card past due for \$35 with a balance of \$281 (SOR 1.f); two different store credit card accounts with the same collection agency for \$2,617 (SOR 1.g), and \$655 (SOR 1.h); a bank credit card in collection for \$4,368 (SOR 1.i); a computer company credit account in collection account for \$2,192 (SOR 1.j); another bank credit card account in collection of \$1,855 (SOR 1.k); four collection accounts with the same collection agency for three different stores for \$700 (SOR 1.l), \$2,812 (SOR 1.m), \$1,671 (SOR 1.n), and \$1,081 (SOR 1.o); a loan account in collection for \$1,912 (SOR 1.p) another loan collection account for

\$478 (SOR 1.q); a collection account for \$139 (SOR 1.r); a collection account for \$1,036 (SOR 1.s); a collection account for \$2,374 (SOR 1.t); a collection account for \$1,705 (SOR 1.u); a collection account for \$198 (SOR 1.v); and a collection account for \$61 (SOR 1.w).

Applicant submitted his security clearance application when starting employment with his present employer in September 2008. He was interviewed by security agents in November 2008. He did not start to address his delinquent debts until April 2009. Until that time, he stated he had to pay the rent on the apartment he left when he moved to his new location and he had to lease a car. He was able to purchase a new car in January 2009 lowering his car payments. In April 2009, he completed the apartment lease. He stated he now has sufficient funds to address his delinquent debts. He started working with a debt management company and reached an agreement for them to assist him in May 2009. His first payment to them is due in July 2009. (Tr. 40-44; App. Ex. E, agreement, dated May 13, 2009).

Applicant has attempted to reach a settlement with the creditors. He sent them letters dated April 15, 2009, copies of which are attached to the Response to the SOR, offering to settle at a set amount. While the letters are dated April 15, 2009, the certified mail receipts are postmarked May 7, 2009. The settlement offered is usually for 40% of the debt. In some of the offers, it is for 40% of the credit limit on the credit card which is significantly less than the amount of the debt. He has not received a response from the fifteen creditors listed at SOR 1.a, 1.c, 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.m, 1.n, 1.o, 1.q, 1.s, 1.t, and 1.u. (Tr. 46-47; See Response to SOR, dated April 26, 2009; App. Ex. A, Updated Response, undated; App. Ex. G, Updated SOR response, dated June 25, 2009).

Applicant reached a settlement for \$225.07 with the store creditor for the \$450 debt at SOR 1.b. Payment is due no later than July 20, 2009 (App. Ex. G, Updated SOR response, dated June 25, 2009, attachment 6).

The payment of the credit card debt at SOR 1.d is included in Applicant's debt management plan (App. Ex. E, debt management plan, dated May 13, 2009). The first payment under the plan was made on June 15, 2009 (App. Ex. G, Updated SOR Response, dated June 25, 2009 at Attachment 1).

The debts listed at SOR 1.i and 1.p are the same debt. Applicant reached a settlement of \$1,912 with the collection agency for this debt. Applicant will make \$40 monthly payments until a total of \$478 is paid. At that time, Applicant's account will be considered current. Applicant will receive a new credit account from the creditor with a balance owed of \$1,147.22, requiring him to make regular monthly payments. The first two \$40 payments have been made (App. Ex. A, Updated SOR Response, dated April 26, 2009, at attachments G-1, G-2, G-3, and G-4; App. Ex. G, Updated Response to SOR, dated June 25, 2009, at attachment 4).

Applicant reached a settlement of \$450.36 with the collection agency for the \$700 collection account for a store at SOR 1.l. The first payment was made and the last payment is due on July 18, 2009 (App. Ex. A, Updated Response to SOR, dated April 26, 2009, at attachments J-1; App. Ex. G, Updated Response to SOR, dated June 25, 2009, at attachment 3).

Applicant reached a settlement of \$83.11 with the collection agency for the \$138.50 collection account at SOR 1.r. The debt was paid in full (App. Ex. A, Updated Response to SOR, dated April 26, 2009, at attachments O-2 and O-3; App. Ex. G, Updated response to SOR, dated June 25, 2009, at attachment 5).

Applicant disputed the \$198 collection debt at SOR 1.v. stating he had no information on the debt (App. Ex. A, Updated response to SOR, dated April 26, 2009, at attachment T). The collection agency informed Applicant of the origin of the debt and contact information for the original creditor (App. Ex. G, Updated Response to SOR, dated June 25, 2009, attachments 2a and 2b, dated May 12, 2009). Applicant has not taken any action since receipt of this collection agency's response.

Applicant reached a settlement of \$24.40 with the collection agency for the \$61 debt at SOR 1.w. The settlement was paid (App. Ex. A, Updated Response to SOR, dated April 26, 2009 at Attachments T-1, T-2, T-3, and T-4).

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 delinquent debts as admitted by Applicant and listed on the credit reports are a security concern raising financial considerations disqualifying conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG ¶ 19 (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). The debts were incurred when Applicant first received a good paying job in 2003, and he opened store and credit card accounts to purchase items. Applicant was laid off after opening the accounts, and was unable to meet his financial obligations. Applicant has only recently made inquiries about the accounts and paid some of them.

There is a history of an inability to meet financial obligations since Applicant took no action concerning the delinquent debts for over four years. While Applicant thought he was living within his means, he spent freely with his first paychecks incurring a lot of debt on a number of credit cards and store credit accounts which shows his spending was beyond his means.

I considered the financial considerations mitigating conditions (FC MC) raised by Applicant's testimony. 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 it does not apply. Applicant's delinquent debts arose in 2005 and he took no action to even inquire about them until April 15, 2009. Almost all of the debts are unpaid, so the debts are current. The debts are from various stores and credit cards, so he incurred debts frequently. Since the debts are not paid, they cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

I considered 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). Applicant started new employment at a good salary and liberally incurred debt using store credit and credit cards believing his new job provided him the resources to pay the debts. He was laid off twice, could not find good employment, and could not pay his debts. He moved back home, lived with his parents, and found work at a small fraction of his previous salary. Applicant presented no information that he made any inquiries about or paid any of his delinquent debts during this time. Applicant started a good paying position in his field in September 2008. He was interviewed by security investigators in November 2008 and knew of the security concerns for his delinquent debts. He did not start to inquire about the delinquent debts or make any payments on his debt until after he received the SOR. Applicant said he did not have funds to pay the debts until then. However, since he had a good job at a good salary starting in September 2008, he could have at least contacted the creditors to make arrangements to pay the debts when he had funds available. He did not commence any actions on his delinquent debts until he realized the debts were a security concern and affected his employment. He does not receive credit under this mitigating condition since he did not act responsibly under the circumstances.

I considered FC MC AG ¶ 23(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 under control) and it does not apply. Applicant entered an agreement with a credit management company to assist him with the management of his debts. He receives credit counseling as part of the plan. However, he received replies to only a few of the letters he sent to creditors, and resolved only a few of his debts. His finances are not yet under control nor are his debts being resolved.

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. The 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 off each 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. 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. All that is required is that the applicant demonstrated he has established a plan to resolve his financial problems and taken significant actions to implement that plan.

Applicant has not established a good-faith effort to resolve his delinquent debts. He does not have a "meaningful track record" of debt payment. Applicant took no action to resolve his debt until after receipt of the SOR and his realization that his delinquent debts affected his future employment with the defense contractor. He knew of the security significance of his delinquent debt in November 2008 when interviewed by the security investigator. He took no action at that time to even inquire of the creditors about the debts. He only took action after receipt of the SOR. At that time, he entered a debt management program and sent letters to creditors with settlement offers. He has been able to settle and pay only a limited number of his debts. The settlement offer letters, the limited agreed settlements, and the limited debt payments, do not establish a meaningful track record of debt payments and thereby a good-faith effort to resolve debt. In addition, Applicant's promises to pay debts in the future do not rise to the level of a good-faith effort to resolve his debts. Applicant has not presented sufficient information to indicate a good-faith effort to pay creditors or resolve debts. His finances are not under control and he has not acted responsibly. He has not presented sufficient information to mitigate 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant opened credit accounts and incurred debt as soon as he had a good paying job. His debts became delinquent when he was laid off and could no longer meet his obligations. He was employed thereafter, albeit at a lower salary, but he made no effort to inquire about and resolve any of his delinquent debts. Even after gaining meaningful employment and a good salary, he made no effort to inquire about or resolve his delinquent debts until he received the SOR and knew of the security clearance significance of his delinquent debts. His lack of action shows he was irresponsible, unconcerned and careless about his financial obligations. This leads to a determination that he may be untrustworthy, unreliable, exercise bad judgment, has poor self control, and unwilling to abide by rules and regulations. His financial irresponsibility indicates he may behave the same towards the safeguarding of classified information. Overall, on balance the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant

Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant

Conclusion

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