



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



In the matter of:

ISCR Case No. 09-01706

Applicant for Security Clearance

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: Stacy King, Personal Representative

February 25, 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 November 11, 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 27, 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 October 9, 2009.¹

Applicant answered the SOR in writing on September 18, 2009, admitting 30 of the 31 allegations under Guideline F. He requested a hearing before an administrative

¹ The receipt for the SOR is dated 21 days after the date of the written answer to the SOR.

judge. Department Counsel was prepared to proceed on November 5, 2009, and the case was assigned to me on November 17, 2009. DOHA issued a Notice of Hearing on November 20, 2009, scheduling a hearing for December 9, 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 one witness testified on his behalf. Applicant offered 13 exhibits, marked App. Ex. A through M, which were received without objection. I kept the record open for Applicant to file additional documents. Applicant timely filed 23 documents marked App. Ex. N through II, which were received without objection (Gov. Ex. 7, Memorandum, dated January 7, 2010. DOHA received the transcript of the hearing (Tr.) on December 24, 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 30, 2009, nine 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 9, 2009, before the Notice of Hearing was issued on November 20, 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. 5-8).

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 29 years old and has worked as an engineering technician for a defense contractor for approximately two years. He served four years on active duty with the Marine Corps, and four year in the Marine Corps Reserve as a food service specialist. He received an honorable discharge. He did not hold a security clearance while in the Marine Corps. Applicant was married for five years but is now divorced. He has paid his attorney's fees associated with the divorce. He has two children, a ten-year-old son from a prior relationship, and a seven-year-old daughter with his former wife. He has custody of his daughter. He pays child support for his son and his wife pays child support for their daughter. Applicant's monthly pay is approximately \$1,700, but his monthly child support payments of \$215 have been taken from his pay. His wife's support payment for the daughter is \$392, for a total income of \$2,192. His expenses are approximately \$1,800 to include day care for his daughter. He has approximately \$300 monthly in discretionary funds available. A relative has now agreed to provide child care for no charge freeing an additional \$460 in monthly discretionary funds (Tr. 51-63; Gov. Ex. 1, e-QIP, dated November 12, 2008; App. Ex. C, Attorney's letter, dated September 22, 2009; App. Ex. N, Letter, dated December 31, 2009).

Credit reports (Gov. Ex. 4, dated November 5, 2009; Gov. Ex. 5, dated June 22, 2009; and Gov. Ex. 6, dated November 25, 2008) show the following delinquent debts for Applicant: a car repossession debt for \$22,755 (SOR 1.a and SOR 1.cc); a credit card debt for \$2,051 (SOR 1.b); a television cable debt for \$522 (SOR 1.c); medical debts for \$50 (SOR 1.d), \$50 (SOR 1.e), \$15 (SOR 1.f), \$15 (SOR 1.g), \$50 (SOR 1.h), \$15 (SOR 1.i), \$50 (SOR 1.j), \$50 (SOR 1.k), \$50 (SOR 1.l), \$50 (SOR 1.m), and \$50 (SOR 1.n); a debt to a jeweler for \$173 (SOR 1.o); an utility bill for \$495 (SOR 1.p); a telephone debt to different service providers for \$477 (SOR 1.q), \$138 (SOR 1.r), and \$464 (SOR 1.s); another medical debt for \$104 (SOR 1.t); a debt for a computer purchase for \$3,125 (SOR 1.u); another telephone provider debt for \$189 (SOR 1.v); a debt for furniture for \$4,384 (SOR 1.w); three additional medical debts for \$50 (SOR 1.x), \$149 (SOR 1.y), and \$206 (SOR 1.z); a credit card debt of \$211 (SOR 1.aa); a television cable debt of \$239 (SOR 1.bb); a debt to a tax preparer for \$111 (SOR 1.dd); and a credit card debt of \$1,500 (SOR 1.ee).

The delinquent debts at SOR 1.a and 1.cc for car repossession are the same debt. Applicant and his former wife purchased the car together. At the time, they had two incomes. Applicant's wife quit her job in January 2003 and worked only for a short time in late 2003 and early 2004. She left Applicant in 2004. With the loss of income, Applicant was not able to make the required car payments. The car was repossessed and after sale the debt remained. The debt was sold by the credit union that was the original creditor to a collection agency. He contacted the collection agency and offered a settlement paying \$110 monthly. He has not received a reply (Tr. 21-27; App. Ex. G and T, Letter, dated September 23, 2009; App. Ex. U, Letter, dated December 13, 2009).

The delinquent debt at SOR 1.b is for a credit card. Applicant has a payment plan for \$33 monthly. He made a payment in September 2009, but because of divorce expenses was unable to make a payment in October and November 2009. He was to make a payment in December 2009 (Tr. 28-29; App. Ex. I, statement, dated September 17, 2009; App. Ex. BB, Letter, dated December 13, 2009).

The delinquent debt at SOR 1.c for \$522 is for cable television service. Applicant states that the debt is for only \$192. He is waiting for verification of the amount of the debt from the creditor. He will settle the debt and enter into a payment plan (Tr. 30-31; App. Ex. CC, and App. Ex. DD, Letters, dated December 13, 2009).

The delinquent debts at SOR 1.d to SOR 1.n, and SOR 1.x may be for medical co-payments for medical treatment for his former wife and son. Applicant provided health insurance for his wife until the divorce was final. He also provided medical insurance for his son. Applicant does not know about any of the debts but assumes they are for the co-pays for his former wife and his son. He has written the creditors to learn about the debts. He has not received a reply (Tr. 31-34, 46; App. Ex. Z, Letters, dated December 13, 2009).

The delinquent debt at SOR 1.o for \$173 was in collection for a jeweler. Applicant settled the debt for \$150, and paid it in full (Tr. 35-36; App. Ex. H, Notice, dated

September 17, 2009; App. Ex. O, Checks, dated December 12, 2009 (\$66.63), and January 12, 2010 (\$100); App. Ex. Q, Bank statement, dated December 31, 2009; App. Ex. Y, Letter, dated December 13, 2009)

The delinquent debt at SOR 1.p is for a utility debt. Applicant contacted the creditor and was informed they no longer have the debt. He contacted the utility company as the original creditor and was informed they also no longer have the debt. Applicant is willing to reach a settlement agreement as soon as he knows the contact information for the creditor (Tr. 36-37).

The delinquent debt at SOR 1.q for \$477.21 is in collection for telephone service. Applicant agreed to a payment plan (App. Ex. K, Statement, dated September 21, 2009; App. Ex. GG, Letter, dated December 13, 2009). Applicant has made payments according to the plan (Tr. 37; App. Ex. O, Check, dated December 29, 2009; App. Ex. Q, Bank statement, dated December 31, 2009). The delinquent debt at SOR 1.r for \$138.21 is to the same collection agency for another telephone debt for a different service provider. Applicant agreed to a settlement of this debt (App. Ex. L, Statement, dated October 6, 2009; App. Ex. GG, Letter, dated December 13, 2009). Applicant has made one payment according to this plan (Tr. 37; App. Ex. O, Check, dated December 29, 2009; App. Ex. Q, Bank statement, dated December 31, 2009). The delinquent debt at SOR 1.s for \$464.24 is in collection to the same collection agency for a different telephone provider. Applicant agreed to a settlement of this debt paying \$50 per month. He has been unable to make a payment under this plan (Tr. 38; App. Ex. M, Statement, dated October 20, 2009; App. Ex. GG, Letter, dated December 13, 2009).

The delinquent debt at SOR 1.t for \$104 may be a co-pay for medical service provided his former wife. Applicant does not know the location or contact information for the creditor. At the time the debt accrued, Applicant was in the northeast part of the country, and his wife was living in the southeast. He contacted the creditor offering to pay \$15 monthly on the debt. He has not received a reply (Tr. 38-41; App. Ex. FF, letter, dated December 13, 2009).

The delinquent debt at SOR 1.u for \$3,125 is for a computer Applicant and his former wife purchased together when Applicant was still on active duty. Payments were made on the debt until his wife quit her job in early 2003. No payments have been made since then. The creditor offered to settle the account for \$1,923.97. Applicant was unable to make this payment. He contacted the creditor to arrange a settlement and payment plan offering to pay \$50 monthly. His first payment was made on December 11, 2009 (Tr. 41-42, 44; App. Ex. J, Notice, dated, undated; App. Ex. EE, Letter, dated December 13, 2009; App. Ex. R, Bank statement, dated December 31, 2009).

The delinquent debt at SOR 1.v for \$189 is for another telephone service debt. Applicant agreed to a settlement total of \$110, paying \$18 monthly. He made one payment in September 2009 of \$18 but was unable to make the October and November payments. He contacted the creditor and agreed to continue to make the payments starting in December 2009 (Tr. 42-44; App. Ex. V, Letter, dated December 13, 2009).

The delinquent debt at SOR 1.w for \$4,384 is for furniture Applicant and his former wife purchased in May 2002. A limited number of payments were made with the last one in August 2002. The account was initially closed by the creditor and listed as closed for profit and loss. Applicant again contacted the creditor and agreed to a payment plan of \$30 monthly. A payment of \$55 was made on this plan on December 11, 2009 (Tr. 44-46; App. Ex. V, Creditor's letter, dated December 14, 2009; App. Ex. P, cancelled check, dated December 20, 2009).

The delinquent debts at SOR 1.y for \$149 and SOR 1.z for \$206 are also medical debts for medical services provided either his former wife or his son. Applicant was unaware of these debts. He has contacted the creditors for information concerning the debts and offered a settlement plan paying \$20 or \$30 monthly on each debt. He has not received a reply from the creditors (Tr. 46-48; App. Ex. X, Letters, dated December 13, 2009).

The delinquent debt at SOR 1.aa for \$211 is for a gas credit card. Applicant believed he paid this debt in full. However, he contacted the creditor and learned it is a valid debt. He has started making payments on the debt (Tr. 48; App. Ex. O, Check, dated December 15, 2009; App. Ex. Q, bank statement, dated December 31, 2009).

The delinquent debt at SOR 1.bb for \$239 is for television cable service. Applicant believed the debt was from a promotional agreement when the original creditor commenced cable service in his area. He contacted both the original creditor and the collection agency concerning the debt. Neither creditor had information on the debt. However, Applicant offered a settlement agreement with the original creditor paying \$23 monthly (Tr. 49-50; App. Ex. AA and DD, Letters, dated December 13, 2009).

The delinquent debt at SOR 1.dd for \$111 is for a tax preparation services. The service fee was paid when Applicant received his tax refund and the debt is paid in full (Tr. 50-51; App. Ex. W, Letters, dated December 13, 2009, and December 30, 2009).

The delinquent debt at SOR 1.ee for \$1,500 is for a military credit card. The debt was paid in full in 2005 (Tr. 51; App. Ex. F and S, Letter, dated September 25, 2009).

Applicant has been receiving financial counseling from a friend who is a loan officer (App. Ex. B, letter, dated September 22, 2009). Applicant has also attended classes provided by his employer in managing money and personal budgeting (App. Ex. N, Letter, dated December 31, 2009).

Applicant is considered an excellent employee by his company. His immediate supervisors noted that Applicant is an exemplary employee with excellent work ethic and abilities. He is considered dedicated and trustworthy. He earned the confidence and respect of his supervisors (App. Ex. D, letter, dated December 8, 2009). Applicant is also considered one of the most reliable employees in his division. He continues to provide his employer with a quality product (App. Ex. E, letter, undated).

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 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 after his former wife quit her job and the couple could not pay their debts on one income. His former wife then left Applicant and he incurred medical debt from co-pays for her medical care that he was not aware of. He has not been able to make payments on many of his delinquent debts.

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 when he went from a two income family to one income. His debts became significantly delinquent when his former wife quit her job. He could no longer meet his financial obligations. His wife then left him and he incurred medical debt for her medical care. He was not aware of these debts until he received the SOR. Some of his debts, but not all, were caused by conditions beyond his control. However, that was not totally a situation beyond his control. The debts were incurred in the normal course of financial activities. He incurred those debts because he and his former wife overextended themselves financially and lost income because his wife quit her job. Some of the debts have been paid, but having to pay his divorce attorney has prevented him from paying on his other debts. Most of the debts are still outstanding, and as such are current debts. However, the circumstances of his delinquent debts should not recur because Applicant is receiving financial counseling, understands budgeting, is employed with a good salary, and is now divorced. Applicant has contacted most of his

creditors, is paying the delinquent debts that he can, and is thereby acting responsibly toward his debts.

I considered FC MC AG ¶ 20(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 is under control). The mitigating condition applies. After receiving the SOR, Applicant sought out credit counsel. He is receiving financial counseling from a loan officer and has attended classes for understanding finances and developing and implementing a personal budget. There are clear indications that he is following the advice of the loan officer. His debts have either been paid, are being paid, or he is waiting for information from creditors.

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 committed 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 demonstrates he has established a plan to resolve his financial problems and taken significant actions to implement that plan.

Applicant has paid 3 of his 34 delinquent debts, is paying according to payment plans seven other debts, and offered to enter payment plans on seven other debts. He is unaware of 12 other debts, many of which are small medical co-pays which he believes are for his former wife or son. However, he has contacted the creditors asking for details on the debts and stated his intention to enter payment plans with the creditors. Applicant's actions paying and resolving his delinquent debts is significant and constitutes credible information to establish a meaningful track record of debt payment, and shows that he acted reasonably under the circumstances.

Applicant has acted responsibly towards his debts and finances under the circumstances. Applicant presented sufficient information to mitigate security concerns for financial considerations by establishing that he has or is paying his delinquent debts, and has payment plans to pay his delinquent 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.

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 that Applicant has a reputation in the company 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. He is not required, as a matter of law, to establish that he paid each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his actions to reduce his outstanding indebtedness are credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time

Applicant established a meaningful track record of debt payment of his delinquent debts. The debts incurred are not the type indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant's financial problems started when his wife no longer had a job, and further contributed by their divorce. Applicant got behind on his finances and was unable to pay his obligations in a timely manner. Applicant is now in control of his finances and is making timely payments on his debts. He has or is paying those debts for which he has payment or contact information. He has contacted his creditors to verify his debts and offered to enter into payment plans when his debts have been verified. He has paid, is paying, or

will shortly start paying on all of his SOR debts. He is living within his means and paying his obligations in a timely manner.

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 as security clearance. Applicant established that he acted reasonably and responsibly towards his finances indicating 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.ee: 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