



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



In the matter of:)
)
) ISCR Case No. 09-01707
)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: Maureen Brown, Personal Representative

June 3, 2010

Decision

CREAN, Thomas M., Administrative Judge:

On June 24, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor. 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 October 29, 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 answered the SOR on November 14, 2009, admitting 19 and denying five of the 24 allegations under Guideline F. Applicant provided additional information on January 25, 2010. Applicant provided a detailed explanation of the status of his debts in both of his answers. Applicant initially requested a decision on the record and a File of Relevant Material (FORM) was prepared by Department Counsel. (Gov. Ex. G, dated February 23, 2010) Applicant later requested a hearing before an administrative judge. (Case File, letter, dated March 8, 2010) Department Counsel was prepared to proceed

on March 12, 2010, and the case was assigned to me on March 17, 2010. DOHA issued a Notice of Hearing on March 22, 2010, scheduling a hearing for April 8, 2010. I convened the hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov. Ex.) 1 through 6, which were admitted without objection. Applicant and one witness testified on his behalf. He offered 13 exhibits, marked Applicant Exhibit (App. Ex.) A through N, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 15, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Applicant is entitled to 15 days advance notice of the hearing. (Directive ¶ E3.1.8) Applicant discussed with Department Counsel the hearing date of April 8, 2010, before the Notice of Hearing was mailed. At the hearing, Applicant waived the 15 days notice requirement. (Tr. 8-9)

Findings of Fact

Applicant admitted 19 of the 24 factual allegations in the SOR. I include Applicant's admission 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 36 years old, and has worked as an electronics technician III for a defense contractor building network infrastructures for approximately one year. He has been married since 2004 and has no children. He is a high school graduate with some college credits. (Tr. 30-32; Gov. Ex. 1, e-QIP, dated June 24, 2008) At the time of the hearing, both Applicant and his wife were unemployed and drawing unemployment insurance. (App. Ex. M, Unemployment Approval, dated February 18, 2010) Applicant is on administrative leave from his employer pending resolution of his request for a security clearance. His wife recently received a Master's Degree in Business and Finances and is seeking employment. Their combined monthly income from unemployment is \$3,500, with approximately \$3,250 in monthly expenses, leaving \$250 monthly in disposable income. (Tr. 52, 85-86, App. Ex. L, Budget, undated)

Applicant is highly regarded by his employer. His supervisor wrote that Applicant was accurate and neat with his work product. He showed initiative and a good work ethic. He works well with others because of his friendly demeanor. He is considered an asset to the job. He is highly motivated and continually asks for additional responsibility. (App. Ex. J, Letter, dated March 29, 2010)

Credit reports (Gov. Ex. 4, Credit report, dated July 3, 2008, and Gov. Ex. 5, Credit report, dated August 31, 2009) show the following debts for Applicant: a collection account for \$3,666 (SOR 1.a); a cable company debt in collection for \$255 (listed at both SOR 1.b and SOR 1.o); a debt in collection for \$912 (SOR 1.c); a debt for tax service for \$90 (SOR 1.d); three medical accounts in collection by the same creditor

for \$332 (listed at both SOR 1.e and 1.q), for \$134 (SOR 1.p), and \$903 (SOR 1.u); a collection account for a loan for \$801 (SOR 1.f); a collection account for \$1,629 (SOR 1.g); a collection account on a loan for \$1,069 (SOR 1.h); two credit card debts in collection to the same credit card company for \$11,553 (SOR 1.i), and \$4,564 (SOR 1.j); a collection account on a telephone debt for \$378 (SOR 1.k); a cable debt in collection for \$264 (SOR 1.l); three medical debts in collection to the same creditor for \$394 (SOR 1.m), \$489 (SOR 1.n), and \$373 (SOR 1.v); an account in collection for leased furniture and appliances for \$3,051 (SOR 1.r); a pay day loan in collection for \$462 (SOR 1.s); a telephone company debt in collection for \$1,405 (SOR 1.t); and a military exchange credit card past due more than 120 days for \$2,029 (SOR 1.w). Applicant is also charged with uttering a fraudulent check for an amount under \$500. He was found guilty and fined \$204. (SOR 1.x) The balance owed is approximately \$35,512. (App. Ex. A, Debt Plan, undated)

Applicant lived with a girlfriend for approximately nine years from 1995 until 2003. During this time, he purchased or leased items like furniture and appliances for her that he could not afford. By sometime in 2001, Applicant admitted he was living beyond his means. He was using credit cards to make every day purchases and items requested by his girlfriend. He tried working overtime to get more funds, but he still spent beyond his means. He and his girlfriend had agreed to share expenses, but Applicant was paying the majority of their bills. In late 2003, Applicant's girlfriend left and took the leased furniture and appliances with her. He was left with the debts they had accumulated. (Tr. 32-36)

Applicant continued to work at various electronic technician positions, and on temporary duty overseas and in the United States. He married in July 2004, but he and his wife lived at separate locations while he finished a few jobs. He moved to his wife's location in December 2004, and started looking for work in his field. He was unemployed from December 2004 until he found employment again in November 2005. He drew unemployment during this time. He and his wife had sufficient income for their present living expenses. Applicant was employed by a company as an electronics technician from November 2005 until December 2006. He worked for another company for about a year from December 2006 until June 2007 and part of his job required extensive travel. He was paid per diem by the company to cover his travel expenses. However, the company was late in paying the per diem causing Applicant to accumulate additional delinquent debts. Then, Applicant worked for a series of companies from June 2007 until December 2007, sometimes at less salary than he was paid by his previous employer. He left the companies as contracts and jobs were completed and the work terminated. He did not travel or receive per diem in most of these other positions thus lowering his cash input. Since he was underemployed or unemployed, Applicant did not have the funds to pay his past due obligations. (Tr. 36-40)

Applicant and his wife moved to their present location in 2007 because Applicant knew he could find good employment and a good salary in that location. He was unemployed, but drew unemployment funds, from December 2007 until June 2008, when he started working for his present employer. Even with his present employer,

there were periods of unemployment as contracts were finished or lost. During the time he was not working, he was drawing unemployment. After moving to their present location, Applicant and his wife changed their life style to match their income. They stopped using credit cards, paid off and sold one of their cars, modified the loan on his remaining car, and established a budget permitting payment of present debts and past due obligations. They have managed to stay within budget and still pay off some of Applicant's past due obligations. Applicant is now receiving a monthly credit report and has a credit watch request with the credit reporting agency. Applicant has paid seven of the delinquent debts, and is making paying on two of the debts. He successfully disputed 12 of the debts as not his debts, and they have been removed from his credit report. He made restitution for a fraudulent check and paid a court fine. He has four debts remaining to be paid, including the two he is presently paying. Applicant paid or resolved \$20,757 of debt, with \$14,754 still to be paid (Tr. 44-52; App. Ex. A, financial summary, undated; App. Ex. I, Loan Modification, dated March 5, 2010; App. Ex. K, Credit Report Request, dated March 9, 2010; App. Ex. N, Credit Watch Request, dated March 25, 2010)

Applicant disputed the debt at SOR 1.a, and it was resolved in his favor as a fraudulent entry by the credit reporting agency. (Tr. 52; Answer to SOR, Letter, dated November 12, 2009, and Letter, dated January 27, 2010; App. Ex. B, Letter, dated April 5, 2010) Applicant disputed the debt listed at both SOR 1.b and SOR 1.o as not his debt since it listed the debt belonging to someone with a different social security number. The dispute was resolved in his favor and the debt has been removed from his credit report. (Tr. 52-53, 68-72; Answer to SOR, Letter, dated November 10, 2009; App. Ex. C, Letter, date January 10. 2010)

Applicant has been making payments on the debt listed at SOR 1.c. The amount of the debt has been reduced by half and is now only \$450. (Tr. 54-55; Answer to SOR, Western Union Receipts, dated November 13, 2009, and November 16, 2009) Applicant paid in full the debt at SOR 1.d for tax service. Tr. 55-56; Answer to SOR, Note, dated July 6, 2009)

Applicant disputed the \$134 medical debt for a hospital listed at both SOR 1.e and SOR 1.p, the \$394 medical debt at SOR 1.m, the \$489 medical debt at SOR 1.n, the \$332 medical debt at SOR 1.q, and the \$903 medical debt at SOR 1.u. He also disputed the medical debt at SOR 1.v for the services of the emergency physicians at the hospital. The bills all arose from emergency treatment of Applicant. He had health insurance when he was treated. The bills should have been paid by the insurance company. The creditor acknowledged the debts were listed in error and they have been removed from Applicant's credit report. (Tr. 56-58, 72-74; App. Ex. D, Letter, dated April 5, 2010; App. Ex. F, Receipt, dated April 6, 2010; Answer to SOR, Hospital Letter, undated, Med Data Letter, dated February 5, 2010)

The delinquent credit card debt at SOR 1.f has been paid in full. (Tr. 58; Answer to SOR, Collection Agency Letter, dated November 11, 2009) Applicant disputed the debt listed at SOR 1.g. The dispute was resolved in Applicant's favor, and removed from

his credit report. (Tr. 59; Answer to SOR, Letters, dated January 8, 2010, October 14, 2009, and September 22, 2009) The delinquent debt at SOR 1.h is for a loan Applicant used to assist his mother. The debt has been paid in full (Tr. 59-60; Answer to SOR, Letter, dated October 13, 2009)

The delinquent debts at SOR 1.i for \$11,553 and SOR 1.j for \$4,564 are for the same credit card company for Applicant's expense accounts with two of his previous employers. He used the accounts to buy items for his job as well as for personal purchases. He was authorized to use the cards for non-business items. Applicant has reached a settlement with the credit card company, but does not have the funds to make the payment. He is trying to arrange a payment plan with the creditor. (Tr. 60-64; Answer to SOR, Letter, dated January 11, 2010)

Applicant paid in full the delinquent phone debt at SOR 1.k. (Tr. 64-65; Answer to SOR, Letter, dated November 9, 2009) Applicant paid in full the delinquent cable company debt at SOR 1.l. (Tr. 65-68; Answer to SOR, Letter, dated June 30, 2006) Applicant settled the debt for leased furniture and appliances at SOR 1.r for \$400, and it has been paid. (Tr. 74; Answer to SOR, Letter, dated November 12, 2009; App. Ex. E, Letter, dated January 22, 2010) Applicant settled the pay day loan debt at SOR 1.s for \$623 and it has been paid. (Tr. 74-75; Answer to SOR, Letter, dated November 11, 2009) Applicant is making monthly payments as agreed on his military exchange credit card listed at SOR 1.w. (Tr. 76-77; App Ex. G, letter, dated March 30, 2010)

Applicant disputed and resolved in his favor the telephone debt at SOR 1.t, and it has been deleted from his credit report. (Tr. 75-76; Answer to SOR, Letter, dated November 13, 2009) Applicant believed he had sufficient funds in his account when he wrote a check shortly after moving with his wife to his present location as listed at SOR 1.x. He paid restitution for the check and paid the resulting fine. (Tr. 21, App. Ex. H, Check and Receipt, dated August 4, 2006)

In summary, Applicant has either paid, is paying, or disputed and resolved the disputes on all but four of his delinquent debts. He is making regular payments on the debt at SOR 1.c, and the military credit card at SOR 1.w. He still has debts outstanding to a credit card company as listed at SOR 1.j and 1.t. Applicant's wife testified that she has a Master's Degree in Business and Finances. She has been counseling Applicant on proper financial management. After they married, she started Applicant on a family budget, and used a budget spreadsheet to manage their finances. She assisted Applicant in controlling his finances and reducing his debt levels. With her help, Applicant paid over half of his delinquent debt total. They developed a plan to pay the remaining debts, so they have established a sense of financial responsibility. Their plan is to continue to pay off the debts at SOR 1.c and SOR 1.w, and anticipate paying them off by the end of 2010. There are settlement offers on the two remaining credit card debts that expire shortly. Applicant's wife is seeking an extension of the settlement offers. As soon as Applicant is again employed and can contribute to the family income, they will start to pay these debts. They intend to pay the debts on a monthly basis until resolved. (Tr. 85-93)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. Applicant admits he incurred delinquent debts because he lived beyond his means and purchased items he did not have sufficient resources to fund. 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), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG ¶ 19(e) (consistent spending beyond one's means, which may be indicted by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis).

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 incurred delinquent debts because he lived beyond his means and purchased items to please his girlfriend. His debts were not incurred under unusual circumstances that were beyond his control. They were incurred through immaturity and irresponsible financial actions. But for the influence that his wife now exerts on his finances, Applicant's debts could recur. The only credit Applicant can receive under these mitigating conditions is that he is now acting responsibly towards his finances. He has paid or resolved a majority of his delinquent debts. Since his debts are being paid or resolved, his present finances do not cast doubt on his current reliability, trustworthiness, or good judgment.

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. Applicant's wife, who has a Master's Degree in Business and Finance, has been counseling Applicant on proper financial management and taken control of his finances. Under her influence, there are clear indications his debts are either paid or being paid.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ AG 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. Applicant presented information to show that seven of the delinquent debts have been paid, and he is paying on two other debts which should be paid by the end of 2010. He also presented information to show that he successfully disputed 12 of the debts and they have been removed from his credit reports. He redeemed by restitution a fraudulent check and paid a court imposed fine. He has two remaining debts and has settlement offers on these debts. He has a plan to seek an extension of the settlement offers and each a payment plan with the creditor. Applicant's actions to contact his creditors, pay or dispute debts, and enter payment plans are good-faith efforts to repay his creditors or resolve his debts. The mitigating condition applies.

I considered FC MC AG ¶ 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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). Applicant disputed 12 of the delinquent debts, many of them medical debts, and provided documented evidence that the disputes were resolved in his favor, and the debts removed from his credit report.

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 that Applicant is considered a good employee by his supervisor. 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 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. 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, including evidence of actual debt reduction through payment of debts. Applicant presented sufficient information to show he is taking reasonable and responsible action to resolve his financial issues. He paid seven of the delinquent debts, and disputed and resolved 12 more of the debts. He resolved and paid a fraudulent check. He is paying two other debts according to agreed plans. These two debts will be paid in full by the end of 2010. He has settlement offers on his two remaining debts and will start to pay them when he returns to employment with his employer. Applicant's management of his finances and past obligations indicates he will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on his finances. Overall, on balance the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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: FOR APPLICANT

Subparagraphs 1.a - 1.x: 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 a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge