



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



In the matter of:)	
)	
)	ISCR Case No. 09-02065
)	
)	
Applicant for Security Clearance)	

Appearances

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

September 21, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on November 18, 2008, as part of his employment with a defense contractor. On June 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 June 19, 2009.

Applicant answered the SOR in writing on June 30, 2009. He admitted the ten allegations under Guideline F with explanation. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 10, 2009, and the case was assigned to me on July 20, 2009. DOHA issued a Notice of Hearing on July 30, 2009, for a hearing on August 19, 2009. Applicant signed for the Notice of

Hearing on August 5, 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 and one witness testified on his behalf and offered four exhibits, marked Applicant Exhibits (App. Ex.) A through D which were received without objection. The record was left open for Applicant to submit additional documents. Applicant timely submitted four additional documents, marked App. EX. E through H. Department counsel had no objection to the admission of the documents (Gov. Ex. 5, Memorandum, dated September 9, 2009), and they were admitted. DOHA received the transcript of the hearing (Tr.) on August 25, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Applicant signed for the Notice of Hearing on August 5, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of August 19, 2009, prior to the mailing of the Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 14 days prior to the hearing. He waived the 15 days notice requirement (Tr. 4-5).

Findings of Fact

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

Applicant is 35 years old and has been a computer programmer for a defense contractor for three years. He is a college graduate with a degree in computer science. This is his first request for a security clearance. He is married with five children, ages four to 17. Three of his children have profound disabilities, one with cerebral palsy, one with a seizure disorder, and one with a heart condition. The children are in wheelchairs, and receive support from the State for their disabilities (Tr. 18-20). Applicant's monthly net pay is \$3,100. The family receives \$1,500 monthly for support of the disabled children, for a total monthly income of \$4,600. Their monthly expenses are about \$4,100, leaving approximately \$500 in monthly disposable funds. Applicant has \$9,000 in his 401K account. Other than the delinquent debts listed in the SOR, his other bills are current (Tr. 20-31).

Credit reports list the following financial issues for Appellant: a medical debt of \$1,264 (SOR 1.a); a credit card debt in collection for \$680 (SOR 1.b); a credit card debt in collection for \$956 (SOR 1.c); a credit card debt in collection for \$4,787 (SOR 1.d); a credit card debt in collection for \$418 (SOR 1.e); another credit card debt in collection for \$261 (SOR 1.f); a credit card debt in collection for \$1,831 (SOR 1.g); a credit card debt in collection for \$500 (SOR 1.h); a debt for an automobile repossession for \$306 (SOR 1.i); and a medical debt in collection for \$68 (SOR 1.j; Gov. Ex. 3, credit report, dated May 29, 2009; Gov. Ex. 4, credit report, dated December 11, 2008).

Applicant's wife handles the family finances. Applicant's wife testified that their debt problems started when Applicant was a married college student with children. He looked for a job after college and incurred continuing expenses for the care of his five children. Three of the children have profound disabilities requiring expensive and extensive medical care. There was always a lag between the family and medical personnel discovering that the children had a disability requiring medical and specialized care and the state providing the care or covering the children's medical care expenses. The family used credit cards to assist with purchasing needed necessities of life and medical care for the children. They were unable to pay all of their debts because of the needs of the children (Tr. 10-11, 33-36, 40-41). Applicant and his wife started working with a debt management company in mid 2008 for assistance in paying their debts. Their first step was to determine the creditors and how much was owed them. It took Applicant's wife almost a year to get the required information. Applicant entered an agreement with the debt management company in July 2009 for management of six of their debts (Tr. 30-31, 41-42; See, App. Ex. D, Debt Management payment schedule, dated August 5, 2009).

The delinquent debt alleged in SOR 1.a is a medical bill for Applicant after an emergency room visit in 2006 that was not covered by the family insurance plan. One of their children was hospitalized when Applicant went to a hospital emergency room twice with a reaction to medication. Applicant and his wife did not know that the second trip was not fully covered by their insurance plan. The delinquent debt is included in the debt management plan (Tr. 31-33).

The delinquent debts at SOR 1.b, 1.c, 1.f, 1.h, and 1.i are credit card debts and are included in Applicant's debt management plan (Tr. 40-42; App. Ex. D, Repayment Schedule, dated August 5, 2009). Applicant has made payments to the debt management company according to the plan (App. Ex. F, Account summary and debits, dated September 2, 2009; See, Gov. Ex. 2, Answers to Interrogatories, dated April 22, 2009, at 4 and 5). The delinquent debt at SOR 1.d is a credit card debt. Applicant's wife thought that the debt had been paid but learned that it had not been completely cleared. Applicant and his wife entered an agreement with the present collection agency, a law firm, to settle the account for \$1,256.27, payable at \$75 monthly. Payments have been made according to the plan (App. Ex. C, Letter, dated July 28, 2009; App. Ex. G, Cancelled check, dated August 26, 2009; See, Gov. Ex. 2, Answers to Interrogatories, dated April 22, 2009, at 3).

At the time of the hearing, Applicant's wife and the debt management company had not been able to identify or verify two other debts, SOR 1.e, and 1.g. Since the hearing, the creditor for SOR 1.g has been identified and added to the debt management plan (Tr. 42-43; App. Ex. H, Payment Information, dated September 2, 2009). The debt management company does not work with the creditor holding the delinquent debt at SOR 1.g. Applicant and his wife entered a separate agreement with that creditor to pay \$50 monthly until the debt is satisfied.

Applicant learned after extensive inquiries that the medical debt at SOR 1.j was an old debt that he and his wife thought had been paid. They have paid the debt in full (App. Ex. E, E-mail, dated September 2, 2009).

Applicant presented two letters of recommendation. A friend wrote that he has known Applicant for over five years and would trust him with his life. He knows of no better person than Applicant to be a friend and hard worker. He gives Applicant his full recommendation (App. Ex. A, Letter, dated, August 4, 2009). Another friend writes he has known Applicant since high school over 17 years ago. Applicant has always been responsible, trustworthy, and loyal. The friend has a security clearance and endorses Applicant for a security clearance (App. Ex. B, Letter, dated August 7, 2009).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations:

Under the financial considerations adjudicative guidelines, 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 his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

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 FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances) apply. Applicant incurred delinquent debt when he was a married college student and had children that were profoundly disabled and needed extensive medical care. While Applicant and his wife received assistance from the state, it was not always timely received, causing them to use credit cards for living expenses. Applicant and his wife first considered the needs of their children in deciding the priority for the use of their funds. These conditions were beyond Applicant's control. Since the children are all now receiving timely assistance from the state and Applicant is employed, the circumstances causing delinquent debt are not likely to

recur. Since the family receives timely state assistance and has sufficient funds to pay delinquent debts, they entered a payment plan with a debt management company, and have approved payment plans with other creditors to pay debts. Applicant established that he acted responsibly towards his finances under the circumstances.

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). Applicant presented documentation to establish he sought and received assistance from a debt management organization. He has a plan to resolve his finances and is making payments on that plan, so there are clear indications that his financial problems are 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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant presented information to show he is paying his delinquent debts. He has an agreed payment plan with a debt management company that is paying seven of his ten debts. He has agreed payment plans with two other creditors and is paying according to those plans. He paid one debt in full. Applicant appears to have sufficient resources to make the agreed payments on his delinquent debts. He presented a concrete plan to pay his delinquent debts. His plans to pay debts which were incurred by circumstances beyond his control are reasonable, prudent, and honest. Applicant presented sufficient information to establish a good-faith effort to pay creditors or resolve debts. His finances are under control and he has acted responsibly. He mitigated 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 relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's good reputation for trustworthiness and reliability at work and in the community. I considered that most of Applicant's debts are directly attributed to the need to provide support and assistance to his disabled children.

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

Applicant established a meaningful track record of debt payment by presenting sufficient information to show he has payment plans in effect for his delinquent debts and his payments are current according to the plan. He has sufficient monthly income to meet his present obligations. Applicant demonstrated that his plans to pay his delinquent debts are credible and realistic. He is managing his finances responsibly under the circumstances. The management of present finances and past obligations indicates Applicant will be concerned, responsible, and not careless in regard to classified information. Applicant is not financially overextended and he is living within his means. Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment, reliability, and trustworthiness. He established his suitability for a security clearance. I conclude Appellant 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusions

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge