



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



In the matter of:)	
)	
)	ISCR Case No. 09-02601
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 29, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Positions (SF 86) as part of his employment with a defense contractor on October 28, 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 July 7, 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 answered the SOR in writing on September 9, 2009, admitting two and denying two of the four allegations under Guideline F. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 17, 2009, and the case was assigned to me the same day. DOHA issued a Notice of Hearing on November 23, 2009, scheduling a hearing for December 11, 2009. I convened the hearing as scheduled. The government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were admitted without objection.

Applicant testified on his behalf and offered two exhibits, marked Applicant Exhibit (App. Ex.) A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2009. The record was left open for Applicant to submit additional documents. Applicant timely submitted two additional documents marked App. Ex C and D, which were received without objection (Gov. Ex. 6, Memorandum, dated December 31, 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 December 2, 2009. 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 11, 2009, before the Notice of Hearing was mailed, so actual notice was given more than 15 days before the hearing. However, Applicant signed for the Notice of Hearing only about nine days prior to the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 4-5).

Findings of Fact

Applicant admitted two and denied two of the four factual allegations in the SOR. I included 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 63 years old, and is a security specialist for a defense contractor. He is presently not working while he awaits a decision on his security clearance. He served over 22 years on active duty in the Army, retiring in 1998 with an honorable discharge. He held a security clearance while on active duty, and since then while working for government contractors. He is a college graduate. He has been married for 44 years. Applicant has two adult children who live on their own (Tr. 13-15; Gov. Ex. 1, SF 86, dated October 28, 2008; App. Ex. A, DD 214, October 1998). Applicant's monthly income is \$4,093.34, from military retirement of \$1,216.29, and social security payments of \$2,877.05. His monthly expenses are \$3,190, leaving a positive remainder \$903.34 (Gov. Ex. 2, Answer to Interrogatories, at 5, Personal Financial Statement).

Credit reports (Gov. Ex. 3, Credit report, dated October 1, 2009, and Gov. Ex. 5, Credit report, dated November 13, 2008) show that Applicant has the following delinquent debts: a debt to a credit union for \$323 (SOR 1.a); a debt to the same credit union more than 120 days past due for \$10,707 on a balance of \$143,999 (SOR 1.b); and another debt to the same credit union in collection for \$13,508 (SOR 1.c). It is also alleged that Applicant filed a Chapter 7 bankruptcy on April 21, 2009 (SOR 1d).

Applicant moved to a large metropolitan area when he retired from the Army in 1998. He was entitled to and received military retired pay. He and his wife purchased a home in the metropolitan area. His finances were in good condition and he was able to

meet all of financial needs. He had no delinquent debts. He worked as a contractor providing executive protective services to a federal agency. After a few years, he transferred to work for another firm providing protective services at a military installation closer to where he lived. Even though this job paid less than his previous position, he no longer had a long commute and expenses (Tr. 23-27).

Applicant and his wife paid \$147,000 for their house when purchased in 1998. By 2005, similar homes in his area were selling for over \$400,000. Applicant wanted to make some improvements on the house. He went to the credit union located at the military base where he worked to learn the best way to proceed. Because of the large equity in his house, he was advised by loan officers at the credit union to take out a line of credit on the house, consolidate all of his debts into the line of credit, and have only one payment at a lower rate. Applicant took out a line of credit of about \$160,000 to pay debts for credit cards and car loans. He also made substantial improvements on the house and purchased a second house in the area to use as investment property (Tr. 34-36).

The interest payments on the line of credit changed in 2007 from \$800 per month to over \$1,400 per month because the line of credit had a "balloon" interest rate. At the same time, the housing market in the area was deteriorating. Applicant's house value plummeted to under \$140,000. In addition, Applicant's company lost the contract for protective services at the installation and Applicant was no longer working. He went to the credit union requesting a loan modification, but was refused. Applicant could no longer make the mortgage and line of credit payments. He started using a credit card issued by the credit union to make the mortgage and line of credit payments as well as other purchases. He placed his house for sale but it did not sell. After a year with his house on the market, Applicant left the house. The credit union foreclosed on the house loan, and placed the house for sale. Applicant was not a party to the sale of the house and was not advised of the selling price for the house. However, the original mortgage was covered by the sale of the house. The line of credit from the house was not paid by the sale of the house (Tr. 22-27, 39-42, 46-48).

The delinquent debt at SOR 1.b is for the payments Applicant did not make on the line of credit before the house was foreclosed. The delinquent debt at SOR 1.c is for the debt on the credit card Applicant used to make house and line of credit payments.

Applicant was also a victim of identity theft. He is unsure of the origin of the debt at SOR 1.a. He only had the mortgage, line of credit, and credit card accounts with the credit union. He believes the debt at SOR 1.a was attributed to him because of the identity theft problem. There is no indication in the credit reports of the origination of the debt listed at SOR 1.a (Tr. 43-46).

Applicant and his wife decided to leave the metropolitan area and move to the southeastern United States in January 2008, for a lower cost of living and better job prospects. Applicant was unable to find consistent work in his field of protective services in the southeast. He and his wife filed for bankruptcy protection in April 2009 (Tr. 13-18;

Gov. Ex. 4, and App. Ex. D, Bankruptcy documents, dated April 23, 2009). His debts, including his debts to the credit union, were discharged on November 24, 2009 (App. Ex. B, Bankruptcy discharge order, dated November 24, 2009). The debts listed at SOR 1.b and SOR 1.c were listed in the bankruptcy documents and discharged (App. Ex. C, bankruptcy schedule F).

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 when the economy in his area had a downturn, he lost the equity in his home, and his company lost a contract and he was no longer employed. He was unable to make his house and line of credit payments. He had to incur credit card debt to make his house and line of credit payments. Applicant was one of the victims of the ongoing economic crisis.

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 apply. Applicant never had any financial issues until, on the advice of his banker, he took out a line of credit loan from the credit union to consolidate his bills and make home improvements. Unfortunately, the timing was wrong because the housing market collapsed, and Applicant lost the equity in his house and the ability to pay his mortgage and line of credit. His financial problems were under the unusual circumstance of an economic crisis and not within his control. He has acted responsibly under the circumstances. He tried to make the mortgage and line of credit payments as well as sell his house. When he could not sell

the house, he returned the house to the bank for foreclosure. This was the only viable option for him. He moved to an area with a lower cost-of-living and where he felt he could find better employment. He could not find employment, so he filed for bankruptcy and had his debts discharged. Bankruptcy is a legal and permissible mean of resolving indebtedness. Applicant's finances under these circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment.

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 Applicant's more than 22 years of honorable service in the Army. I considered that he has held a security clearance for almost 40 years. Applicant's financial problems were caused by conditions beyond his control. Like many people, his financial status was affected when he took a loan based on the equity in his house, and the value of the house deteriorated because of a financial crisis. His mortgage and line of credit became now more than the value of his house. He could not meet the demands of the mortgage and line of credit payments. His circumstances are no different than those faced by many families in the United States. Until this point, Applicant had an excellent credit and financial history. Because of the crisis and his financial condition, he filed bankruptcy and had his debts discharged so he could start over financially. The way he managed his finances through the crisis and his many years holding a security clearance indicate 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 as to 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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