



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



In the matter of:)	
)	
)	ISCR Case No. 09-03955
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

January 29, 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 October 5, 2007. 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 June 19, 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 June 27, 2009.

Applicant answered the SOR on July 15, 2009, admitting three and denying six of the allegations under Guideline F. He stated eight of the nine debts had been paid, even two that he admitted. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 27, 2009, and the case was assigned to me on October 5, 2009. DOHA issued a notice of hearing on October 7, 2009, scheduling a hearing for October 22, 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 one exhibit, marked Applicant Exhibit (App. Ex.) A which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 6, 2009. Applicant waived the 15 day notice requirement (Tr. 5-6). I kept the record open for Applicant to file additional documents. Applicant timely filed four additional documents marked App. Ex. B through E, which were received without objection. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted three factual allegations in the SOR (SOR 1.a, SOR 1.b, and SOR 1.e). He stated that the debts listed in SOR 1.a and SOR 1.e have been paid in full. He denied the other six allegations noting that they had also been paid in full. 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 31 years old, and has worked as a computer technician for a defense contractor for approximately four years, since February 2006. He served two tours in war zones for his employer. He was in Iraq from July 2008 until June 2009, and in Afghanistan from June 2009 until present. He came to the hearing from his duty station in Afghanistan, and was returning to Afghanistan immediately after the hearing. He is single with no children. He has credit for over two years of college. He served six years in the United States Marine Corps, two in the reserves (1998-2000) and four on active duty (2000-2004). He held a security clearance while on active duty. He received an honorable discharge. Applicant's monthly pay is approximately \$8,400. Since he is stationed in a war zone, he has only minimal monthly expenses of approximately \$2,000, leaving \$6,400 in discretionary or disposable income (Tr. 45-51; Gov. Ex. 1, e-QIP, dated October 5, 2007; Gov. Ex. 3, DD 214, dated February 2004).

After leaving active duty in 2004, Applicant worked as a car salesman from November 2004 until January 2005. He left car sales in January 2005 because he was not a good sales person, and was unemployed until June 2005. He worked as a computer technician for two different employers from June 2005 until February 2006, when he started working for his present employer (Tr. 38-40).

Credit reports (Gov. Ex. 4, Credit report, dated November 7, 2007, and Gov. Ex. 5, Credit report, dated June 4, 2009) show the following delinquent debts for Applicant: a medical debt in collection for \$261 (SOR 1.a); a state tax lien for \$5,640 (SOR 1.b); a credit card debt charged off for \$300 (SOR 1.c); a charged off bank debt for \$1,456 (SOR 1.d); a student loan to a university for \$700 (SOR 1.e); a charged off credit card account for \$1,160 (SOR 1.f); a collection account on a car loan for \$8,550 (SOR 1.g); and two debts placed for collection for the same insurance company for \$470 (SOR 1.h), and \$313 (SOR 1.i). The balance owed on these accounts is \$18,800.

The delinquent debt at SOR 1.a is a medical debt. The debt was paid in full in December 2008 (Tr. 18-22; Response to SOR, dated February 2, 2009, at 15).

The delinquent debt at SOR 1.b is for a lien from the state from which Applicant entered active duty and returned after active duty. The state claims Applicant filed for and received unemployment two months before he was eligible and the lien is to recoup the unemployment payments. Applicant claims he was entitled to unemployment at the time. The state provides veterans free tuition for college, and also pays them unemployment. Applicant was enrolled in college receiving the education free as a veteran. He believes he is therefore entitled to unemployment. He contested the lien starting in February 2008 but the dispute has yet to be resolved. He has sufficient funds to pay the debt if the dispute is not resolved in his favor (Tr. 40-42).

The delinquent debts at SOR 1.c and SOR 1.f are two accounts with the same creditor. Both debts have been paid in full (Tr. 22-29; App. Ex. B, Credit report, dated December 18, 2009, at 18; App. Ex. D, Letter, November 13, 2009).

The delinquent debt at SOR 1.d has been paid in full. Applicant did not have a receipt for this payment since he came to the hearing from overseas (Tr. 29-31).

The delinquent debt at SOR 1.e is a direct tuition payment owed to a university. The debt has been paid in full (Tr. 31-32; App. Ex. C, Letter, dated November 13, 2009).

The delinquent debt at SOR 1.g is for a car loan. The debt was settled for \$2,500 and paid (Tr. 32-33).

The delinquent debts at SOR 1.h for \$470 and SOR 1.i for \$313 are to the same insurance company. The debts have been paid in full (Tr. 33; App. Ex. E, message, dated November 13, 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 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 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 leaving active duty in 2004 while he was in school and moving from job to job.

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). The mitigating conditions partially apply. Applicant did not provide information to show any circumstances causing him to accumulate delinquent debt that were unusual or beyond his control. He had periods of unemployment, but received unemployment benefits. He had difficulty finding and holding a good paying job. However by February 2006, he was employed and accumulating funds to pay his debts. He could incur delinquent debt again. However he acted responsibly because he has paid almost all of his delinquent debt. Since his debts have been paid, his finances do not cast doubt on his current reliability, trustworthiness, or good judgment.

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 has sufficient discretionary funds to pay his delinquent debts. He presented sufficient information to show that eight of the nine delinquent debts have been paid in full. The remaining debt is being disputed. Applicant contacted his creditors and arranged to make payment of the debts demonstrating a good-faith effort to repay his creditors.

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 documentation to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue). Applicant disputes the state lien based on recoupment of unemployment benefits. The state has a program of free tuition and payment of unemployment for veterans while they are in school. Applicant was a veteran and was receiving a free college education. Since he received the free tuition, he was eligible for unemployment. Applicant provided information to show he has a basis for the dispute since he was a veteran, attending school for no fee in a state program for veterans, and entitled to receive unemployment. While the dispute has not been resolved, Applicant has a reasonable basis for his dispute and is prepared to pay the debt if it is not resolved in his favor.

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 served as a Marine for six years, four of those years on active duty. I also considered that he served two tours in the war zones of Iraq and Afghanistan for his employer.

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, 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 eight of the nine delinquent debts. He disputed the one remaining debt, and has a reasonable basis for the dispute. While the dispute has not been resolved, Applicant has sufficient funds to cover payment of the unemployment benefits, if required. Applicant's management of his finances and payment of 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 as to Applicant’s eligibility and suitability for a security clearance. For all these reasons,

