



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



In the matter of:)
)
) ISCR Case No. 09-04022
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2010

Decision

CREAN, Thomas M., Administrative Judge:

On November 20, 2008, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement for a position 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 January 25, 2010, 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 within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on February 3, 2010.

Applicant answered the SOR on February 11, 2010, admitting two and denying seven of the allegations under Guideline F. Department Counsel was prepared to proceed on May 20, 2010, and the case was assigned to me on May 28, 2010. DOHA issued a Notice of Hearing on June 4, 2010, scheduling a hearing for June 16, 2010. I convened the hearing as scheduled. The Government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were admitted without objection.

Applicant testified on his behalf, and offered seven exhibits, marked Applicant Exhibits (App. Ex.) A through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 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 stationed overseas with his employer. He was returning to the United States for a short visit and the hearing was scheduled while he was in the United States. He received the Notice of Hearing on or about June 4, 2010. Applicant is entitled to receive notice of his hearing at least 15 days in advance of the hearing. (Directive E3.1.8.) Applicant waived the 15 day notice requirement. (Tr. 5-6)

Findings of Fact

Applicant admitted two of the nine factual allegations in the SOR. I included Applicant's admissions in my findings of fact. Applicant denied six allegations since the alleged debts had been settled, paid, or resolved. The remaining debt was for a dishonored check that had been resolved. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 30 years old and has been employed by a defense contractor as an aircraft mechanic and technician working on military aircraft in the Middle East since October 2007. He is a high school graduate. Applicant served eight years on active duty in the Air Force and was honorably discharged in May 2007. He left the Air Force as it downsized its military force. He held a security clearance while on active duty. Applicant was first married in June 2003 and divorced in August 2003. He has no financial obligations from this marriage. He remarried in October 2007, and he has one child and one step child. (Tr. 41-44; Gov. Ex. 1, e-QIP, dated November 20, 2008)

Applicant's monthly pay while serving on active duty was \$3,000. After he left active duty in May 2007, he did not immediately find work. Then, he worked at low-paying jobs, earning about half of his active duty salary, or approximately \$1,600 monthly. During this time, Applicant was unable to keep current with his debts and some became delinquent. He was finally hired by his present defense contractor employer in October 2007. Applicant's monthly pay with the defense contractor is approximately \$5,800, with monthly expenses of \$4,900, leaving \$800 in monthly discretionary funds. Since being advised of his debts by security investigators in May 2009, Applicant's payment plan has been to accumulate funds, and when he has sufficient funds, settle and pay each account in turn. Also during this time, Applicant was working overseas and having difficulty contacting and paying creditors. (Tr. 31-33, 38-39, 44-51).

Credit reports (Gov. Ex. 3, dated November 3, 2009; Gov. Ex. 4, dated December 23, 2008) and answers to interrogatories (Gov. Ex. 2, dated August 25, 2009) show the following delinquent debts for Applicant: a collection account for

apartment rent for \$1,564 (SOR 1.a); a credit card account in collection for \$3,007 (SOR 1.b); a credit card account in collection for \$4,431 (SOR 1.c); a charged-off loan for \$5,290 (SOR 1.d); a car repossession debt for \$7,086 (SOR 1.e); a debt to the Defense Finance and Accounting Service for \$1,859 (SOR 1.f); a collection account for \$1,582 (SOR 1.g); a collection account for a loan for \$2,500 (SOR 1.h); and a conviction for theft by dishonored check of less than \$500 (SOR 1.i). The total delinquent debt is \$27,319.

The delinquent debt at SOR 1.a is for an apartment Applicant leased before he left active duty. Applicant believed that the lease was terminated with no rent due since he was vacating the apartment pursuant to military orders. Applicant did not know of the debt until he was interviewed by security investigators. The debt has been paid in full. (Tr. 16; 29-31; App. Ex. A, Check, dated June 2, 2010)

The delinquent debt at SOR 1.b results from charges on a credit card Applicant used before and after he left active duty. When his pay was cut after leaving active duty, he could not make the required payments. He settled the debt for \$1,319.70, and it has been paid. (Tr. 17 and 31; App. Ex. B, Bank Statement, dated June 3, 2010)

The delinquent debt at SOR 1.c, also listed as a debt with the original creditor at SOR 1.h, is for a credit card Applicant and his wife used to meet living expenses after Applicant left active duty. Applicant has been paying this debt at \$200 monthly since starting work with the defense contractor in October 2007. The present balance of the debt is \$2,800. His payments are current. (Tr. 17 and 32; App. Ex. C, Letter, dated December 9, 2009)

The delinquent debt at SOR 1.d is for a loan Applicant and his wife used to purchase items when their child was born in 2005. Applicant had two loans with the same creditor. Both loans have been paid in full. (Tr. 18, 33-34; App. Ex. D, Paid in Full Letter, dated November 9, 2009; App. Ex. E, Paid in Full Letter, dated November 25, 2009)

The delinquent debt at SOR 1.e is for a car repossession. Applicant settled this account, and it has been paid. His present credit report shows the account at "0" balance. (Tr. 18 and 35; App. Ex. G, Credit Report, dated June 8, 2010, at 4)

The delinquent debt at SOR 1.f is for a debt owed the Defense Finance and Accounting Service for uncharged leave while on active duty. Applicant paid this debt in full. (Tr. 18 and 35; App. Ex. F, Paid in Full notice, dated May 5, 2010)

The delinquent debt at SOR 1.g is for a telephone debt. Applicant paid the debt to the telephone company as the original creditor. He disputed the debt with the telephone company when he learned about it from security investigators. The original creditor notified the collection agency that the debt had been paid. The debt has been removed from Applicant's credit report. (Tr. 18-21, 35-36; App. Ex. G, Credit Report, dated June 8, 2010)

The financial issue at SOR 1.i is for a 2003 conviction for a dishonored check. Applicant believes the check was for an overdraft of his checking account for a check he issued to a local supermarket. Applicant believed when he wrote the check that he had sufficient funds in his account. However, there was a delay on the direct deposit of his pay to his bank account. His attorney noted that his conviction for theft by check was improper since Applicant was not notified of a hearing and did not appear. (Tr. 20, 37-38; See, Applicant's response to SOR, Attorney's Letter, dated January 21, 2008)

Applicant has not received financial counseling. Applicant has worked overseas away from home and family for over three years to accumulate funds to pay his debts. He and his wife have a family budget to manage their finances. They have checking and saving accounts with positive balances. He is current with his mortgage and vehicle loan payments, as well as his federal, state, and local taxes. (Tr. 39-41)

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.

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 his or her 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 reported in credit reports 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). Applicant incurred delinquent debts after he involuntarily left active duty in May 2007 because the Air Force was downsizing its military force. He was unable to immediately find employment at a salary comparable to his military salary. He incurred delinquent debt because he did not have sufficient income to meet his financial obligations. His finances show an inability and not an unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Condition (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's delinquent

debts were incurred because he left active duty involuntarily when the Air Force downsized and was not immediately able to find suitable employment. When he did find employment five months later, he started repaying his delinquent debts. All but one of his debts has been paid. Applicant's loss of good employment was beyond his control and he acted reasonably and responsibly under the circumstances by paying almost all of his debt.

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 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. All that is required is that Applicant demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan. Applicant's financial problems were caused by conditions beyond his control. Applicant settled and paid six of his eight delinquent debts. He established that one of the delinquent debts is a duplicate of a debt paid to the original creditor that is listed as alleged by the collection agency. He is making current monthly payments on the eighth debt, and the amount of the debt has reduced significantly. Applicant also established that he should not have been convicted for a dishonored check since he paid the check and he was not present for the court hearing pertaining to the debt. Applicant's actions in paying and resolving his delinquent debts provide significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay his creditors or resolve debt. His actions show he acted reasonably and responsibly under the circumstances. His finances no longer reflect adversely on his trustworthiness, honesty, and 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 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 that Applicant served eight years on active duty in the Air Force, received an honorable discharge, and successfully held a security clearance. 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 took reasonable and responsible action to resolve his financial issues. His financial issues were caused by conditions beyond his control. He is resolving his financial issues and has all but one resolved. The remaining delinquent debt is being paid and is current. Applicant's current finances do not show any financial problems. 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, I conclude Applicant mitigated security concerns arising from financial considerations and should be granted access to classified information.

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.i:	For Applicant

Conclusion

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