



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



In the matter of:)	
)	
)	ISCR Case No. 09-05507
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 26, 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 March 17, 2009. 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 September 28, 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 within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on October 4, 2009.

Applicant answered the SOR on October 6, 2009, admitting four and denying one of the five allegations under Guideline F. He denied that the admitted allegations raise a security concern. Applicant requested a decision on the record. On October 26, 2009, Department Counsel requested a hearing pursuant to paragraph E3.1.7 of the Additional Procedural Guidelines (Hearing exhibit I, dated October 26, 2009). Department Counsel was prepared to proceed on November 30, 2009, and the case was assigned to me on January 14, 2010. DOHA issued a Notice of Hearing on January

25, 2010, scheduling a hearing for March 9, 2010. I convened the hearing as scheduled. The government offered seven exhibits, marked Government Exhibits (Gov. Ex.) 1 through 7, which were admitted without objection. Applicant testified on his behalf. I kept the record open for Applicant to submit documents in support of his testimony. Applicant timely submitted nine documents marked Applicant Exhibit (App. Ex.) A through I, which were admitted without objection (See, Gov. Ex. 8, Department Counsel Memorandum, dated March 23, 2010). DOHA received the transcript of the hearing (Tr.) on March 18, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

SOR 1.e alleges a federal tax lien of \$421,000. The lien was based on a tax assessment for unrealized stock options from Applicant's employer. At the close of the hearing, Department Counsel correctly requested that the allegation be withdrawn because the Government's own evidence shows that the Internal Revenue Service abated the tax lien based upon Congressional action. I granted the request. However, since the tax lien affected Applicant's ability to pay other debts while it was in effect, I will discuss the impact of the lien on other allegations (Tr. 64-65; Gov. Ex. 6, Emergency Economic Stabilization Act of 2008; Gov. Ex. 7, IRS Abatement Letter, dated April 3, 2009).

Findings of Fact

Applicant admitted four of the 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 49 years old, and has worked as an electrical engineering consultant for a defense contractor for a number of years. His employer has not used him as a consultant since the SOR was received in 2009. The company is still sponsoring him for a security clearance. If Applicant is granted access to classified information, he will also seek further employment in the defense industry. He was married in August 1988 and divorced in July 1995. He has two children from the marriage and is required to pay child support for them until the youngest child graduates from high school in June 2010 (Tr. 13-14, 39-41; Gov. Ex. 1, Security Clearance Application, dated March 17, 2009).

Applicant is a college graduate with a bachelor's degree in electrical engineering awarded in 1982, and a master's of business degree awarded in December 2007. Applicant's family did not assist him to pay for his college education. He had to fund his education himself, which he did using work study programs, loans, and other outside work. He learned to live on a meager budget and have an austere lifestyle. After earning his bachelor's degree, he worked as a consultant presenting courses on electrical engineering subjects. He also was successful in designing electrical devices for his employer. His teaching and design work was initially successful until the recession of 1997 severely affected the demand for his courses as well as the need for newly

designed electrical devices. He had a house mortgage and also a family to support. His debts were such that he had to declare bankruptcy in 1997. His financial problems led to his separation and subsequent divorce in 1998 (Tr. 24-27; App. Ex. A, Applicant's letter, dated March 11, 2010; App. Ex. B, Bankruptcy Discharge, dated December 17, 1997).

Applicant moved across country to work for a company on the west coast in September 1996. During this time, his wife sent his two children to live with him because she could not handle them. They lived with him for about six months, and he supported them. His company was successful and offered its employees, as part of their compensation, stock options in the company. Applicant received stock options worth on paper a few million dollars. He attempted to execute his stock options but the broker could not immediately execute the transaction. Applicant was involved in other business problems for his company and went on travel to Europe to assist in solving some electronic problems on company products. When his broker contacted him for the margin call, he was overseas and unable to execute the transaction with the broker. Before he could return and execute the sale, the stock price plummeted and his stock options became worthless. The IRS taxed him and other employees on the high value of the stock. He was assessed a tax of \$421,000, and the IRS placed a lien on his property and bank accounts to pay the tax. Applicant's bank funds were seized by the IRS whenever he made a bank deposit. The lien and the funds seizure prevented him from making timely child support and other payments. His company provided legal advice and assistance for the effected employees. Eventually, Congress passed legislation that relieved the individuals of the tax liability for their unrealized gain. The IRS then abated his tax lien in April 2009 (Tr. 27-32, 37-40; Gov. Ex. 6, IRS bulletin, dated April 14, 2009).

About six months after the tax lien was placed on his accounts, Applicant was passed over for promotion by his company, so he left the company and moved to the northeast in January 2006. He found employment and started school for his Master's of Business Administration degree. Applicant applied for a security clearance but the tax lien and financial problems for child support and student loans were still pending. Since he did not immediately receive a security clearance, his new employer released him. Applicant concentrated on his schooling for his master's degree. After receiving his degree, he was unable to find employment in the immediate area. He moved to his former home in the southeast where he was raised and his former wife and family lived in December 2007. He found work as an electrical engineer consultant and again applied for a security clearance (Tr. 32-37).

Credit reports (Gov. Ex. 3, Credit report, dated April 25, 2006, Gov. Ex. 4, Credit report, dated March 17, 2009, and Gov. Ex. 5, Credit report, dated August 26, 2009) show a Chapter 7 bankruptcy filed in September 1997, with debts discharged in December 1997 (SOR 1.a); child support payments in collection for \$12,965 (SOR 1.b); and a federal tax lien for \$421,000 (SOR 1.e). Investigative documents from OPM show a personal financial statement that reflects no income for Applicant (SOR 1.c); and

Applicant's statement that he failed to pay federal income taxes for seven years (SOR 1.d).

SOR allegation 1.a alleges Applicant filed bankruptcy. Applicant admits he filed a Chapter 7 bankruptcy in September 1997. His debts were discharged in December 1997 (App. Ex. B, Bankruptcy Discharge, dated December 17, 1997).

SOR 1.b alleges child support payments in arrears and collection for \$12,965. Applicant pays his child support when he is employed, but admits he is in arrears on his child support payments. Since he is not employed at present, he has not been making his child support payments. The latest child support statement shows he has a required monthly payment of \$906.53 with arrears of \$36,089.02 (Tr. 41-42; App. Ex. D, statement, dated November 6, 2009).

SOR 1.c alleges Applicant reported he had no income in response to interrogatories. Applicant has earned income in every year except 1994. His income fluctuates substantially (App. Ex. C, Social Security statement, dated April 11, 2007). Applicant's tax returns for tax years 2007 and 2008 show he was self-employed as a consultant in 2007 and 2008. He did not receive substantial pay these two years (App. Ex. G, Tax returns for Tax year 2008; App. Ex. H, Tax return for tax year 2007). Applicant's tax return for tax year 2009 shows he was still self-employed as a consultant but that he again did not make substantial pay (Tr. 42-49; App. Ex. F, Tax return tax year 2009).

SOR 1.d alleges Applicant stated to security investigators that he had not filed income tax returns in seven years. Applicant stated that his comments were taken out of context since he told investigators that he had not had to pay a lot of taxes in recent years since he had little taxable income. Applicant provided his income tax returns for tax years 2007, 2008, 2009 (Tr. 42-47; App. Ex. F, Tax return, tax year 2009; App. Ex. G, Tax return, tax year 2008; App. Ex. H, Tax return for tax year 2007).

Applicant also states that he has approximately \$6,000 in his checking and saving accounts. He also has student loans from his undergraduate and graduate degrees. The loans have been consolidated and originally were for \$32,336.71. Applicant made payments on the loans, and the balance on the consolidated loan is \$27,462.77. Applicant is current with his monthly payment of \$239.23 (Tr. 49-50; App. Ex. I, Student Loan statement, dated February 2010).

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 requiring him to seek bankruptcy protection in 1997. The IRS placed a large lien on and seized funds from his bank accounts for taxes on a stock option plan in 2004. He also had difficulty finding good employment at a comparable pay because of the economic downturn and his company's business failure in early 2000. The IRS lien was resolved in his favor, but he still had delinquent debts. In addition Applicant's statement in response to interrogatories and to security investigators shows that he may not be employed or filing his tax returns.

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 and his former wife had financial issues in 1997, and they filed bankruptcy. Bankruptcy is a legal and permissible means of resolving indebtedness. However, the circumstances of the bankruptcy can and should be considered in determining an individual's security worthiness. The bankruptcy filing does not create a security concern.

After the bankruptcy discharged the debts, Applicant did not encounter other delinquent debts until the IRS tax lien was placed on his accounts. The tax lien was initiated by the IRS because of an anomaly in the tax implication of a stock option. While this problem was resolved in favor of Applicant, it created financial issues for him. The IRS lien was a circumstance beyond Applicant's control, and not likely to recur since the issue was resolved by congressional action. Applicant's inability to find good employment at a meaningful pay was also beyond his control since it was caused by recent economic circumstances. Applicant acted responsibly by furthering his education to make himself more marketable, and continuing to pay his debts, particularly his student loans, as he could. His financial problems 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 does not apply. Applicant did not present any information that he sought or received financial or credit counseling.

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. The concept of good-faith action requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. An applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of the “good-faith” mitigating condition. Applicant did resolve his debts in 1997 by bankruptcy. Thereafter, he encountered delinquent debt because of an erroneous tax lien placed on his accounts by the IRS. Applicant now has two debts, his student loans which are current, and his child support payments which are in arrears. His continued payment of his student loans and his efforts not to incur further delinquent debts show that he is acting reasonably, prudently, and honestly in regard to his financial situation. His payment of student loans shows he is adhering to a duty or obligation to pay his debts. Applicant's employment situation in the last few years has been intermittent at best. However, he has managed to continue to consolidate his student loans and keep payments current. He has not had sufficient income to make his child support payments. The payment of his student loans indicates a good-faith effort to resolve his debts and pay creditors.

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. 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 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, including evidence of actual debt reduction through payment of debts. As noted, Applicant has two outstanding debts, child support arrears and student loans. Applicant presented sufficient information to show he has taken reasonable and responsible action to pay his student loans. He had the loans consolidated, receiving a reasonable payment plan that he could implement within his financial means, and the loan payments are current. He does not have the financial resources to pay the required child support because of his inability to find meaningful work at this time. When his former wife needed help with the children, he had them live with him for a time and paid for their living expenses. He has the opportunities for meaningful employment at a sufficient pay because of his education and work experience. His obligation to pay child support ends in a month when his youngest child become of age where child support is not required, so the amount of the arrears will not increase. Applicant's responsible management of his debts and finances 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 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
Subparagraph 1.e:	Withdrawn

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