



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



In the matter of:)
)
) ISCR Case No. 09-05792
)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

May 27, 2010

Decision

CREAN, Thomas M., Administrative Judge:

On June 10, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment 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 December 11, 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on January 2, 2010.

Applicant answered the SOR on January 2, 2010, admitting all but one of the ten allegations under Guideline F. He provided a detailed explanation for his response, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 10, 2010, and the case was assigned to me on March 22, 2010. Applicant was stationed in Iraq working for a defense contractor. He returned to the United States for some training, and became available for a hearing. DOHA issued a Notice of Hearing on April 29, 2010, scheduling a hearing for May 3, 2010. I convened

the hearing as scheduled. The government offered three exhibits, marked Government Exhibits (Gov. Ex.) 1 through 3, which were admitted without objection. Applicant testified on his own behalf and introduced three exhibits marked Applicant Exhibits (App. Ex.) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 18, 2010. I kept the record open for Applicant to submit additional documents. Applicant timely filed three additional documents marked App. Ex. D through F, which were received without objection (Gov. Ex. 4, Memorandum, dated May 24, 2010). 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 April 29, 2010. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with myself and Department Counsel the hearing date of May 3, 2010. At the hearing, Applicant waived the 15 days notice requirement (Tr. 9-13).

Findings of Fact

Applicant denied SOR 1.j, but admitted with explanation SOR allegations 1.a - 1.i. I included Applicant's explanation 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 46 years old, and has worked as a welder for a defense contractor for about a year. He graduated from the equivalent of high school in his native country and received professional training in the United States as a welder. He came to the United States in 1994, and became a United States citizen in 2002. He is married with four children, ages 18, 12, 10, and seven months. All of his children live at home. His wife is at home with the children, and is not employed outside the home. She worked outside the home until their youngest child was born in September 2009. (Tr. 31-35) Applicant's monthly net salary is \$9,677.51, with monthly expenses of \$6,566. He has a monthly remainder for discretionary spending of approximately \$3,000. Applicant no longer uses credit cards but relies solely on his debit card. (Tr. 57-61; Gov. Ex. 2, Answers to Interrogatories, Personal Financial Statement, at 52)

Applicant was steadily employed until mid-2008 when his employer finished a contract and did not have another job for Applicant. Up until that time, his debts were paid as agreed and his credit was good. Applicant was only able to find temporary jobs until he went to work for a defense contractor in June 2009. He was unable to keep up with his bills and mortgage payments and had to use credit cards to continue providing for his family. His pay in the temporary jobs was adequate but the jobs did not last long. (Tr. 14-22)

A credit report (Gov. Ex. 3, Credit report, dated June 20, 2009) shows the following delinquent debts for Applicant: a charged-off debt to Bank of America for \$3,905 (SOR 1.a); a Chase Home Mortgage foreclosure on a balance of \$122,932, that

was past due for \$8,658 (SOR 1.b); a charged-off credit card debt of \$966 (SOR 1.c); another charged-off credit card account for \$1,500 (SOR 1.d); a charged-off loan of \$7,195 (SOR 1.e); a department store charged-off account for \$1,567 (SOR 1.f); an electronics store account charged-off for \$2,793 (SOR 1.g); an auto repair debt charged-off for \$782 (SOR 1.h); and a telephone debt in collection for \$2,803 (SOR 1.i). The balance owed on these accounts is \$30,167 (Tr. 13). Also listed is a Chapter 7 bankruptcy filed on May 28, 2009, and dismissed in August 2009 (SOR 1.j)

Applicant filed a bankruptcy petition in May 2009 when he could not pay his debts on time and was not steadily employed. (SOR 1.j) As soon as he received steady employment from the defense contractor, Applicant had the bankruptcy dismissed in August 2009. (Tr. 35-41)

Applicant's delinquent mortgage loan at SOR 1.b has been modified and his payments are current. (Tr. 24-25; App. Ex. A, loan documents, dated April 19, 2010) Appellant settled or paid some of his debts. He paid in full the \$966 credit card debt at SOR 1.c. (Tr. 45-46; Answer to SOR, Letter dated November 2, 2009) He settled and paid the credit card at SOR 1.e. (Tr. 46-47; App. Ex. D, Letter, dated January 5, 2010, App. Ex. E, Bank Statement, dated January 20, 2010) He settled and paid the loan debt at SOR 1.h. (Tr. 50-51; Answer to SOR, Letter, dated January 2, 2010) Applicant also paid or is current on some debts not listed in the SOR. His car loan is current and he only has five payments left. He paid a credit card debt of \$1,265. (Tr. 26-30; App. Ex. B, Payment Letter, dated December 21, 2009) His latest credit report shows most of his debts are paid as agreed. (App. Ex. C, Credit report, date May 2, 2010)

Applicant contacted or attempted to contact the original creditor or the collection agency on four of the remaining debts. The creditors or collection agencies for the debt at SOR 1.a, SOR 1.d, SOR 1.e, and SOR 1.g informed Applicant that they either do not own the debt or do not know the identity of the current creditor. Applicant has not been contacted by any creditors seeking payment of these debts. Applicant is ready and able to settle or pay the debts if he can determine the correct creditor. (Tr. 41-46, 49-51)

Applicant disputed the telephone debt at SOR 1.i with the credit reporting agency. After an investigation, the credit reporting agency removed the debt from his credit report. (Tr. 51-52; App. Ex. F, Letter, dated May 13, 2010)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. Applicant's delinquent debts as reported in a credit report and admitted by 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).

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's delinquent debts were incurred when he lost his steady employment, and found only work with a temporary agency. The jobs he received paid well but only lasted a short time. Applicant continued to seek employment and finally was steadily employed by the defense contractor. Since being steadily employed, he has contacted all of his creditors. His house mortgage was modified. He paid three of the SOR debts in full, and paid other debts in full not listed in the SOR. He is current with his car payments. He disputed one debt that has been removed from his credit report. He tried to pay his remaining four SOR debts but was unable because he could not learn the identity of the creditor. He filed a bankruptcy action but immediately had it dismissed when he found good steady employment. The unemployment and underemployment were circumstances beyond his control. He is now steadily employed and delinquent debts should not recur. He does not use credit cards but only his debit card, so he is living within his means. His present credit report shows he is paying his debts as agreed. He acted responsibly under the circumstances by paying most of his past due debts and staying current with his present financial obligations. His debts have been or are being paid, and he cannot pay others because the creditors are not known. 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 three of the nine delinquent debts have been paid, and his mortgage has been modified and is current. He wanted to pay four others but he was unable to find the creditors after diligent inquiry. Applicant's action in contacting his creditors and arranging to make payments on the debts demonstrates 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 a telephone debt as not his debt since he never had service with the telephone provider. The debt was removed by the credit reporting agency from his credit report.

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 is a hard worker who always sought employment. 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. 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 three of the nine delinquent debts; his mortgage payments have been modified and are current; he disputed one debt and it has been resolved in his favor; he filed bankruptcy but had it dismissed as soon as he received good steady

employment; he tried to pay or settle four of his other debts but could not learn the appropriate creditor; and he paid other debts not listed in the SOR. 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, 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.

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.j For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge