



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



In the matter of:)
)
) ISCR Case No. 09-06051
)
)
Applicant for Security Clearance)

Appearances

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

September 30, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On June 2, 2009, Applicant submitted Electronic Questionnaires 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 May 6, 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 May 14, 2010.

Applicant answered the SOR on May 28, 2010, admitting the 18 factual allegations under Guideline F, but denying that these facts were a security concern. Department Counsel was prepared to proceed on June 30, 2010, and the case was

assigned to me on July 1, 2010. DOHA issued a Notice of Hearing on July 7, 2010, scheduling a hearing for July 27, 2010. I convened the hearing as scheduled. The Government offered six exhibits, marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified on his behalf, and offered seven exhibits, marked Applicant Exhibits (App. Ex.) A through G. Exhibits A through E were admitted without objections. I did not admit exhibits F and G since they were copies of decisions issued by other DOHA administrative judges. The record was held open for Applicant to submit additional documents. Applicant timely submitted five additional documents marked and admitted without objection as App. Ex. I through M. (Gov. Ex. 7, Memorandum of no objection, dated August 16, 2010) DOHA received the transcript of the hearing (Tr.) on August 3, 2010.

Findings of Fact

Applicant admitted all factual allegations in the SOR. He denied that these facts raised a security concern. I include Applicant's admissions 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 29 years old and has been a pilot for a defense contractor for approximately 18 months. He attended two schools to obtain a bachelor's degree in aviation management, two schools for flight training, and one for flight safety to earn his pilot's license. He used student loans to fund his entire education. He has rating in multiple engines and instrument flight operations. He also works a part-time position as a flight operations coordinate to earn extra income. He married in 2005 and has a three-year-old child. (Tr. 20-24; Gov. Ex. 1, e-QIP, dated June 2, 2009)

Applicant began his school and pilot career training in 1999 and graduated in December 2006. Aviation training and schooling is expensive and Applicant funded his entire schooling and pilot's training using student loans from two separate lending institutions specializing in student loans. The amount borrowed was about \$120,000 to \$140,000. The amount of debt listed for student loans in the SOR is over \$240,000, of which approximately 50% is in interest and penalties. (Tr. 16-20, 45-47)

Credit reports (Gov. Ex. 5, dated March 8, 2010, and Gov. Ex. 6, dated June 17, 2009) show delinquent student loans to one of the original creditors for \$95,789 (SOR 1.k, 1.l, 1.m, and 1.n), and to collection agencies for the other original creditor for \$98,968 (SOR 1.a, 1.b, 1.c, 1.d, 1.e, and 1.f), \$21,375 (SOR 1.i, and 1.j), and \$26,446 (SOR 1.p, 1.q, and 1.r). In addition, the reports also list delinquent medical debt for both \$44 and \$137 (listed as SOR 1.g and SOR 1.o), and a delinquent cell phone account for \$574 (SOR 1.h). Applicant acknowledged each of these debts. (Tr. 24-27; Gov. Ex. 2, and Gov. Ex. 3, Answers to Interrogatories, dated October 5, 2009)

Applicant worked as an airport manager after completing his degree and receiving his pilot's license. Applicant's monthly income was sufficient and his required monthly payments on student loans small enough for him to make payments on the

loans until 2007, since most of the loans were in deferment. The student loans became due and were no longer in deferment and his income was not sufficient to meet the new required monthly loan payments. He began to accrue delinquent debt for the student loans and other credit obligations. In January 2009, Applicant took his present job as a pilot because he wanted to return to his original career goal of being an operational pilot. In taking this position with his present employer, he earned approximately 60% less in income. However, Applicant believes his potential to make more in the future was better in a pilot's position than as an airport manager. (Tr. 47-50) Applicant listed his monthly income in October 2009 as \$1,853 with \$1,439 in monthly expenses, leaving \$414 in net remainder. (App. Ex. C, Personal Financial Statement, dated October 5, 2009) His present monthly income is listed at \$2,251, with \$2,086 in monthly expenses, leaving \$165 in discretionary funding. (App. Ex. A, Personal Financial Statement, dated July 22, 2010) His taxable income in 2009 was almost \$18,000. Applicant and his wife do not use credit cards and their present monthly bills only include funds for necessities, utilities, and rent. (Tr. 16, 41-43; App. Ex. D, Pay receipt, undated)

Applicant entered a debt management plan to assist him in repaying his non-student loan delinquent debts. His monthly payment is \$276 which is included as part of his monthly expenses. Under this plan, he has been able to reduce his non-student loans debt by approximately \$11,000. Most of his debts have been paid and resolved. Of the debts listed on the SOR, the medical debt is being paid by insurance and is now at \$4. (App. Ex. I, Letter, dated August 7, 2010; App. Ex. J, Credit report entry, dated July 27, 2010) The cellular phone debt is being paid by the debt management company. (App. Ex. K, e-mails, dated August 6, 2010) The remaining non-student loan debts are scheduled to be paid in 2011. Applicant's only assets are his two vehicles. He has no savings or real estate. (Tr. 15-17, 26-29; App. Ex. A, Personal financial Statement, dated July 22, 2010; App. Ex. B, Debt Management Plan Statement, dated July 25, 2010; App. Ex. I, Letter, dated August 8, 2010)

Applicant has over time made only minimal payments on his student loans. His tax refund for tax year 2008 was garnished to pay some of his student loans. Applicant has attempted to negotiate a debt payment plan with the student loan creditors. He has contacted an attorney specializing in student loan reform. The attorney is aware of Applicant's student loans and uses Applicant's student loan situation in advocating for reform of the system. (Tr. 19-20; App. Ex. E, Letter, dated June 2, 2010) One of the original creditors has refused to negotiate a payment plan with Applicant. Applicant has placed numerous calls to them with no response. (App. Ex. M, Telephone log, dated July 27, 2010) They notified Applicant they intend to garnish his wages but no action has been taken to garnish his wages. The other creditors have been more receptive to negotiate a payment plan. After the hearing, he was notified by one of the collection agencies for some of his student loans that some loans were consolidated and placed in a payment program. This plan calls for payments of \$50 monthly until the \$18,460.75 debt to this creditor is satisfied. (Tr. 34-41; App. Ex. L, Letters, dated July 29, 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.

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 and admitted by Applicant, 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 student loan debts when he used the student loans to fund his entire education to earn a degree and become a professional pilot. He originally borrowed in student loans between \$120,000 and \$140,000. While attending school and after earning his degree, he also incurred credit card and other delinquent debts. 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 do not apply. Applicant has delinquent debts that he has not been able to satisfy, so the debts are current. The majority of his delinquent debt is from student loans that Applicant willingly used to fund his career intentions of earning a degree in aviation management and becoming a professional pilot with multiple licenses. Applicant's actions in securing the student loans were willing and voluntary and not caused by any conditions beyond his control. Applicant has attempted to address his delinquent student loans, but his limited income and financial situation prevent him from making any meaningful progress in paying his delinquent student loan debt. He has other minor delinquent debts that he has addressed and is paying under a debt management plan. Again, these debts were not caused by conditions beyond his control, but he is acting responsibly towards the debts by paying also 80% of these and having a debt management plan in place to pay the remainder.

I have also considered FC MC ¶ 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). This mitigating condition applies in part. Applicant received financial counseling when he engaged the services of the debt management company. However, his financial problems are of such a magnitude that they are not resolved and are not under control.

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 established a meaningful track record of debt payment for his non-student loan debts. He showed a substantial reduction of his non-student loan debts using a payment plan. His payment plan will have these debts paid in full within the next year. However, this leaves him with substantial student loan debt of over \$240,000 that he has not paid. His one payment plan, which just started, is for a small amount and will not pay this part of the student loan debt for many years in the future. He stated that he will pay his student loans when he is able. A promise to pay in the future is not evidence of a good-faith effort to pay creditors or resolve debts. Applicant is financially overextended because of his large student loan debt and his limited income ability to resolve these debts. Applicant did not present sufficient evidence to establish a good-faith effort to pay his creditors. His finances are not under control. He has not mitigated security concerns for financial considerations.

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. Applicant established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts for only a limited amount of his delinquent debts. He has significant debt from student loans that he is not able to resolve. Applicant freely and willingly incurred a large significant student loan debt to realize his dream of being a professional pilot. He used the loans to pay for his entire schooling. His debt is so large and his income and prospective income so small that he cannot mitigate the financial considerations security concerns. He has paid or is paying his non-student loan debts, but he has little if any prospect of paying his student loan debt in the foreseeable future. This situation places him at risk of being financially overextended with no ability to pay his debts and meet his financial obligations. Applicant's management of his finances by incurring significant debt with limited ability to pay the debt indicates he will not be concerned, responsible, and careful regarding classified information. Applicant has not mitigated security concerns based on his finances. Overall, on balance the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant should not 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge