



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



In the matter of:)
)
) ISCR Case No. 09-06552
)
)
Applicant for Security Clearance)

Appearances

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

May 25, 2011

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 granted.

On June 11, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required 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 two Interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the Interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated October 6, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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 19, 2010.

Applicant answered the SOR on October 28, 2010. He admitted seven allegations (SOR 1.a, 1.b, 1.d, 1.e, 1.h, 1.i, and 1.l). He denied four allegations (SOR 1.c, 1.g, 1.j, and 1.k). He did not answer two allegations (SOR 1.f and 1.m), which I considered as denied. Department Counsel was prepared to proceed on December 21, 2010, and the case was assigned to me on February 10, 2011. DOHA issued a Notice of Hearing on February 15, 2011, scheduling a hearing for March 9, 2011. I convened the hearing as scheduled. The Government offered five exhibits marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified, and offered 22 exhibits marked and admitted without objection as Applicant Exhibits (App. Ex.) A through V. I left the record open for Applicant to submit additional documents. Applicant timely submitted three documents marked and received as App. Ex. W through Y. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 6, Memorandum, dated March 17, 2011) DOHA received the transcript of the hearing (Tr.) on March 17, 2011.

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 been employed by a defense contractor as an information technology specialist and software engineer for approximately two years. Applicant immigrated to the United States on a student visa in 1983 at age 21. He received a bachelor's degree in accounting in 1987. He returned to school in 2005 and received a technical certificate in 2006. He became a United States citizen in 1995. He has been married three times. His first wife died. He married again in 1995, but divorced in 2000. He married again in 2002. He has four children, ages 9, 7, 5, and ten months, all living at home. Applicant's present yearly salary is \$73,000. His wife is a stay at home mother and a student. He is current on his taxes and he now only uses a debit card. (Tr. 12-13, 39-42, 50-62; Gov. Ex. 1, e-QIP, dated June 11, 2009)

Credit reports (Gov. Ex. 4, dated June 19, 2009; and Gov. Ex. 5, dated August 10, 2010) show the following delinquent debts for Applicant: medical debts in collection for \$714 (SOR 1.a), \$1,716 (SOR 1.d), \$270 (SOR 1.e), \$615 (SOR 1.i), \$497 (SOR 1.j), \$1,224 (SOR 1.l), and \$194 (SOR 1.m); an unpaid medical bill for \$6,759 (SOR 1.b), a utility bill in collection for \$287 (SOR 1.c); and credit card debts in collection or charged off for \$4,138 (SOR 1.f), \$354 (SOR 1.g), \$2,595 (SOR 1.h), and \$2,227 (SOR 1.k). The total amount of delinquent debt alleged is approximately \$22,000.

Applicant experienced a severe medical problem in 2006, when he was a full-time student without health insurance. He had a number of tests and had to have regular doctor visits. He used credit cards to pay both medical bills and some living expenses. (Tr. 21-24, 28-29, 42-45). Prior to this medical incident, His medical debts

were paid on a student sliding scale payment plan, and his family's medical expenses were covered by state Medicaid. (Tr. 42-45)

Some of Applicant's medical debts have been paid, others deleted from his credit reports, and others are still outstanding. One of Applicant's medical creditors deleted two unidentified medical debts from credit reports. (Tr. 23-24, App. Ex. A, letter, dated September 29, 2009), Applicant provided documentation that he paid in full a medical debt of \$497 (SOR 1.j). (App. Ex. C and V, Letter, dated October 29, 2009) Applicant provided documentation that he has been making payments on various medical debts. It could not be determined if these payments were made on any of the debts alleged in the SOR. The payments were to some of the collection agencies listed in the SOR but for debts incurred from 1998 until 2001. He provided documentation on payments of \$173 (App. Ex. D, Letter, dated September 23, 2009), \$153.77 (App. Ex. E, e-mail, dated September 21, 2009), \$335 (App. Ex. G, Letter, dated October 29, 2009), \$90 (App. Ex. H, Letter, dated September 14, 2009), \$60 (App. Ex. I, Letter, dated September 14, 2009), \$98 (App. Ex. J, Letter, dated September 14, 2009), \$162.50 (App. Ex. K, Letter, dated September 14, 2009), \$60 (App. Ex. L, Letter, dated September 14, 2009), \$192 (App. Ex. M, Letter, dated September 14, 2009), \$50.91 (App. Ex. N, Letter, dated September 14, 2009), \$38 (App. Ex. O, Letter, dated September 14, 2009), \$62 (App. Ex. P, Letter, dated September 14, 2009), \$117 (App. Ex. Q, Letter, dated September 14, 2009), and \$80 (App. Ex. R, Letter, dated September 14, 2009). Applicant provided documentation that he made three payments totaling \$120 to another medical collection agency (App Ex. S, e-mail, dated December 2, 2009). He provided documentation of payments made to the hospital medical provider listed at SOR 1.b. However, this debt is not paid. (Tr. 29-38; App. Ex. F, T, and U, Account Statements, various dates)

Applicant documented in his interrogatory response, payments made on various debts that were not included in the SOR. (Gov. Ex. 2, and Gov. Ex. 3, dated March 10, 2010) Applicant provided documentation that he paid in full the utility debt at SOR 1.c. (Tr. 23-24; App. Ex. B, Letter, dated October 28, 2010) Applicant was also a victim of credit fraud. (Gov. Ex. 4 Credit Report, dated June 19, 2009, and Gov. Ex. 5, Credit Report, dated August 10, 2010) Applicant disputed the credit card debts at SOR 1.g and 1.k. The credit reports note the disputes were filed. He believes the debts were removed from his credit reports. He was not provided any documentation of a resolution. Applicant did not provide any documentation to show payments on the credit card debts at SOR 1.f and 1.h. He used the cards to either pay some medical bills or to make household purchases. (Tr. 46-50)

Applicant's performance assessment shows he has excellent job skills and is a good team player. He is well regarded by his employer's clients and meets or exceeds their requirements and expectations. (App. Ex. V, Assessment, dated December 31, 2010). His immediate supervisor notes that Applicant is a dependable employee who demonstrates good character traits. (App. Ex. W, Letter, dated March 10, 2011). Another of Applicant's supervisors noted that he hired Applicant in June 2009. He

considers Applicant a good and trustworthy employee, who provides a quality work product for their clients. (App. Ex. X, Letter, dated March 10, 2011)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 admitted that he deliberately did not file or pay his federal and state taxes for four years so he could use the funds to support his family. Applicant's delinquent debts that are noted on credit reports are a security concern and raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); FC DC AG ¶ 19(c) (a history of not meeting financial obligations); and FC DC AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same). His finances show an inability 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 incurred delinquent debts after he experienced a severe medical problem as a student without health insurance. His medical debts are unlikely to recur since he is now employed and has health insurance. His medical problems were beyond his control and he acted responsibly by paying his medical debts as best he could. He also has credit card debt resulting from using credit for some of his medical debts and for household expenses. He disputed two of the credit card debts because of credit fraud. He has not paid the other two debts. He does not use credit cards now but only a debit card.

I 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 does not apply. Applicant did not present any evidence of financial counseling, but the evidence shows his financial problems are being resolved and 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 incurred medical debt when he experienced a severe medical problem while a student without health insurance. He has provided sufficient information to establish he has been making payments on his medical debts even though some have not been alleged as a security concern or been paid in full. He paid a utility debt and disputed some credit card debts based on credit fraud. He plans to continue to pay his medical debt as he has the funds to make payments. He does not use credit cards and is current with his state and federal taxes. Applicant has sufficient funds to meet his financial obligations. Applicant's actions in making payments on his medical debts provides 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 is acting reasonably and responsibly to resolve his financial problems. His delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment.

I considered FC MC ¶ 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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). Applicant presented documented evidence from the credit reporting agencies that he filed disputes with them. (Gov. Ex. 4 and 5) The disputes have not been resolved and are still under consideration.

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 is considered a good employee and that his supervisors recommend he be granted access to classified information. I considered Applicant's financial problems arose from a severe medical problem when he was a student without health insurance. Applicant established a "meaningful track record" of payment of some of his medical debts, a utility debt, and his dispute of credit card debts resulting from credit fraud. He is current with his taxes and no longer uses credit cards. Applicant's actions to pay his past financial obligations indicate he will be concerned, responsible, and careful regarding classified information. 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 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.m: 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