



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



In the matter of:)
)
) ISCR Case No. 09-06777
)
)
Applicant for Security Clearance)

Appearances

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

October 28, 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 granted.

On May 4, 2009, Applicant submitted an 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 March 3, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. DOHA acted 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 3, 2010.

Applicant answered the SOR on May 17, 2010, admitting the one allegation under Guideline F, but denying that the allegation raised a security concern. Department Counsel was prepared to proceed on July 1, 2010, and the case was

assigned to me on August 11, 2010. DOHA issued a Notice of Hearing on September 2, 2010, scheduling a hearing for September 22, 2010. I convened the hearing as scheduled. The Government offered four exhibits marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified, and offered six exhibits marked and admitted without objection as Applicant Exhibits (App. Ex.) A through F. DOHA received the transcript of the hearing (Tr.) on October 6, 2010.

Findings of Fact

Applicant admitted the factual allegation 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 50 years old and has been employed as a lead technician for a defense contractor for approximately two years. He is married with two children who are not dependent on him for support. (Gov. Ex. 1, e-QIP, dated May 4, 2009) Credit reports (Gov. Ex. 3, dated May 19, 2009; Gov. Ex 4, dated April 13, 2010) show a delinquent debt for a line of credit for \$18,582. Other debts were initially listed as delinquent on the credit reports, but Applicant has paid these debts in full. (Tr. 40-42)

Both Applicant and his wife lost their good paying jobs in mid-to-late 2007. Applicant's wife was employed as a quality control inspector for a mining company, but the work became too hard for her. She left that job and was unemployed for only a month before finding employment, but at a lower salary. She also started to attend school at night to change careers. Her net salary with the mining company was about \$700 a week but her present net salary is only approximately \$300 weekly or \$1,300 monthly. Applicant was laid off in December 2007 and went on unemployment in January 2008. He received only \$326 weekly in unemployment. Applicant started his present job in June 2008. His net monthly pay is now \$2,400. Applicant and his wife's monthly combined total income is approximately \$3,700. Their present income has been cut approximately in half from the income they received before losing employment in 2007. Their monthly expenses are about \$3,200 leaving approximately \$300 to \$500 in discretionary income. (Tr. 22-23)

Applicant purchased land and started to build his own house on the land in 2002. He used a construction loan of over \$115,000 to purchase the land and building supplies and equipment. In 2006, Applicant refinanced his mortgage. He took about approximately \$10,000 in equity which he used to pay other bills and debts. At this time, his mortgage was approximately \$167,000 and his monthly mortgage payments were approximately \$1,300. The mortgage company also provided them a home equity line of credit card with a limit of \$20,000 in early 2007. At first, Applicant and his wife did not use the line of credit. At the time, he and his wife were earning approximately \$80,000 yearly, and had sufficient income to meet all their financial obligations. (Tr. 25-27)

When Applicant and his wife lost their good paying employment in the fall of 2007, they started to use the line of credit for normal living expenses and the amount

owed on the line of credit rose to approximately \$18,000. Their line of credit payments were approximately \$300 monthly so they had a combined payment to the mortgage company of approximately \$1,600. They were unable to meet their mortgage and line of credit payments. Applicant was able to sell the house and part of the land it was on to his father-in-law on a short sale for approximately \$45,000 less than the mortgage. This relieved Applicant of the mortgage. His father-in-law rents the house back to Applicant, and he is current with his rent. Applicant had other debts that were delinquent, such as medical and credit card debts, but they have been paid in full. He also pays approximately \$400 monthly for the portion of the land he initially purchased that was separated from the house at the short sale. (Tr. 28-30, 33-35)

The creditor with the line of credit sold the debt to a collection agency. Applicant was willing to make payments on the line of credit. He contacted the collection agency but they would not negotiate a payment plan. They wanted a lump sum payment of the debt, or at best payments of \$3,000 to \$4,000 monthly until the debt was paid in full. Applicant does not have enough income to meet the demands of the collection agency. His last conversation with the collection agency was a few months ago. Applicant is current with all his bills, and local, state, and federal taxes. Only his line of credit is delinquent. (Tr. 30-45)

Applicant presented letters of recommendation from local officials, his work supervisors, and customers. A local official noted that Applicant worked on a project for the county and showed excellent technical knowledge. His interpersonal skills fostered good working relationships with the county and Applicant's company. He was always a good team player and facilitator. (App. Ex. A, Letter, dated September 10, 2010) A local official noted he has known and worked with Applicant for over 20 years and Applicant is a person of high integrity and character. (App. Ex. B, Letter, undated) A fellow employee notes that he has known Applicant for over two years. Applicant has a high degree of integrity, responsibility, dependability, and trustworthiness. (App. Ex. C, Letter, dated September 10, 2010) A vice president for Applicant's employer notes that he has known Applicant for over two years. Applicant has met the company's high standard for work performance. He has excellent technical knowledge and a professional attitude. He is a valued team member. (App. Ex. D, Letter, dated September 15, 2010) A program manager for Applicant's company stated that Applicant was recommended to them by a supplier. They conducted a background review of Applicant and found nothing to doubt his credibility or suitability for their company. Applicant is considered a trusted and valued employee. (App. Ex. E, Letter, dated September 9, 2010) Another fellow worker notes that Applicant exhibits leadership, integrity, and commitment to excellence in dealing with the customers. Applicant is the visible representative of the company and is a trusted employee. (App. Ex. F, Letter, dated September 10, 2010)

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 of 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 line of credit account, as reported in credit reports and admitted by Applicant is 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 and his wife lost well paying jobs. 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 line of credit debt became delinquent when Applicant and his wife lost good paying jobs. When they did find employment, their combined income was half of their previous income. Applicant was unable to meet all his financial obligations because of the loss of employment and income. Since he and his wife are now gainfully employed although at a lesser salary, the unemployment circumstances are unlikely to recur. Applicant acted responsibly under the circumstances. He and his wife sought employment and were not without work and income for a long period. They accepted employment even though their salaries were not at their earlier income level. Applicant sold his house at a short sale relieving him of his mortgage obligations. He paid all his other debts, and did not incur additional delinquent debts. He attempted to negotiate payment of the line of credit debt, but the collection agency would not negotiate, wanting only large lump sum payments.

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 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 when he and his wife lost employment. When Applicant and his wife did gain good paying employment, they paid all but one of their debts. Applicant attempted to negotiate a settlement with the collection agency but the collection agency is unwilling to reasonably settle the debt. Applicant's actions in paying and resolving his delinquent debts caused by unemployment provides significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to resolve debt. His actions show he acted reasonably and responsibly under the circumstances. His finances do not 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 is a good employee who is highly regarded by his supervisors and customers. I considered that Applicant's financial problems arose from the loss of good paying employment by both he and his wife. These financial conditions were beyond his control, and he resolved all but one delinquent financial obligation. Applicant presented sufficient information to show he took reasonable and responsible action to resolve his financial issues. Applicant's management of his finances indicates he will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts about 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 on the allegation 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: 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