



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



In the matter of:)	
)	
)	ISCR Case No. 09-06943
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

September 20, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

On October 11, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), to obtain a security clearance for his employment with a defense contractor. (Item 5) On March 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 answered the SOR on April 15, 2010. He admitted all 40 allegations under Guideline F. He provided an explanation for eight of the allegations that indicate he denied the eight allegations even though he stated that he admitted the allegation.

(SOR 1.a, 1.c, 1.p, 1.q, 1.x, 1.z, 1.bb, and 1.cc) Even though his answer is ambiguous, I find that he admitted each of these eight allegations. Applicant also stated that there were 12 medical debts that were fraudulent. He did not identify the allegations in question nor explain why the debts were fraudulent. Since he admitted all allegations and the suspected fraudulent allegations were not identified, I find that he admitted to the 12 medical allegations. He elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on May 18, 2010. Applicant received a complete file of relevant material (FORM) on May 31, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on September 1, 2010.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 49 years old and has been employed as an outside plant technician by a defense contractor in Kuwait for over three years. He is a technical school graduate. Applicant answered that he was never married in response to a question concerning his marital status on the e-QIP. However, in other documents in the file, including his responses to interrogatories and answers to questions from security investigators, he refers to his ex-wife and a daughter that he supports. I find that Applicant has been married, is divorced, has one child, and provides support for his former wife and child. There is no information in the file to indicate his monthly income, monthly expenses, and monthly discretionary funds. It does not appear that he previously held a security clearance. (Items 5, 6, and 7)

Credit reports (Item 8, credit report, dated December 30, 2009; Item 9, credit report, dated September 28, 2009; Item 10, credit report, dated March 4, 2009; Item 11, credit report, dated June 13, 2008, and Item 12, credit report, dated November 2, 2007), and court records (Item 13, Judgments and Liens, dated December 7, 2009) show delinquent debts in excess of \$78,000. These delinquent accounts include two judgments totaling \$7,500 (SOR 1.a and 1.b), a federal tax lien for \$13,000 (SOR 1.c), and student loans for approximately \$33,000 (SOR 1.w and 1.x). The other debts are smaller debts for medical services, utility service, telephone service, cable service, and credit card accounts.

In his response to the SOR, Applicant admits responsibility for his financial problems. He has been overseas for over three years. He was divorced within this period, and his mail service has been sporadic at best. He has not received notice of many of his debts. However, he does not indicate how this situation contributed to or caused his financial problems, and why under the circumstances he was unable to meet his financial obligations. He does not identify any specific reasons or conditions that caused the debt, except for his ex-wife's poor financial management while he was

serving overseas and that some accounts were established without his knowledge. He does not provide any information to establish his ex-wife's poor financial mismanagement or why he was unaware of some accounts opened in his name. He also notes that some of the accounts are old and he has no means of showing proof of payment. He provides no information to dispute the legitimacy of any debts. (Items 6 and 7) While some of the debts may appear to be duplicates, Applicant provides no information to indicate some are duplicates.

In his response to the SOR, Applicant states that he has a plan to pay his debts. He will seek credit counseling to better manage his finances, legal counseling to support efforts to establish or dispute debts, he will obtain copies of his credit reports to know of the specific nature and amount of his debts, he will negotiate settlement of the indentified debts, and he will then pay the agreed settlement. However, he has not presented any documentation or evidence to show he has taken or intends to take any action to implement his plan to resolve or pay his delinquent debts. He does not indicate he sought or received financial counseling or sought legal assistance in paying or disputing his delinquent debts. He does not indicate he has copies of his credit reports so that he can understand the specific nature of his debts. He presented no information to show he paid any of his delinquent debts. He presents no information concerning present finances and his ability to pay his debts. It is noted that he has worked overseas for a reputable defense contractor for over three years where salaries are very good and expenses are very low which should provide a high percentage of discretionary funds. It is assumed from his employment history with the defense contractor in the Middle East that he is making sufficient income to pay his debts.

Policy

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 over-arching 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 as to obtaining 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 protect or 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, 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 listed in credit reports and admitted by Applicant raise 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). The number and nature of the debts, over 40 debts including judgments, liens, and student loans, many over five years old with no action on the debts, establishe a history of unwillingness to pay debts.

The Government produced substantial evidence in credit reports to establish the disqualifying conditions of a history of not meeting financial obligation or an inability or unwillingness to satisfy debts as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

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 ¶ 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 separations) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. While Applicant took responsibility for the delinquent debts, he stated that his ex-wife mismanaged their finances while he was overseas, he did not receive notice of some of the debts because his mail service was sporadic, and that some debts were based on fraud. However, he presented no information, evidence, or documentation to verify his assertions. Without any information from Applicant, it cannot be determined if the circumstances causing debt happened or that they will not likely recur. These mitigating conditions are not applicable. With evidence of delinquent debt and no explanation from Applicant concerning his financial situation, it is obvious that his financial problems are not under control.

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). Applicant presented no information to indicate he received financial counseling. He stated part of his plan was to seek counseling but he presented no information of counseling. Even if he had received counseling, there is no indication his financial problems are being resolved or under control. He has not presented information concerning making payments on his delinquent debts, and he has not presented an adequate plan to resolve his delinquent debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 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. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. 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 any plan to reduce outstanding indebtedness is credible and realistic.

Applicant stated he has a plan to pay his debts, but he has not presented any evidence to show he implemented his plan and paid any of his debts. He has not presented evidence of his financial circumstances that would indicate he has sufficient income to meet his financial obligations. All indications in the file are that he should have sufficient income because of his long steady overseas employment in a war zone with a defense contractor which normally indicates a good salary. Applicant's lack of action to pay his debts is significant and constitutes credible information to show that he has not acted reasonably under the circumstances. Based on the information presented by the Government in credit reports and court records, Applicant has not acted responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations because he did not establish that the reasons for his debts were beyond his control and that he took reasonable and responsible efforts to manage his finances and pay his debts.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all the circumstances. The 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 eligibility for access to classified information 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 has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems, or even that he has a credible plan to resolve and pay his delinquent debts. Applicant has not demonstrated he responsibly managed his finances and has a consistent record of actions to resolve financial issues. On the contrary, the record shows he has been irresponsible towards his financial obligations. The lack of responsible management of financial obligations

indicates he may not be concerned or responsible in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Eligibility for access to classified information is denied.

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.nn: Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge