



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



In the matter of:

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)	
)	ISCR Case No. 09-07139
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Clarence R. Johnson, Jr. Esquire

May 31, 2011

Decision

CREAN, Thomas M., Administrative Judge:

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

On March 2, 2009, Applicant submitted a Questionnaire for Sensitive Position (SF 86) to determine his eligibility for access to classified information 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 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 August 12, 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 September 9, 2010.

Applicant answered the SOR in an undated response received at DOHA on September 13, 2010. He admitted two allegations (SOR 1.e and SOR 1.h), and denied eight of the eleven allegation under Guideline F. He did not respond to SOR allegation 1.a, which I considered a denial. Department Counsel was prepared to proceed on October 26, 2010, and the case was assigned to another administrative judge on November 3, 2010. DOHA issued a Notice of Hearing on November 12, 2010, scheduling a hearing for December 15, 2010. The hearing was convened as scheduled. The administrative judge granted Applicant's request for a delay to obtain an attorney to represent him. The case was reassigned to me on February 10, 2011. DOHA issued another Notice of Hearing on February 15, 2011, scheduling a hearing for March 8, 2011. I convened the hearing as scheduled, and Applicant appeared with counsel. The Government offered five exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified, and offered one exhibit that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A. DOHA received the transcript of the hearing (Tr.) on March 16, 2011.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 43 years old and has been employed by a defense contractor for approximately two years as an engineer analyst. He is a high school graduate. He married in 2002 and has twin boys. His mother-in-law, who was blind, lived with him and his wife until recently, when she passed away. His teenage daughter, his step-daughter, and his wife's 59-year-old disabled brother also live with Applicant. Applicant's present yearly salary is \$54,487. (Tr. 10-12, 52-54; Gov. Ex. 1, SF 86, dated March 2, 2009) Applicant worked in debt collections from approximately 1989 to 1999. At present, he only has two active credit cards with a credit limit of \$500 on each card. He has two automobiles, a 2000 BMW and a 2004 Lincoln for which the loan payments are current. (Tr. 41-42, 52-55)

Credit reports (Gov. Ex. 4, dated March 14, 2009; and Gov. Ex. 5, dated April 15, 2010) show the following delinquent debts for Applicant; a medical debt for \$237 (SOR 1.a); a \$377 debt in collection (SOR 1.b); a cell phone service account in collection for \$938 (SOR 1.c); a credit card collection account in collection for \$471 (SOR 1.d); a department store account in collection for \$817 (SOR 1.e); an electronic store credit card account in collection for \$4,184 (SOR 1.f); a credit card account in collection for \$1,127 (SOR 1.g); a department store account in collection for \$643 (SOR 1.h); an account with a bank charged off for \$2,199.99 (SOR 1.i); an insurance debt placed for collection for \$59 (SOR 1.j); and an account with a bank placed for collection for \$1,383 (SOR 1.k). The total amount of the alleged debt is approximately \$12,000.

Applicant's wife worked as an administrative assistant until their twins were born in 2001. Her annual income was approximately \$30,000. She did not work for four years until 2005, when she worked part-time as a teaching assistant earning approximately \$8,000 a year. She has been employed full time as a fraud analyst since 2006 with a present yearly salary of approximately \$30,000. Applicant and his wife are current with their federal and state taxes. In 2009, they received a combined federal and state tax refund of approximately \$4,000. The funds were used for his mother-in-law's funeral. They received a combined tax refund of approximately \$8,200 in 2010. Applicant stated his mortgage is current even though at times it has been from 30 to 60 days past due. (Tr. 32-37, 42-43)

Applicant was first interviewed by a security investigator in April 2009. Applicant had not looked at his credit report before the interview. Applicant discussed his finances with the investigator. Applicant acknowledged the debts at SOR 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, and 1.h. He had no knowledge of the debts at SOR 1.c, 1.i, 1.j, and 1.k. (Gov. Ex. 3, Response to Interrogatory, dated April 1, 2010) Applicant noted that most of his charged off debts are with collection agencies. He stated his intent to dispute some of the debts and allow others to become uncollectable under the statute of limitations. (Gov. Ex. 2, Response to Interrogatory, dated April 1, 2010) Applicant did not believe his finances were a security concern after the interview because some people told him the interview process was a normal procedure. When he received the SOR in August 2010, he still did not think his finances were a security concern because he believed the process was a normal procedure. He did not understand the security implications of his finances until he came to the first hearing. Because of the serious nature of the issues, he requested an attorney to represent him. He has not taken any action on the debts except having his wife contest some of the debts with the credit reporting agencies. (Tr. 37-42)

Applicant has no information concerning the debt at SOR 1.a except knowing it is a medical debt. He believes it may be a dental bill for a root canal. He did not make any inquiries concerning the debt. Applicant has no knowledge of the debt at SOR 1.b and has not made any inquiries concerning the debt. (Tr. 43-44) Applicant called the collection agencies for the debt at SOR 1.c but did not receive a reply. He did not call the original creditor, a major wireless company. (Tr. 44-45) Applicant paid the debt at SOR 1.d because it went to judgment and the collection agencies had it garnished from his pay. (Tr. 45-46; App. Ex. A, Letter, dated March 4, 2011) The debts at SOR 1.e and 1.h are the same debt and have not been paid or resolved. (Tr. 46-47) Applicant acknowledges the debt at SOR 1.f, but disputes the amount of the debt. He believes the amount should be only approximately \$1,500, since that was his credit limit. He has not inquired about the debt or made any payments to resolve the debt. The debts at SOR 1.g and 1.i are for credit cards and have not been paid or resolved. The debts are over ten years old. (Tr. 48-49) Applicant admits that he had insurance in the past with the insurance company listed as the original creditor for the debt under collection in SOR 1.j. He has not paid the debt or made any inquiries concerning the debt. (Tr. 49-50) Applicant does not have any knowledge of the debt at SOR 1.k. He believes it may be a

duplicate of another debt but he presented no information to establish the duplication. (Tr. 50)

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.

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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 he is required to manage his finances in such a way as to meet his financial obligations. The delinquent debts that were established by credit reports 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). Applicant incurred delinquent debt when his wife had to stop working after the birth of their twins in 2001. She did not work again until 2005, when she started working part-time and in 2006 when she became employed full time. The present yearly combined salary for Applicant and his wife is approximately \$85,000. Most of the delinquent debts originated when his wife was unemployed and have not been resolved. The time the debts have been unpaid and the lack of action to resolve the debts establishes a history of both an inability and an unwillingness to satisfy debt.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifted 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 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 initially

incurred the delinquent debt when he lost his wife's income in 2001. However, she rejoined the workforce in 2005 and her salary is now comparable to her earnings before the births. The debts were incurred many years in the past but have not been resolved and are still current. Applicant stated the loss of his wife's income was a reason for his financial problems. However, he had the ability to predict the problem and plan for a favorable outcome. For the last five years, Applicant has had sufficient income to resolve his debts but has not done so. In addition to their combined salary, Applicant and his wife received tax refunds in the last two years that could have paid the alleged debts. Applicant has not established that he acted responsibly under the circumstances to resolve his debts.

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 presented no information concerning financial counseling and his finances 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.

Only one of Applicant's debts alleged in the SOR has been paid. The debt was paid involuntarily and not by affirmative actions of the Applicant. A judgment was used to garnish his pay. He has not paid the other debts and has not made inquiries about most of them even after a security investigator informed him of the security concerns regarding his financial situation and he received the SOR. He had worked in debt collections for over ten years and understands the debt collection system. He knows that the debt will eventually be removed from his credit reports by the statute of limitations. His failure to act on these debts in the past shows that he was irresponsible towards his finances. He has not provided 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. These past delinquent debts 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 stated he disputed some debts or the amount of the debts. However, he did not present documented evidence to establish the disputes or indicate any action taken on the disputes.

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 did not take reasonable and responsible action to adjust his finances when he knew he would lose the benefit of his wife's income after she gave birth to twins. While I considered that Applicant's financial problems arose partially from conditions beyond his control, those circumstances have not been in existence for more than five years. He and his wife earned income and received refunds providing him sufficient funds to pay debts. Applicant's failure to act on his debts shows he was unreasonable and irresponsible towards his finances. His failure to properly manage his past finances indicates he may not be responsible regarding classified information. Overall, the record evidence at this time leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate security concerns arising from his finances, and he 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant (Duplicate)

Subparagraphs 1.i-1.k:

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