



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-08080

Appearances

For Government: Gina Marine, Esquire, Department Counsel

For Applicant: *Pro se*

March 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 July 31, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for 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 an interrogatory to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated September 7, 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 13, 2010.

Applicant answered the SOR on October 7, 2010. He denied the two allegations under Guideline F. Department Counsel was prepared to proceed on December 13, 2010, and the case was assigned to me on December 20, 2010. DOHA issued a Notice of Hearing on December 28, 2010, scheduling a hearing for January 26, 2010. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified on his behalf. Applicant offered five exhibits that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A through E. I left the record open for Applicant to submit additional documents. Applicant timely submitted three documents which I marked and received as App. Ex. F through H. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 7, Memorandum, dated February 18, 2011) DOHA received the transcript of the hearing (Tr.) on February 3, 2011.

Findings of Fact

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

Applicant is 36 years old and has been employed by a defense contractor for approximately 30 months as a program integrator. He served over ten years on active duty in the Army. He was discharged in 2002 with an honorable discharge. He is married with two children. He received a bachelor's degree in December 2008, and is working on his master's degree. He and his wife have a combined monthly income of approximately \$7,132, with monthly expenses of approximately \$5,300, leaving them with monthly discretionary income of approximately \$1,800. He and his wife also have approximately \$1,000 in savings. (Tr. 16-17, 40-46, 68-71; Gov. Ex. 1, e-QIP, dated July 31, 2009; App. Ex. A, Resume, undated; App. Ex. D, Budget, undated) Credit reports (Gov. Ex. 4, dated October 18, 2005; and Gov. Ex. 5, dated August 19, 2009) show two recurring delinquent debts for Applicant, \$9,804 for an automobile loan on a repossessed car and \$10,881 for a personal loan.

Applicant believed he would start a civilian job immediately after his discharge from the Army in August 2002. However, the employer had a contract delay and could not bring him into the company until February 2003. Applicant was unemployed without income for over three months while waiting for the start of his new employment. Applicant had never worked as a civilian because he entered the Army immediately from high school. He was on active duty for over ten years and living in government quarters, and he did not properly estimate his family's costs in establishing a civilian household and living in a civilian community. He did not have sufficient funds to pay all of his debts when he was unemployed and establishing his new household, so he used loans and credit cards to meet his expenses. At present, most of these loans and credit cards have been paid or are being paid as agreed. His current credit report reflects no

delinquent accounts and all debts are paid as agreed. While the above two debts are not listed in the current credit report, Applicant acknowledged he owes the debts. (Tr. 17-26)

When Applicant was discharged from the Army in 2002, his yearly military salary was approximately \$35,000. In his first three years as a civilian, his yearly salary was approximately \$32,000. He changed positions and moved in 2005, increasing his yearly salary to \$67,000. He changed employers in 2007, increasing his yearly salary to \$72,000. His present yearly salary is \$87,000. Applicant's wife also had some employment that contributed to the family income. (Tr. 35-39)

Applicant's initial plan to pay debts was to save enough funds and to negotiate settlements with creditors holding his debts. This plan did not work since emergency situations would deplete the funds he saved before he could make payments on his past debts. He contacted a credit counseling service in February 2007, which assisted him by refining his plan. Following this refined plan, he was able over time to pay and reduce his delinquent debt so only the two debts listed in the SOR remain. One of Applicant's former creditors wrote that Applicant's account with them is in good standing. (Tr. 36-46; Gov. Ex. 2, Answer to Interrogatory, dated April 14, 2010; Gov. Ex. 3, Security interview, dated June 6, 2006; App. Ex. C, Letter, dated August 24, 2006; App. Ex. E, Letter, dated January 21, 2011)

The two remaining delinquent debts were incurred during the time Applicant was leaving the Army. He purchased a car in 2001 for approximately \$10,000 with monthly payments on the car loan of \$318. He made payments until October 2002, when he could not make continued payments because he was unemployed. He tried to make arrangements with the creditor but to no avail. He told them he could no longer make the loan payments and to retrieve the car. A few months after the car was repossessed, Applicant contacted the creditor to get a receipt for the car. They did not respond and did not tell him if the car was sold at auction and if he had any remaining debt. He next contacted the loan company in 2008 and was told they had no record of his debt. At the time of the hearing, Applicant had not been in contact with the creditor since 2008. At the hearing, Applicant stated that his plan was to attempt to settle the debt with the creditor in a way that would not affect his credit rating. Within two weeks after the hearing, Applicant contacted the loan company and received a settlement offer for \$5,567. (Tr. 46-52, 71-77; App. Ex. H, Letter, dated February 14, 2011) Applicant wrote that he would pay this settlement by April 2011. (App. Ex. F, Letter, dated February 11, 2011) Department counsel, at my request, contacted Applicant on March 28, 2011, to provide him an opportunity to present evidence that he made some payment on this settlement. Applicant did not respond and did not provide information to show any payments towards the settlement offer or additional actions to resolve the debt.

Applicant received a personal loan of \$3,500 from a loan company in 2002. The loan was to assist him while unemployed with his daily living and family expenses. He was only able to make two payments of \$200 each on the loan. In 2006, he reached a settlement agreement of \$4,000 with the creditor. However, he was unable to agree on

a periodic payment plan for the settlement amount. Prior to the hearing, Applicant had not been in contact with the creditor since the failed settlement agreement in 2006. He stated at the hearing that his present plan was to settle the debt in a way that does not damage his credit rating. Within two weeks after the hearing, Applicant was able to contact the creditor and arrange to settle the debt for \$1,700. (Tr. Tr. 51-59, 77-8; App. Ex. G, letter, dated February 3, 2011) Applicant stated he would pay the settlement by February 16, 2011 (App. Ex. F, Letter, dated February 11, 2011). Department Counsel, at my request, contacted Applicant on March 28, 2011, to provide him an opportunity to present evidence that the settlement was paid as he agreed. Applicant did not provide information to show payment of the settlement.

Applicant was commended by the government agency that his company supports for the assistance he provided them. (App. Ex. A, Letter, undated)

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 two long-standing delinquent debts 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). While Applicant did not initially have the financial resources to pay the debts, he did have the resources to pay the debts over time. These long-standing debts and his failure to resolve them indicate a history of both an inability and 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 incurred debt he could not pay when he left the Army and started living in the civilian community. He believed he would immediately have a job but had to wait a few months. He used loans and credit cards to meet his expenses. These unusual circumstances were

beyond his control but are not unusual. With reasonable and responsible forethought, Applicant should have been prepared for how he was to meet the eventuality of increased and unknown expenses. A time lag before a job starts could recur. While the debts were incurred many years ago, they have not been paid and are still outstanding. To his credit, Applicant managed to pay all but two of these debts, a debt from a car repossession and a personal loan. He acted responsibly by paying all but two of the debts and maintaining his present bills on a paid-as-agreed basis. But his failure to inquire about the two remaining debts for many years is unreasonable and irresponsible. The ease with which he contacted the creditors and reached settlement agreements after the hearing shows that, with reasonable action, Applicant could have earlier resolved these 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 partially applies. When Applicant could not manage to pay his delinquent debts according to his own plan, he engaged the services of a credit counseling agency to assist him. He was able to pay all but two of his delinquent debts. While he has paid most of his debts, he has not resolved all of his past debts and because of that 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. Applicant paid all but two of his delinquent debts over a period of time and pays his current debts as agreed. The two remaining debts were some large debts. His last contact with the two creditors holding his remaining delinquent debts was in 2006 and 2008. He was recently able to easily contact the creditors and make arrangements to settle the debts. Applicant has had sufficient funds for some time to permit him to pay reasonable settlement agreements. His failure to act on these debts in the past and the ease with which he was able to reach settlement agreements indicate he acted unreasonably and irresponsibly towards his remaining delinquent debts. While he established a track record of paying most of his debts, his failure to reasonably and responsibly act on these two debts does not provide 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.

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 Applicant's ten years of active duty in the Army. I considered that Applicant is a good employee who provides a valuable service to the government for his company. While I considered that Applicant's financial problems arose partially from conditions beyond his control, he should have been more cognizant of the financial problems he would encounter upon discharge from the Army, and he should have been prepared to meet them. To his credit, he contacted his creditors and is current with his debts and bills. He resolved all but two of his delinquent debts prior to the hearing. Applicant's failure to act on these two debts in the past and the ease with which he reached settlement agreements show he was unreasonable and irresponsible towards his finances. His failure to properly manage his past finances indicates he may not be concerned, responsible, and careful 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. However, Applicant showed the potential to reasonably and responsibly manage his finances when he settled the two remaining debts. If Applicant continues to pay the settlement agreements, pay his current debts as agreed, and does not incur additional delinquent debt, he has the ability to establish a meaningful track record of debt payment and reasonable and responsible management of his finances. At this time, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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