



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



In the matter of:)
)
) ISCR Case No. 09-08237
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

February 14, 2011

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 August 21, 2009, Applicant submitted an Electronic Questionnairesa for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) On July 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 August 9, 2010. He admitted seven of the nine allegations noting that he was paying or negotiating settlement of these debts. For the

two debts he denied, he noted that he was either paying the debt or it had been resolved. The total delinquent debt alleged in the SOR is \$46,749. Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on September 2, 2010. Applicant received a complete file of relevant material (FORM) on November 24, 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 January 14, 2011.

Findings of Fact

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

Applicant is 38 years old, and has worked for a defense contractor as a systems administrator since August 2009. He is not married, has no children, and has never served in the military. This is his first application for a security clearance. He has a bachelor's degree but continues to take courses at the same university that awarded him his degree. (Item 5) In response to interrogatories, Applicant listed his net monthly income as \$3,600, with net monthly expenses of \$2,937, leaving a monthly remainder in discretionary funds of \$663. (Item 6 at 4) On his security clearance application, Applicant lists a period of unemployment from January to August 2009, and self-employment from August 2004 until November 2005.

Credit reports (Item 7, credit report, dated April 23, 2010; Item 8, credit report, dated December 28, 2009; and Item 9, credit report, dated September 1, 2009) show delinquent debts of approximately \$46,749. These delinquent accounts include charged-off credit card debts (SOR 1.a to 1.f, and 1.i), and two loans for purchase of items (1.g, and 1.h).

Applicant attributes his financial problems to an inability to pay his delinquent debts and not an unwillingness to resolve financial issues. He stated he accumulated a great deal of debt when he started his own business in 2004. The business failed due to the economy and a natural disaster. He further noted he has worked hard to pay his debts, entered a debt management program, paid the loan on his car, and is paying his student loans on schedule. (Item 4 at 2)

In an April 2010 response to interrogatories, Applicant acknowledged all of the delinquent debts. He provided copies of March 2009 letters he sent to one of the credit card companies on two of the debts, and one of the loan companies offering a payment plan. (SOR 1.a and 1.b, and 1.h) He has not received a reply from the companies nor did he present any information on any follow-up contact attempts. Regarding the other seven delinquent debts, Applicant noted that the debts are being paid under a debt management program with a debt solution company starting in April 2010. He presented his repayment schedule showing that he is to make \$679 monthly payments to the debt solution company which will in turn assist in paying his delinquent debts. Applicant did

not present any documentation that he made payments to the debt solution company or that the debt solution company paid any of his delinquent debts.

In his response to the SOR, Applicant denied the debt at SOR 1.a stating that he settled the debt and is making payments. He did not present any documentation to support his assertion. In his denial of the debt at SOR 1.e, he notes the debt was resolved but presented no documentation to establish how or when it was resolved. (Item 4)

Applicant has failed to present documentation showing he has taken or intends to take any action to implement his plan to resolve or pay his delinquent debts. He presented no documentation on debt payments. He did present documents showing an agreement with a debt solution company, but he did not present any documentation to verify payments to the debt solution company. He has substantial discretionary funds on a monthly basis but provided no information on how those funds are utilized or will be utilized to resolve his delinquent debts.

Policy

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 for 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 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, 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, nine debts from credit cards and loans, establish a history and unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions 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. Applicant incurred delinquent debt after completing college, being self-employed, and a short period of unemployment. Even though he experienced an eight-month period of unemployment, there is no indication that his debts were incurred under such circumstances that the debts will not recur. In fact, it appears the debts were incurred by Applicant in the normal course of living. Applicant contacted some of his creditors and indicated an agreement with a debt solution company to pay his debts. He has discretionary funds each month to pay delinquent debts but has not indicated that he is making payments, thereby acting responsibly to use these funds to resolve his past financial obligations. Applicant presented no information, evidence, or documentation to verify his assertions of debt settlement or payment. Without information from Applicant, it cannot be determined his financial problems are being resolved. With evidence of delinquent debt and no documentation to support reasonable management of his finances, 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 information to indicate an agreement with a debt solution company. I assume that since he entered an agreement with the company, there was some debt counseling provided Applicant. Even if he received counseling, there is no indication his financial problems are being resolved or under control.

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 a plan to resolve financial problems coupled with significant action to implement that plan. Applicant failed to establish such a meaningful track record.

Applicant stated he has an agreed plan with a debt solution company to pay his debts. However, he has not presented adequate evidence to show he implemented this agreement. He has sufficient income to meet his financial obligations and has years of steady employment. Applicant's lack of documented action to pay his debts is significant. Based on the acknowledged delinquent debts, Applicant has not acted responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

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 responsible management of his finances or a consistent record of actions to resolve financial issues. 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 about 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.i:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge