



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



In the matter of:)
)
) ISCR Case No. 09-08305
)
Applicant for Security Clearance)

Appearances

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

March 25, 2011

Decision

CREAN, Thomas M., Administrative Judge:

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

On September 14, 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 two 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 June 28, 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 July 7, 2010.

Applicant answered the SOR on July 14, 2010. He denied all allegations under Guideline F. Department Counsel was prepared to proceed on October 21, 2010, and the case was assigned to me on December 1, 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 marked and I admitted without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant and four witnesses testified on his behalf. Applicant offered nine exhibits I marked and admitted without objection as Applicant Exhibit (App. Ex.) A through I. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents which I marked and received as App. Ex. J and K. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 7, Memorandum, dated February 4, 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 27 years old and has been employed by a defense contractor for approximately 18 months as a tank mechanic. He served over four years on active duty in the Army with two tours in Iraq. His first tour was from March 2004 until June 2005. He was wounded in combat on this tour but did not require medical evacuation. He served a second tour from March to May 2007. He was again wounded in combat and was medically evacuated. He was medically retired because of the wounds.

He was married in September 2006 and divorced in January 2008. He married again in May 2009. He has two children, one from each marriage. His youngest child lives with him and his present wife. His oldest child lives with his former wife, and he is required to pay child support for this child. His monthly income, including retired medical pay, is \$2,760, with monthly expenses of approximately \$2,365. He has approximately \$400 in monthly discretionary funds. (Tr. 56-60, 70-72, 90-93; Gov. Ex. 1, e-QIP, dated September 14, 2009; App. Ex. H, Medical records, undated; App. Ex. I, Expenses, undated)

Credit reports (Gov. Ex. 5, dated September 30, 2009; and Gov. Ex. 6, dated May 17, 2010) show the following delinquent debts for Applicant: a medical account in collection for \$369 (SOR 1.a); child support payments in collection for \$1,338 (SOR 1.b); car repossession debt charged off for \$13,113 (SOR 1.c); a telephone bill in collection for \$378 (SOR 1.d); a utility debt in collection for \$44 (SOR 1.e); and a bank account debt in collection for \$128 (SOR 1.f). In response to interrogatories, Applicant acknowledged the debts at SOR 1.a, 1.b, 1.c, and 1.e. He provided an explanation for the debts as well as payment information on the debts. He denied knowledge of the accounts at SOR 1.d and 1.f. (Gov. Ex 2 and 4, Answers to Interrogatories, dated March 25, 2010)

The medical debt in collection for \$369 is for treatment of Applicant's daughter. The debt was incurred in February 2008 before Applicant left active duty in March 2008. Applicant did not know of the debt on his credit report until he viewed a credit report after receiving the SOR. He had not received a bill or a letter from the hospital. He contacted the hospital and was initially advised they did not have a debt pertaining to him. He was able to contact the collection agency and received a copy of the debt in September 2010. The cost of the medical care should have been covered by the military medical system, TRICARE. Applicant was on active duty at the time of the treatment. Even if he was not on active duty, he and his dependents are entitled to coverage under TRICARE in his status as medically retired. He contacted TRICARE again about the debt. If TRICARE does not cover the debt, he will use tax return money in April 2011 to pay it. (Tr. 43-46, 59-62, 81-83; App. Ex. E, Hospital bill, dated September 17, 2010)

Applicant has been required since 2007 to pay child support for his older child who is living with his former wife. His initial monthly payment was \$750. He sent the first couple of payments directly to his wife. However, he only received credit for one payment. He incurred a child support debt of about \$1,700. Payment of \$375 monthly for the continued child support and the arrears are taken directly from his pay. The arrears on the child support payments is now about \$255. (Tr. 37-43, 83-88; App. Ex. B, Child support ledger, dated July 9, 2010; App. Ex. C, Pay voucher, dated November 11, 2010; App. Ex. D, Order for Garnishment, dated September 22, 2009; App. Ex. J, Social Service Letter and Statement, dated January 20, 2011)

Applicant and his first wife co-signed for the purchase of a new vehicle for \$17,000 before he deployed to Iraq on his second deployment. His wife was the principal purchaser. On deployment, an allotment went directly to his wife for sufficient funds of \$650 to make the vehicle and insurance payments on both of their vehicles. Applicant's wife also had access to their joint checking account. Shortly after Applicant arrived in Iraq, his wife stopped making the vehicle payments. The vehicle was used for only three months and sold at auction for \$7,000 leaving a debt of \$9,500. With interest and penalties, the debt is now over \$15,000. Applicant's former wife has been making payments on the debt. She has asked him for help in making the payments. Applicant has contacted the creditor who wants Applicant as a joint account holder to pay over \$600 to bring the account current. Applicant has offered to pay \$100 month until the account is current, but his offer has been refused by the creditor. Payment on the debt continues to be made by his former wife. (Tr. 30-37, 63-69, 76-81; App. Ex. A, Creditors Letter, dated September 29, 2010)

Applicant contacted the creditors concerning the telephone debt at SOR 1.d, the utility debt at SOR 1.e, and the bank debt at SOR 1.f after receiving the first set of interrogatories. He was not aware of the telephone bill, so he contacted the phone company, which did not have a debt listed for him. He tried to contact the collection company but was unable to locate the correct collection company. However, he is current with his payments to the telephone company, which may indicate he does not owe them a debt. (Tr. 46-50, 69-70; App. Ex. K, Statement, dated December 22, 2010) Applicant was able to find information on the utility debt and the bank debt and paid

both debts in full. (Tr. 69-71; App. Ex. F, Bank Statement, dated September 16, 2010; App. Ex. G, Paid-in-Full Letter, dated September 17, 2010)

One of Applicant's supervisors testified that he has known Applicant since he started work for his company in August 2009 as a heavy equipment mechanic. He sees Applicant a few times a week. Applicant is a good, honest, and dependable employee. He knows of no instance when Applicant used poor judgment. (Tr. 15-17) Applicant's immediate supervisor testified that he sees Applicant daily, and Applicant does his job with little supervision. He considers Applicant to be honest, reliable, trustworthy, and to exercise good judgment. He is aware of Applicant's financial problems, and they do not change his opinion of Applicant. (Tr. 17-21) A government employee who works with Applicant testified that he has worked closely with Applicant on some projects. Applicant follows the rules strictly and is trustworthy and reliable. He recommends that Applicant be granted access to classified information. (Tr. 21-24) Applicant's company's facility security officer testified that Applicant was truly diligent in paying his delinquent debts. Applicant has always provided her with straight and clear information. She believes that Applicant exercises good judgment and is reliable and trustworthy. (Tr. 25-28)

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 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, 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. Credit reports and Applicant's statements show that he has delinquent debts that 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 information indicates 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. When Applicant deployed to Iraq, he provided his former wife sufficient funds to make payments on their vehicles. She did not make the payments. As a result, the vehicle was repossessed and a

delinquent debt arose when the vehicle was sold at auction. His former wife is now paying the debt. When Applicant switched from being employed to attending school under the GI Bill, he did not make some child support payments. He has been making the payments on the arrears and is almost current with his child support obligations. A medical debt should have been paid by the military health care system. He paid two other debts in full and the last debt is not recognized by the creditor. These delinquent debts were incurred under unusual circumstances and largely beyond his control when others did not pay bills as agreed or required. He acted responsibly under the circumstances by inquiring about the debts with creditors, arranging payment plans, and making payment on the plans.

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 demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan. Applicant paid two of the debts in full; he is almost current with his child support payments; his former wife is making payments on the vehicle debt that is her responsibility; and he has taken the necessary steps to have the military health system pay a medical debt that is its responsibility. Applicant has sufficient funds to meet the financial obligations under his payment plans. Applicant's actions in paying and resolving his delinquent debts 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. His actions show he is now acting reasonably and responsibly to resolve his financial problems. His past delinquent debts do not now 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 four years of active duty in the Army, his two tours in a combat zone, and that he was wounded in combat twice. I considered that Applicant is considered a good employee and that both his government and company supervisors recommend that he be granted access to classified information. I considered that Applicant's financial problems arose from conditions beyond his control. He provided his former wife sufficient funds when he deployed to manage their bills, but she did not do so, She is now paying that debt. He is almost current with his child support payments. He contacted the military health care system to request payment of a medical debt that is its responsibility. He resolved his remaining delinquent debts. Applicant established a "meaningful track record" of payment of his delinquent debts. Applicant's actions to pay his past financial obligations indicate he will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to 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 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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	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