



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



In the matter of:)	
)	
)	ISCR Case No. 10-00039
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A Stevens, 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 granted.

On July 22, 2009, Applicant submitted An Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance required for a position with a defense contractor. DOHA issued a Statement of Reasons (SOR), dated November 1, 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 November 13, 2010.

Applicant answered the SOR on December 2, 2010. He admitted 12 and denied 3 of the 15 allegations under Guideline F. Department Counsel was prepared to proceed on January 7, 2011, and the case was assigned to me on February 1, 2011. DOHA issued a Notice of Hearing on February 15, 2011, scheduling a hearing for

March 9, 2011. 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 5. Applicant testified on his behalf and offered four exhibits that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A through D. DOHA received the transcript of the hearing (Tr.) on March 17, 2011.

Procedural Issues

Applicant never received the Notice of Hearing. He discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on February 15, 2011. Applicant is entitled to 15 days advanced notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on March 9, 2011, and he had sufficient time to prepare. He waived the 15 days notice requirement. (Tr. 5-6)

Applicant's employer had mistakenly entered a notice that Applicant had been separated from his position and did not require eligibility for access to classified information. Department Counsel discussed Applicant's continued need for eligibility with Applicant's facility security officer and the original notice of separation was withdrawn. Applicant's employer sponsored him for a determination of his eligibility for access to classified information. (Tr. 24-26; Hearing Exhibit 1, JPAS Entry, dated March 4, 2011)

Findings of Fact

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

Applicant is 46 years old and has been employed by a defense contractor for approximately four years where he served in Kuwait, Iraq and Afghanistan as a logistics specialist. He previously had served over four years on active duty in the Navy. He married in August 1986. His wife became seriously ill in 2004 and passed away in June 2006. They had one son who is now a college student. After his honorable discharge from the Navy, Applicant worked for over 14 years for a United States airline. After the terrorist attack on September 11, 2001, the airline industry slowed and Applicant was laid off in April 2004. His wife became ill at the same time and had to stop working. Applicant found employment at a lower rate after he was laid off. He started working for a defense contractor as a logistics specialist in Iraq in September 2005. As his wife became increasingly ill, he had to return home to care for her and his son, and he was unemployed from June 2007 until March 2008. After his son graduated from high school and started college, Applicant went to Kuwait from March to May 2008 for the defense contractor until the contract he was involved with was terminated. He worked for a few months at home until he returned to Iraq in July 2008 where he served until July 2009. He changed contractors in July 2009 to be assigned in Afghanistan. He was sent home by his employer and has not worked since he was initially denied access to classified information in November 2010.

A credit report, court documents, and Applicant's admissions (Gov. Ex. 2 and 3, Answers to Interrogatories, dated August 9, 2010; Gov. Ex. 4, Judgment and Lien filing, dated October 18, 2007; and Gov. Ex. 5, dated August 8, 2009) show the following delinquent debts for Applicant: two state tax liens from 2007 for \$1,160 (SOR 1.a) and \$19,227 (SOR 1.b); a federal tax lien for 2005 for \$77,201 (SOR 1.c); a federal tax lien for 2004 for \$11,444 (SOR 1.d); a judgment in 2006 for \$13,167 (SOR 1.e); a judgment in 1997 for \$3,294 (SOR 1.f); a charged-off account for \$551 (SOR 1.g); accounts in collection for \$618 (SOR 1.h), \$123 (SOR 1.i), \$148 (SOR 1.j), \$995 (SOR 1.m), \$435 (SOR 1.n), and \$751 (SOR 1.o); and medical accounts for \$164 (SOR 1.k) and \$69 (SOR 1.l).

Applicant and his wife had steady income and their financial situation was good until he was laid off and she stopped working because of illness in 2004. He lost his health insurance and other benefits. The majority of their delinquent debts arose after his lay off and the start of her terminal illness. Applicant was not aware of all of his wife's bills and debts when she was ill. He learned of some credit card and other accounts after she died. He has taken responsibility for all of their debts. Applicant worked in Iraq prior to his wife's passing and returned there after burying his wife so he could have sufficient income to pay their current and past debts. He contracted with and paid a retainer to a credit counseling agency starting in 2006 to assist him in contacting and paying his creditors. He was making progress in learning of his debts and having sufficient funds to start paying his debts when he had to return home because he did not have a security clearance. He used the SOR and a credit report to work with the credit counseling agency to pay his past due debts. (Tr. 17-24)

The tax liens in SOR 1.a to 1.d are the result of Applicant's income that is excluded from taxes because he is serving overseas. Applicant served overseas over two tax years each time he served in Iraq in 2004/2005 and 2006/2007. Taxes were withheld from his pay, but he is entitled to have \$91,000 of his yearly pay excluded from income tax liability for serving over 330 days continuous overseas service. The liens in the SOR are for the entire income Applicant received in these years. The calculation of his tax liability is complicated, so Applicant hired an experienced tax consulting firm to represent him in resolving his federal and state tax liability. He does not know if he will owe any tax but he is prepared to pay any taxes once calculated by the state and federal tax agencies. (Tr. 38-46, 58-59)

Applicant believes the judgment at SOR 1.e for \$13,167 filed in March 2006 may be for one of his wife's credit cards. He contacted the creditor for information but it was unable to assist him with knowledge of the debt or the means to pay it. (Tr. 48-49)

The judgment at SOR 1.f for \$3,294 is for windows Applicant and his wife had placed in their house in 1997. This debt was paid in full in 1999 when the house was sold. Because of the moves after his wife's death, Applicant was unable to locate the settlement documents from the sale of the house. (Tr. 49-51)

After he returned from Iraq in November 2010, Applicant contacted the creditors listed for the debts at SOR 1.h and 1.j, based on information provided by the credit counseling agency. The creditors did not have any record of debts owed them and were unable to provide Applicant with payment information. Applicant had sufficient information on the other debts and paid the debts at SOR 1.g, 1.i, 1.k, 1.l, 1.m, 1.n, and 1.o, in full. (Tr. 49-58; App. Ex C, Bank Statement, dated December 6, 2010; App. Ex. D, Statement, dated December 2, 2010),

Applicant's company supervisor stated that he worked with Applicant for approximately eight months and found him to be honest and forthright. His work ethic was excellent, and he is missed by his customers. He recommends that he be granted access to classified information, and he looks forward to having him back at his position for the company. (App. Ex. A, Letter, dated February 12, 2011) Applicant's government supervisor in Iraq noted that Applicant displayed exceptional knowledge and leadership in managing an important logistics mission for units of Operation Iraqi Freedom. Applicant conducted himself in a professional manner and was greatly respected by his military and civilian counterparts. He was dedicated and hard working and always displayed sound judgment. He is honest and trustworthy in all situations. (App. Ex. B, Letter, dated January 16, 2011)

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. Applicant's delinquent debts established by a credit report and Applicant's admissions 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 evidence indicates an inability and not an unwillingness to satisfy debt. Applicant's testimony concerning his finances was candid and forthright, and he provided the financial information that was available to him.

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. Applicant incurred delinquent debt when he lost a good job after September 11, 2001, and his wife became seriously ill and eventually passing away. These debts happened under unlikely circumstances beyond Applicant's control and the conditions are unlikely to recur. Applicant was not aware of all of the delinquent debts that he and his wife incurred since some were made by his wife when she was terminally ill. Applicant's tax liability was caused by the implications of the income exclusion he received for service overseas. This is a complicated tax situation requiring expert assistance which Applicant has engaged. Applicant acted responsibly under the circumstances by inquiring about the debts with creditors, hiring experts to assist him in locating and paying debts, and paying some of his delinquent 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 applies. Applicant has engaged the service of a tax expert and a credit counseling agency to assist him in resolving his delinquent debts and tax liability. He is undoubtedly receiving financial and credit advice from them. He is paying his debts and it is clear his financial problems are being resolved and are 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's plan is to use tax and credit experts to assist him in resolving his debt. The experts are working with government tax authorities and creditors to learn of the nature of the debts, reach settlement agreements where practical, and make payments. Applicant's liability may be small if any because of the income exclusion available to Applicant for overseas service. He established that he paid eight of the listed debts, and after adequate inquiry, was unable to learn of the nature of three other debts or how to pay them. Applicant has sufficient funds to meet the financial obligations under his plans to pay the remaining debts. 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 Navy and his service as a civilian in support of United States Forces in Iraq, Kuwait, and Afghanistan. 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 was laid off from a job that paid well after September 11, 2001. At the same time, his wife became terminally ill and could no longer work. He was unaware of some of their debts since his wife incurred debt when she was sick. Applicant took responsibility for all of their debts after his wife passed away. He hired experts to assist him in solve his complicated tax issues and to resolve his other 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.o: 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