



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



In the matter of:)
)
) ISCR Case No. 10-00298
)
)
Applicant for Security Clearance)

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

December 16, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant provided adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is granted.

On August 18, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor. (Item 5) On June 25, 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 SOR alleges six delinquent debts totaling approximately \$94,000. 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 acknowledged receipt of the SOR on July 7, 2010. (Item 3) He answered the SOR on July 23, 2010, admitting two allegations (SOR 1.a and SOR 1.e), but noting that he is paying the debt listed at SOR 1.e. He denied four allegations noting that he is either unaware of the debt, is paying the debt, or the debt has been paid. He elected to have the matter decided on the written record. (Item 4)

Department Counsel submitted the Government's written case on September 9, 2010. Applicant received a complete file of relevant material (FORM) on September 28, 2010. The FORM stated that Applicant failed to provide adequate information to verify all statements concerning payment of debts. Applicant was given until October 28, 2010, to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Department Counsel granted a delay until November 29, 2010, to provide additional information. However for unspecified reasons, this delay was not adequately noted in the file and the case was forwarded from the Department Counsel office and assigned to me on November 5, 2010. I rendered an unfavorable decision on December 9, 2010. However, Applicant had timely provided additional information which was received at DOHA on November 29, 2010. The Department Counsel office did not timely forward the information to me. The additional information was sent to me on December 10, 2010, and I received it on December 13, 2010. I withdrew my initial decision on December 13, 2010, to consider the additional information. The additional material consisted of a statement from Applicant concerning actions taken to resolve his indebtedness, a letter of employment and first pay from his new defense contractor employer, a letter from the state comptroller noting the payments he has made on his state taxes, a new personal financial statement, and the amount of debt remaining on a credit card. Department Counsel had no objection to consideration of this additional information.

Findings of Fact

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

Applicant is 61 years old, has an associate's degree, and is presently employed as a grounds keeper for a defense contractor. Prior to this job, he was a franchisee for a tool company for 22 years. He is married with two grown children. (Item 5) A personal financial statement provided by Applicant in response to Interrogatories shows that he and his wife have a combined monthly income of \$4,677.73, with monthly expenses of \$4,284.16, leaving approximately \$400 in monthly disposable income. He also lists \$845,000 in total assets from real estate, savings, investments, and other miscellaneous assets. He does not list any liabilities against these assets. (Item 7 at 5) Applicant started a new position with a new defense contractor on November 8, 2010. His pay has almost doubled. His new net monthly salary increased from \$2,470.37 to \$3,808.50. His monthly expenses are approximately the same as previously stated. He continues to list his total assets as \$845,000. (Additional information filed in response to the FORM on November 29, 2010)

Applicant was the sole owner of a tool franchise from 1986 to 2008. As the sole owner, he was responsible for the operation of the business including payment of business and other taxes. He closed the business in 2008 after accumulating debt because of the declining economy, making it difficult to meet expenses and payoff the debts. He believes he held on to the business too long and knows it is hard to start a new career at his age. He intends to do everything to pay the debts. (Item 6 at 7-8),

Credit reports (Item 8, credit report, dated April 15, 2010; Item 9, credit report, dated January 26, 2010; Item 10, credit report, dated August 26, 2009) show state tax liens for \$38,038 (SOR 1.a), and \$857 (SOR 1.b). The reports also show three credit card debts to different banks for \$699 (SOR 1.c), \$10,495 (SOR 1.d), and \$13,495 (SOR 1.e); and a charged-off debt of \$30,220 to the tool company for franchise items provided to Applicant's business.

Applicant admitted the \$38,038 state tax lien at SOR 1.a, but denied the \$857 tax lien to the same state at SOR 1.b. He is not familiar with the tax lien at SOR 1.b, but is sure that the state will let him know about the lien when they want the money. (Item 7 at 2) Applicant was required to pay sales taxes to the state on his business. He was making monthly payments until 2002 when he started to skip the payments. In an interview with security investigators on September 30, 2009, Applicant admitted owing state taxes of approximately \$68,000, but asserted he agreed to pay the state \$500 monthly on the debt starting in September 2009. (Item 6 at 5) In his response to the SOR, Applicant admits the tax lien and states he has been paying this debt at \$500 monthly. In the additional material in response to the FORM, Applicant provided documentation from the state comptroller showing he has been paying the state \$500 monthly since September 2009 on this debt. The additional information also noted his intent to increase the payments to \$1,000 monthly since he has now gained more lucrative employment.

Applicant admitted to the security investigator in September 2009 that he owed three credit card debts from his failed business. He was unsure of the amounts. (Item 6 at 6-7) Applicant denied the credit card debt at SOR 1.c in his July 23, 2010, response to the SOR because he had paid the debt. (Item 4 at 3) He provided adequate documentation that the debt was paid in full. (Item 3 at 5) He admitted the other two credit card debts at SOR 1.d and 1.e. In response to interrogatories, Applicant asserts he had an agreement with the bank to settle the credit card debt at SOR 1.d for \$9,754. He states he made payments of \$1,455 from January 2010 to June 2010, and the debt was paid in full on June 25, 2010. He provided a letter concerning the payment made in March 2010 as well as the name and telephone number of a bank employee who could verify the payments. (Items 7, 10, and 12) Applicant states that he has only one credit card debt remaining from his failed business. Applicant has a payment agreement with the bank for the credit card debt at SOR 1.e, and provided documentation to show monthly payments of \$177.50, commencing in November 2009. He plans to have this debt paid by the end of 2011. (Item 7 at 8-9; Additional information filed on November 29, 2010)

Applicant denied the debt to the tool company for the tools provided his franchise. He received a loan of \$165,000 from the tool company in the late 1990s to purchase a new truck and more tool merchandise. He paid all but \$30,220 of the debt. When Applicant terminated the franchise, the tool company was required to retrieve any remaining inventory in payment of the debt. The company has not retrieved the tools or provided an accurate balance on the account. Applicant has not made any payment on the debt since the final and accurate balance of the debt has not been calculated. He anticipates the final balance will be less than the \$30,000 debt now listed. He intends to pay this debt at \$500 monthly when he is advised of the final balance. (Item 3 at 4, Item 6 at 4; Additional Information filed in response to FORM on November 29, 2010)

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 as to 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 protect or 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, 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). Applicant started to accumulate delinquent debt in approximately 2002 when his tool franchise business experienced difficult times. He stopped making sales tax payments to the state, to banks on credit cards, and to the franchise company for a truck and merchandise loan.

The Government produced substantial evidence by way of credit reports and Applicant's statements to security investigators 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 claims he could not pay his state sales taxes and credit card debts because of the economic downturn that affected his business. Applicant presented no evidence to verify that his ability to meet his business financial obligations was affected by the economic decline. Applicant had to have income from the sale of his tool products to generate state sales taxes. The income from his sales had to be used for purposes other than meeting his obligation under state law as well as to the franchise company and his credit card debt. Applicant has also not shown that the business financial problems originated from conditions beyond his control, and that he took reasonable and appropriate steps to manage the business finances to meet the financial obligations of the business. Applicant admits that he stayed in the business too long after he realized that the business had financial problems. However, he established responsible action to resolve or pay the 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). Applicant presented no information to indicate he received financial counseling. Even if he had 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 normally 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.

Applicant has delinquent debts resulting from a failed business he ran for over 22 years. He established a good-faith effort to resolve these debts by showing a meaningful track record of debt payment. Applicant established the payment plan with the state for business taxes he owes, and provided information he has made payments under this plan for over a year. He provided adequate information to show he has paid two of the three credit card debts arising from the business and that he is paying the third debt according to an agreed payment plan. The remaining debt is to the franchise company. He provided sufficient information to establish his intent to pay the debt once the final balance owed is established in conjunction with the franchise company. While Applicant could have managed the business better so as not to have these business debts, he has taken appropriate steps to pay and resolve the debts. Applicant has substantial assets and is not in danger of a financial collapse. He can use his assets, if financially prudent, to resolve the financial problems and pay the delinquent debts.

Applicant 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 established a meaningful track record of paying his delinquent debts. He paid two credit card debts arising from his failed business and he is paying the remaining credit card debt according to a payment plan. He is paying the failed business state tax liability, and is attempting to resolve the debt owed the franchise company. Applicant has substantial assets which are more than the debts owed from the failed business. He is not in danger of financial failure. Applicant provided sufficient credible documentary information in the form of debt payments and assets to show he is financial stable. He established he is acting reasonably and responsibly to address his delinquent debts and resolve any financial problems. His responsible management of the financial obligations indicates Applicant would be concerned and responsible in regard to protecting classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He established his suitability for access to classified information. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Eligibility for access to classified information is granted.

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

Subparagraph 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 national interest to grant Applicant eligibility for access to classified information. Access to classified information is granted.

THOMAS M. CREAN
Administrative Judge