



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



In the matter of:

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)	
)	ISCR Case No. 10-00855
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

May 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.

Statement of the Case

On August 21, 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 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 October 8, 2010, to Applicant detailing security concerns for financial considerations under Guideline F and criminal conduct under Guideline J. 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 October 20, 2010.

Applicant answered the SOR on October 27, 2010. He denied all factual allegations under both Guideline F and Guideline J. He requested a hearing on the matter. Department Counsel was prepared to proceed on December 28, 2010, and the case was assigned to me on February 10, 2011. DOHA issued a Notice of Hearing on February 15, 2011, scheduling a hearing for March 8, 2011. I convened the hearing as scheduled. The Government offered eight exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 8. Applicant testified on his behalf. Applicant offered four exhibits that I marked and admitted without objection as Applicant Exhibits (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted 15 additional documents I marked and admitted as Applicant Exhibits E through S. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 9 and 10, dated March 22 and May 11, 2011) DOHA received the transcript of the hearing (Tr.) on March 16, 2011.

Procedural Issues

Applicant was employed by a defense contractor until January 7, 2011, when he was laid-off. (Hearing Exhibit 1, JPAS, dated February 4, 2011). Department Counsel discussed Applicant's separation with the facility security officer and determined that Applicant will be rehired by the defense contractor if he is determined to be eligible for access to classified information. I find that there is jurisdiction to determine Applicant's eligibility for access to classified information. (Tr. 29-32; Hearing Exhibit 2, JPAS Entry, dated March 4, 2011)

Department Counsel moved to dismiss SOR allegation 1.h because it was a duplicate of the debt listed at SOR 1.g. the motion was granted. (Tr. 70-71)

Findings of Fact

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

Applicant is a 43-year- old aircraft technician. He is a high school graduate who attended and completed an aircraft mechanics program at a technical school from 1985 to 1987. He was first married in 1988 and divorced in 1995. He married for the second time in 1996. He has four biological children and two step-children. Two of the children live with him and his wife. He is not required to provide child support to any of the children since the children either have aged out of the child support system or live with him and his wife. However, he presently provides some support to his children. Applicant's work record shows that he has been continuously employed in various jobs in aircraft maintenance since at least 1998. He did have short periods of time as he

transitioned from one position to another where he may not have been paid. He also missed approximately two months of work in December 2006/January 2007 when he was jailed on the failure to pay child support charge. (Tr. 12-14, 32-34; Gov. Ex. 1, e-QIP, dated August 21, 2009; App. Ex. J, Bill, dated June 19, 2009; App. Ex. O, Employment Agreement, dated February 7, 2007) Applicant was separated by his employer in January 2011 because the company did not have sufficient work to keep him employed. His source of income now is \$330 weekly in unemployment benefits for a monthly total of \$1,320. His wife is also unemployed and she receives a similar amount in unemployment benefits. (Tr. 26-28; App. Ex. B, Unemployment Determination, dated January 21, 2011)

Credit reports (Gov. Ex. 7, dated September 12, 2009; and Gov. Ex. 8, dated August 3, 2010) show Applicant filed a Chapter 13 bankruptcy in September 2003 that was dismissed in September 2004 (SOR 1.a). He filed a Chapter 13 bankruptcy in September 2004 that was dismissed in April 2008 (SOR 1.b). He filed another Chapter 13 bankruptcy in May 2008 that was dismissed in July 2008 (SOR 1.c). Also listed are collection accounts of \$1,025 for a cell phone (SOR 1.d), \$253 for a credit card (SOR 1.e), \$538 for another credit card (SOR 1.g), another account for \$1,025 (SOR 1.h); and a mortgage account past due for \$19,851 and in foreclosure with a loan balance of \$155,00; and an account past due more than 120 days in the amount of \$13,504 from a car repossession. (SOR 1.i) The total amount of the debt not including the mortgage debt is approximately \$16,000. A criminal record review shows Applicant was convicted of and on probation until August 2012 for failure to pay child support. (SOR 2.a)

In 1998, Applicant established child support payments of \$360 monthly with the state where he then resided so he could see his two children still living with his former wife. He made the payments to the state until he moved to his present location for work purposes in 1999. After the move, he did not immediately find employment. After finding employment, he did not make payments to the state but did send his former wife between \$100 and \$600 monthly whenever he could that he considered child support. Since he did not send the funds to the state, the state did not consider that he paid child support and assessed an arrearage of child support payments. In 1999, the original state garnished his pay for child support arrearage payments. (Tr. 34-44)

In December 2006, Applicant was subsequently arrested in the state where he was employed on a felony criminal warrant and returned to his original state because of his failure to pay child support. In February 2007, the charges were reduced to a misdemeanor and Applicant was convicted of failure to pay child support and placed on probation until the child support arrears were paid. Applicant was never listed with a felony conviction on court records. Applicant's child support case was considered a misdemeanor crime. After his conviction, Applicant made child support payments when employed by payroll deduction. He completed paying the child support arrears, and his probation was terminated earlier than required on April 21, 2011. (Tr. 62-70; App. Ex. E through S, various dates)

Applicant filed Chapter 13 bankruptcy petitions in 2003, 2004, and 2008 to prevent foreclosure of his house (SOR 1.a, SOR 1.b, and SOR 1.c). The first action was filed on August 4, 2003, and dismissed on September 10, 2004 by order of the trustee because the Applicant failed to comply with the regularly required monthly payments, paying only \$2,769.30 of the required \$4,061.64. The trustee used the funds paid by Applicant to make some payments to Applicant's creditors. (Gov. Ex. 5, dated September 20, 2004) The second action was filed on September 24, 2004, and dismissed on April 18, 2008 on motion of the trustee for Applicant's failure to make the required payments under the plan resulting in plan delinquency. Applicant should have paid \$12,701.60 to the plan but paid only \$11,316.98. The trustee used the funds to pay some of the creditors, including mortgage payments. (Gov. Ex. 6, dated June 27, 2008) The third action was filed on May 5, 2008, and dismissed on July 24, 2008 for failure of Applicant to fund the plan. Applicant made no payments to the plan. (Gov. Ex. 4, Dated September 30, 2008) In the first two actions, Applicant made some payments under the wage earner plans but stopped when he was not employed. As noted above, Applicant's work record does not show any extensive periods of unemployment. Applicant permitted the third filings to be dismissed because he did not consider the bankruptcy action to be in his best interest since he had child support and other expenses and could not afford the payments on the wage earners plan. (Tr. 44-46)

Applicant is past due on his mortgage about \$35,000 (SOR 1.f). He purchased the house in April 2002 for \$149,000. His original monthly mortgage payment was \$1,200 but was adjusted to \$1,400 monthly to cover arrears. In the last two years he has been unable to make over 20 of the payments leading to the past due amount. He requested a readjustment of the mortgage but it was denied. (Tr. 46-50: App. Ex. C, letter, dated February 21, 2011; App. Ex. D, letter, dated January 6, 2011) He sought financial counseling to assist with his mortgage issues from a community outreach program. (App. Ex. A, Letter, dated February 18, 2011)

Applicant had a telephone account with Sprint in 2009, but he no longer has an account with them (SOR 1.d). His wife paid the bills so he is unsure if there was a debt to Sprint of approximately \$1,025 when he stopped the account. Applicant has not taken any action to inquire about or pay the debt. (Tr. 50-54)

Applicant denies knowledge of the \$253 collection account under SOR 1.e. He has not made inquiries concerning this debt. (Tr. 54, 60-61) He acknowledges he had a credit card with the creditor for the \$538 collection account at SOR 1.g. When he opened the account, it had a maximum credit of \$300. He cancelled the card without using it because of the high interest rate. Applicant stated that he disputed the debt but he produced no information to substantiate the dispute. (Tr. 54-56) The debt at SOR 1.i concerns the remaining debt from a car repossession. Applicant believes the debt was paid under his 2003 bankruptcy filing. Bankruptcy documents show that no payments were made to the creditor for the repossessed car. Applicant now understands that there have been no payments on the car repossession debt. (Tr. 56-60)

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 delinquent debts established by credit reports 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 incurred delinquent child support debt in 2006, late mortgage payments as early as 2002, and credit card debt as early as 2007. Only the child support debt has been resolved. He has not inquired about the status of many of his debts. The delinquent debts 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 delinquent debt starting in 2006. While the debts were incurred some time ago, they have not been paid, except for child support arrears, and are still outstanding. Applicant filed three bankruptcy actions, but did not complete any because of his failure to keep current with the payments to the wage earners plan, His failure to complete the bankruptcies, coupled with his repeated filings shows unreasonable and irresponsible financial actions casting doubt on Applicant's current reliability, trustworthiness, and good judgment. While Applicant claims to have incurred debt because of layoffs, his employment record shows continuous employment until January 2011. Applicant has not presented any information to show that the debts were incurred by circumstances beyond his control. Applicant did not present information to establish he took consistent, reasonable, responsible, and concerted action to pay or resolve his debts. He has not established a nexus between any periods of no or limited pay and a failure to inquire about the status of debts or make payments. He was placed on probation until child support arrears were satisfied after a misdemeanor conviction for failure to pay child support. This is the only debt he satisfied. His failure to act reasonably and responsibly

concerning his finances indicates that his financial problems are likely to recur and will continue to be a security concern.

I considered FC MC AG ¶ 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 does not apply. Appellant received the required financial counseling when he filed his bankruptcy petitions. He also indicated he received financial counseling from a community outreach program in an attempt to modify his mortgage. However, there is no clear indication that the financial problems are being resolved or 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. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A "meaningful track record" of debt payment is evidence of actual debt reduction through payment of debts. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. An applicant is not required to establish that he paid each and every debt listed.

Applicant provided sufficient information to establish that he paid and satisfied his delinquent child support. He presented no information to show payments of his other debts. He attempted to use the bankruptcy system three times to assist him in resolving debts. While bankruptcy is a legal and permissible means of resolving debt, he never completed any of the three bankruptcies. Only in one instance did he make a reasonable effort to make payments to the wage earners plan. He did make some payments on his mortgage but has not made payments in over two years and he is in arrears over \$35,000. Applicant has not verified other payments on his debts or shown that he has a plan to resolve the debts. His lack of reasonable and responsible action to resolve debt shows a lack of good-faith effort to pay creditors or resolve debt. His delinquent debts and his failure to provide information concerning his efforts to resolve them reflect adversely on his trustworthiness, honesty, and good judgment.

I considered FC MC ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). Applicant indicated he disputed at least two debts. However, he presented no documented evidence showing he filed disputes with the creditors or the credit reporting agencies.

Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Appellant was arrested and convicted of failure to pay child support in December 2006. This criminal conviction raises Criminal Conduct Disqualifying Conditions (CC DC) AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and CC DC AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

I considered Criminal Conduct Mitigating Conditions (CC MC) AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment), and CC MC ¶ 32(d) (there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement). Applicant was paying child support to his original state. When he moved, he made payments to his wife rather than the state. The state did not consider the payments child support, assessed arrears, and convicted him of a misdemeanor failure to pay child support. Applicant was placed on probation until he completed paying the arrears. He completed the payments in April 2011, a year before required and was released from probation early. Applicant's conviction happened under the unusual circumstances of not receiving credit for child support payments. He completed payment of the arrears and was released from probation. The children are now grown and child support is no longer required. The offense will not recur. Applicant established rehabilitation by payment of the arrears. I find for Applicant under criminal conduct.

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 that Applicant paid his child support arrears and has been released from probation. Applicant's financial problems were well within his efforts to control. He was employed most of the time and seems to have sufficient funds to pay his debts. He filed three bankruptcy actions. He made a reasonable attempt to complete only one bankruptcy plan (SOR 1.b). The other two he failed to make payments to the wage earners plan. Applicant has other delinquent debts that he did not pay or even make inquires concerning them. He did not establish a connection between lack of pay and his inability to resolve the debts. While he indicated some debts were disputed, and was provided an opportunity to present documentation to support his disputes, he failed to provide the information. Applicant's failure to act to resolve and pay debts shows he will not be reasonable and responsible in safeguarding classified information. The lack of proper management of his finances indicates he will 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. I conclude that Applicant has not mitigated 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:	For Applicant
Subparagraphs 1.c -1.g:	Against Applicant
Subparagraph 1.h:	Withdrawn
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For 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