



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



In the matter of:

| | | |
|----------------------------------|---|------------------------|
| |) | |
| |) | |
| |) | ISCR Case No. 10-00976 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Pro Se

May 19, 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 October 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 an interrogatory 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 interrogatory, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated September 21, 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 October 1, 2010.

Applicant answered the SOR on October 12, 2010. He admitted three and denied five of the factual allegations. He also denied there was a security concern based on his finances. He requested a hearing on the matter. Department Counsel was prepared to proceed on December 13, 2010, and the case was assigned to me on December 20, 2010. DOHA issued a Notice of Hearing on December 28, 2010, scheduling a hearing for January 25, 2010. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified on his behalf. Applicant offered three exhibits that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A through C. I left the record open for Applicant to submit additional documents. Applicant did not submitted additional documents. DOHA received the transcript of the hearing (Tr.) on February 2, 2011.

Findings of Fact

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

Applicant is 35 years old and a high school graduate. He has been employed as a receiving inspector with a defense contractor since September 2009. He served eight years in the active Army and the Army Reserves receiving an honorable discharge in December 2007. He was married in September 2004. He has four children, two at home and two that he supports. His wife has been continuously employed in the health field for over 15 years. He and his wife have a monthly combined family income of \$3,600, with combined monthly expenses of \$3,350, leaving monthly discretionary funds of \$250. (Tr. 73-77; Gov. Ex. 1, e-QIP, dated October 21, 2009) Applicant has not received any financial counseling except as required by a 2007 bankruptcy. (Tr. 38-39)

Credit reports (Gov. Ex. 3, dated November 13, 2009; Gov. Ex. 4, dated April 18, 2010; and Gov. Ex. 5, dated July 9, 2010) show Applicant and his wife filed a Chapter 7 bankruptcy in September 2007 and the debts were discharged in January 2008. (SOR 1.a) Also listed are the following delinquent debts; a credit card debt in collection for \$805 (SOR 1.b); a cable bill in collection for \$917 (SOR 1.c); a credit card debt in collection for \$514 (SOR 1.d); a telephone debt charged off for \$585 (SOR 1.e); child support payments in collection for \$14,447 (SOR 1.f); and two debts to the Internal Revenue Service (IRS) for past-due taxes of \$401 for tax year 2007 (SOR 1.g), and \$1,211 for tax year 2003 (SOR 1.h). Applicant admitted three of the debts (SOR 1.b, 1.e, and 1.f) noting that the debts were being paid or he was unable to pay the debt because of being laid-off. He denied SOR 1.a because the amount of the bankruptcy was wrong. He denied SOR 1.c because the amount of the debt was not correct. He denied SOR 1.d because he had no knowledge of the debt. He denied the tax debt at SOR 1.g since he believed it had been paid. He denied the tax debt at SOR 1.h as

being discharged in his 2007 bankruptcy. After testimony at the hearing, Department Counsel moved to amend the SOR adding allegation SOR 1.i for a tax debt of \$600 due the IRS for tax year 2008. Applicant had no objection and I approved the amendment. (Tr. 78-80) This brings the total amount of indebtedness alleged to \$19,480.

Applicant and his wife filed a Chapter 7 bankruptcy in September 2007. Applicant testified that most of the debts were accrued by his wife before they married but did include some joint marital debts as well as individual debts from Applicant. The total amount of liability was \$260,000 with assets of only \$127,000. The largest asset was their house which was not forfeited as part of the bankruptcy. Applicant does not believe any assets were sold to have the debts discharged or satisfy any debts listed in the bankruptcy. (Tr. 52-54)

Applicant continued to have financial problems after the bankruptcy discharge because he was laid off twice. (Tr. 13) At the time he filed the bankruptcy in September 2007, he was employed but was laid off in October 2007. He was out of work and did not draw unemployment for three months until hired by another employer in late January 2008. He did work briefly during this time between jobs delivering newspapers and for a pharmaceutical manufacturer. He worked at the new employment from January 2008 until June 2009. He was making approximately \$2,000 monthly until he was again laid off for lack of work in June 2009. He drew unemployment benefits of \$280 weekly for this unemployment until he was hired by his present employer on September 28, 2009. He has been employed in his present position continuously since then. (Tr. 54-57)

Applicant disputed the amount of the bank credit card debt at SOR 1.b. The debt is listed for \$805, but Applicant believes the debt should be for only approximately \$640. Applicant disputed the debt with the credit reporting agency which notified the collection agency that the dispute was based on identity fraud. Applicant received a letter from the collection agency to complete in regard to identity fraud. He did not return a completed form to the collection agency or notify them of the actual basis of his dispute. Applicant stated he made a number of automatic payments from his bank account to the original creditor. Applicant was provided the opportunity to submit documentation after the hearing to establish these payments from his bank account. He did not provide such documentation. (Tr. 41-43, 61-65; App. Ex. A, Letter, dated January 10, 2011)

The cable television debt at SOR 1.c is for equipment provided by the cable company. Applicant stated he returned the equipment to the cable company and does not owe the debt. He has not been in contact with the cable company or the collection agency concerning the debt for over a year. He has not made any payments on the debt. He was provided the opportunity to present the receipt for the equipment after the hearing but he did not provide the document. (Tr. 43-45, 65-66)

The debt at SOR 1.d is for a credit card debt in collection for \$514. Applicant settled the debt for \$168 with a payment plan of \$21 monthly starting in November 2010. Applicant was provided the opportunity after the hearing to provide

documentation that he has made the initial payments. He did not provide such documentation. (Tr. 45-46, 66-67, App. Ex. B, Letter, dated January 10, 2011)

The debt at SOR 1.e is for a telephone bill. Applicant stated he made some payments on the debt whenever he had the funds. His last payment was allegedly for \$140 a few months prior to the hearing. He does not know the balance on the account and has not been in contact with the creditor. He was provided the opportunity to present documentation after the hearing of payments on the debt but he did not provide any information. (Tr. 46-47, 67-68)

The debt at SOR 1.f is for child support Applicant was required to pay under a court order. In November 2010, Applicant appeared before a juvenile court referee concerning his failure to make child support payments. The referee found that Applicant willfully neglected to make 35 separate payments. The arrears accumulated to approximately \$19,273.86. Applicant was ordered to make child support payments of \$400 starting on December 1, 2010. Applicant testified he notified his employer of the need to have the payments taken from his pay and sent to the court. As of the hearing, his employer had not started taking funds from his pay, and Applicant has not been in contact with the employer to determine the status of the support payments. (Tr. 47-48, 67-68; App. Ex. C, Report for Non-payment of Child Support, dated November 10, 2010)

Applicant filed his federal tax returns for tax years 2003, 2007, 2008, and 2009. He admitted that he owed \$401 in federal taxes for tax year 2007, approximately \$610 for tax year 2008, and \$1,211 for tax year 2003. Applicant believes the tax debt for 2007 was paid from the economic stimulus funds of \$600 provided to all tax payers in 2008. He believes the 2003 tax debt was included in the 2007 bankruptcy and discharged. He contacted the IRS to establish a payment plan when he learned of a tax debt for tax year 2009. He was advised that no payment plan was possible because of the taxes owed for tax year 2007. He has not been in contact with the IRS to resolve these tax debts since sometime in mid 2010. He has not set aside funds to pay any tax debts. He has not provided any information concerning any payments to the IRS on taxes due. (Tr. 47-52, 70-73)

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 or 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 continued to incur delinquent debt after a discharge in bankruptcy because of two layoffs from different employers. He also failed to stay current with his child support payments through willful neglect. He has not inquired about the status of his debts from creditors in over a year. 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 the delinquent debt after his debts were discharged in bankruptcy in 2007. He did not take consistent, reasonable, responsible, and concerted action thereafter to continue to pay or resolve his debts. While Applicant was laid off twice for brief periods, he received some unemployment and his wife was employed. He has not established a nexus between the layoffs and his failure to inquire about the status of his debts or make payments. He was ordered to pay child support after a finding of willful neglect to pay the support. He has not ensured that his employer is taking the required child support payments from his pay and sending it to the proper authorities. He stated he made payments on some debts but when offered the opportunity to provide documentation to substantiate the payments, he neglected to do so. While he filed his tax returns, he did not pay the taxes due and has not inquired of the IRS concerning payment of taxes. 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 petition in 2007. He has not provided any information concerning any other counseling. 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 has not provided sufficient information to establish that he paid any of his delinquent debts. Since bankruptcy is a legal and permissible means of resolving debt, the debts discharged in the 2007 bankruptcy are not a security issue. However, after his debts were discharged, he continued to accrue debt and did not establish a plan to resolve the debts. In fact, Applicant has not verified any payments on his debts or even 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.

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 service in the Army and Army Reserves. Applicant's financial problems started after discharge of debts by bankruptcy and he was laid off briefly from two different positions. He did collect some unemployment and his wife was continuously employed. He did not establish a connection between the layoffs and his inability to pay or resolve the debts. He indicated some debts were being paid or disputed. He was provided an opportunity to present documentation of his efforts which he indicated was available. 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: | For Applicant |
| Subparagraphs 1.b - 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 a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge