



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



In the matter of:)	
)	
)	ISCR Case No. 10-01645
)	
Applicant for Security Clearance)	

Appearances

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

September 8, 2011

Decision

CREAN, Thomas M., Administrative Judge:

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

On September 24, 2009, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement 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 findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated September 13, 2010, to Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. 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 within the Department of Defense on

September 1, 2006. Applicant acknowledged receipt of the SOR on September 21, 2010.

Applicant answered the SOR on October 28, 2010. He denied 13 of the 14 allegations under guideline F. He admitted allegation SOR 1.e. He denied allegation 2.a, and admitted the other four allegations under Guideline E. Department Counsel was prepared to proceed on February 3, 2011, and the case was assigned to me on February 22, 2011. DOHA issued a Notice of Hearing on April 19, 2011, scheduling a hearing for May 5, 2011. I convened the hearing as scheduled. The Government offered nine exhibits which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 9. Applicant testified on his behalf, but offered no exhibits. The record was held open for Applicant to submit documents. Applicant timely submitted 44 documents on seven separate occasions which were marked and admitted into the record as Applicant Exhibits (App. Ex.) A through RR. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 10, Memorandum, dated May 31, 2011; Gov. Ex. 11, Memorandum, dated June 2, 2011; Gov. Ex. 12, Memorandum, dated June 7, 2011; Gov. Ex. 13, Memorandum, dated July 6, 2011). DOHA received the transcript of the hearing (Tr.) on May 16, 2011.

Procedural Issues

Applicant did not receive the Notice of Hearing until April 22, 2011, 14 days before the hearing. However, he discussed the hearing date with Department Counsel prior to the notice of hearing being sent on April 19, 2011. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was prepared and ready to proceed at the hearing on May 5, 2011. He waived the 15 days notice requirement. (Tr. 7-9)

Findings of Fact

Applicant denied all but one (SOR 1.e) of the allegations under Guideline F. He denied allegation 2.a, but admitted allegations 2.b, 2.c, and 2.d under Guideline E. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 59 years old and has been employed by a defense contractor as a deputy contracts manager for over two years. Applicant was married in June 1974 but divorced in October 1978. He married again in November 1978 and has been married for 33 years. He has six children, five have graduated from college, and the sixth child is a college senior. Applicant has a bachelor's degree, a Master's degree in Business Administration earned in 1992, and he completed a professional law degree in 2007 at a law school not accredited by the legal accrediting agency, the American Bar Association. (Gov. Ex. 1, e-QIP, dated September 24, 2009)

Applicant was employed by a company as a business manager for over fifteen years. His yearly income was over \$56,000 when the company closed in 1995 and

Applicant was laid off. He was unemployed for four months and drew unemployment of \$200 per week during this time. He discussed his financial situation with his creditors and made arrangements to make lower monthly payments on his debts. After the four months of unemployment, Applicant found employment but had to commute over 150 miles every day and his yearly salary was only \$26,000. In April 1997 he found employment that paid a higher yearly salary and was near his home eliminating his commute. He worked with the company until April 2009 when the company downsized and his position was eliminated. His yearly salary was about \$80,000 when his position was terminated. He was unemployed for three months and drew unemployment of \$302 per week. He started working with his present employer in June 2009. His initial yearly salary was \$95,000. His present yearly salary is \$106,000. His wife worked only sporadically during this time and had only approximately \$12,000 in income. Applicant's present monthly income is \$5,360, with about \$4,800 in monthly expenses, leaving approximately \$550 in monthly discretionary funds. He and his wife have a joint checking account, maintain a budget, and do not use credit cards. They have approximately \$7,000 in savings. (Tr. 21-26; 54-64; Gov. Ex. 3, Response to Interrogatories, dated June 4, 2010)

In addition to his own family, Applicant supported his wife's sister and her family. His sister-in-law was diagnosed with cancer in 1995. She and her four sons came to live with Applicant and his family. He supported them until his sister-in-law died in 1999. Shortly after her death other family members took in Applicant's nephews. (Tr. 23-25)

Credit reports (Gov. Ex. 5, dated October 3, 2009; Gov. Ex. 6, dated March 12, 2010; and Gov. Ex. 7, dated July 27, 2010) show the following delinquent debts for Applicant: medical debts of \$99 (SOR 1.a), \$457 (SOR 1.b), \$49 (SOR 1.c), \$41 (SOR 1.d), \$302 (SOR 1.e), \$188 (SOR 1.f), \$207 (SOR 1.g), \$466 (SOR 1.j), \$605 (SOR 1.k), \$246 (SOR 1.l), and \$78 (SOR 1.n); student loans in collection for \$46,279 (SOR 1.h); a mortgage 60 days past due for \$1,068 (SOR 1.i); and a telephone debt in collection for \$102 (SOR 1.o).¹

When Applicant was interviewed by security investigators, he did not know the origin of most of the medical debts. He had health insurance at the time and thought the debts may be either co-pays or the remainder after the insurance company's payments. (Gov. Ex. 2, Response to Interrogatories, dated June 4, 2010) At the hearing, Applicant was still not sure of the nature of most of the medical debts. After the hearing, he contacted the hospitals where he or his family received treatment to inquire about the debts. He received sufficient information on the debts to permit him to resolve them. He provided a summary of the status of the debts. (App. Ex. DD, Applicant's Account Summary, undated). The medical debt of \$99 at SOR 1.a is paid in full. (Tr. 39-40; App. Ex. R, Check, dated June 2, 2011) The medical debt of \$457 at SOR 1.b is being paid. Applicant has made three payments of \$100 each with the final payment due on July 31, 2011. (Tr. 40-41; App. Ex. D, Summary, undated; App. Ex. C and N, Checks, dated May 24, 2011) The medical debt of \$49 at SOR 1.c has been paid. (Tr. 45-46; App. Ex.

¹ The SOR was incorrectly numbered and there is no allegation 1.m.

C, Check, dated May 24, 2011) The medical debt of \$41 at SOR 1.d has been paid (Tr. 48-49; App. Ex. V, Check, dated June 4, 2011) The medical debt of \$302.45 at SOR 1.e has been paid. (Tr. 48-49; App. Ex. X and Y, Checks, dated May 24, 2011) The medical debt of \$188 at SOR 1.f has been paid. (Tr. 49; App. Ex. D and V, Checks, dated May 24, 2011) The medical debt at SOR 1.g for \$207.08 has been paid. (Tr. 49; App. Ex. D and W, dated May 24, 2011) The medical account for \$466 at SOR 1.j is being paid. Applicant is paying \$50 monthly until the debt is resolved. Four payments have been made. Payments are current. (Tr. 51; App. Ex. G and O, Checks, dated May 24, 2011; App. Ex. BB, Check, dated June 3, 2011; App. Ex. CC, check, dated June 3, 2011) The \$605 medical debt at SOR 1.k is being paid. Applicant has paid \$200 and has four payments remaining. (Tr. 451; App. Ex. G, Check, dated May 24, 2011) The \$246 medical debt at SOR 1.l has been paid. (Tr. 51; App. Ex. G and O, Checks, dated May 24, 2011). The \$79 medical debt at SOR 1.n has been paid. (Tr.52; App. Ex. S, check, dated June 2, 2011) Applicant has paid other medical debts not listed in the SOR. (App. Ex. J, \$199 check, dated May 16, 2011; and App. Ex. K, \$21.50 check dated May 16, 2011) He continues to make contributions to his church. (App. Ex. P. check, dated May 22, 2011)

Applicant believed that his student loans were deferred while he was taking law courses. However, since the school Applicant attended was not accredited, the student loans incurred for his Master's degree at SOR 1.h could not be deferred. When Applicant learned they were not deferred, he negotiated a payment plan with the creditor and he has brought the student loans current. (Tr. 49-51; App. Ex. B, Statement, dated May 8, 2011; App. Ex. E and OO, Check, dated May 24, 2011)

Applicant's mortgage listed at SOR 1.i as 60 days past due is now current. (Tr. 50; App. Ex. F, Statement, dated May 7, 2011). Applicant settled the telephone debt at SOR 1.o for \$25. The settlement has been paid. (Tr. 52; App. Ex. I and OO, check, date May 10, 2011)

In responding to the SOR, Applicant denied a fraudulent check violation from February 2003 listed at SOR 2.a. At the hearing, he noted that he had sufficient time to research the charge and admitted that he had been charged with fraudulent check and paid a fine. His car had been damaged in an accident and his insurance company informed him that he would receive a payment from them for the damage. He took the car to a dealer for repair and paid the bill believing that the insurance company had deposited the payment to his account. The deposit had not been made before the check was sent to the bank for payment. He paid a fine for the insufficient funds check. He admitted he was charged with fraudulent check in June 1995 and September 1997 and paid restitution and court costs. (SOR 2.d and 2.e) He admitted that he was charged with issuing another fraudulent check in January 2000. He did not receive a notice of a court appearance and was charged with failure to appear in April 2001. He was subsequently served with a warrant in April 2009 and paid a fine and court cost for the offense. Applicant issued the fraudulent checks because he was not keeping sufficient and accurate records on his account balance. (Tr. 64-71)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 to obtain 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 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 credit reports raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and 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. He provided financial information of his efforts to resolve his financial obligations.

I considered Financial Considerations Mitigating Conditions 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 was employed with a good salary for over 15 years until the company went out of business in 1995. He was unemployed for a few months but sought employment that paid only half of his previous salary and required a long commute. After approximately 18 months with this company, he was able to get employment with a company at a better salary that did not require a long commute. He worked with the company for over 12 years until his position was eliminated in a downsizing. He was again unemployed for a short time but gained employment with his present employer at a good salary. When he lost his jobs and was receiving unemployment, he contacted his creditors to explain the circumstances and reach payment agreement. During this whole time, Applicant was maintaining a large household, sending his children to college, and supporting some relatives because of the death of their mother.

Applicant's delinquent debts consist of medical debts, student loans, a past-due mortgage, and a telephone debt. The medical debts are for co-pays or remainder after insurance payments. He fell slightly behind on his monthly mortgage payments and thought his student loans were deferred. These debts occurred under unusual circumstances not likely to recur. He lost employment and had a large family to support.

He is gainfully employed again and his children and relatives no longer depend on him for support. Applicant acted responsibly towards his debt. He contacted his creditors, made payment arrangements, paid almost all of his delinquent medical debts, and is current now with his mortgage and student loans. He has a plan to pay the remaining small amounts of his medical 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 did not present any information to show he received financial counseling. However, there are clear indications that his financial problems are being resolved and under control. He has met the requirements of this mitigating condition.

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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. 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 paid almost all of his SOR debts. He paid eight of the SOR medical debts and has payment plans for the remaining three accounts. These accounts are almost paid in full. His mortgage is current and he is paying his student loans. He also settled and paid the one telephone account listed as delinquent. Applicant's actions in paying his debts and having a plan to resolving his remaining delinquent debts provide significant and credible information to establish a meaningful track record of debt payment. His actions are reasonable and prudent and show honesty and an adherence to his financial duties and obligations. He established his good-faith efforts to repay his creditors and resolve debt. His reasonable and responsible efforts to resolve his financial problems indicate that his past delinquent debts do not now reflect adversely on his trustworthiness, honesty, and good judgment. He has mitigated security concerns based on financial considerations.

Guideline E, Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard sensitive information.

Applicant submitted four checks for payment of goods or services from 1995 until 2003 without having sufficient funds to cover the checks. He was convicted of violation of check law and fined. Applicant did not keep accurate or sufficient accounting of his funds during this time. These facts raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing,).

The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶ 16(e). The burden shifted 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. Applicant raised conditions that may mitigate the concern

I have considered Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); AG ¶17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur); and AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress). These mitigating conditions apply.

Applicant's actions in presenting checks for payment without sufficient funds occurred from 8 to 15 years ago. At the time, he did not keep adequate financial records of his account balance. He is now keeping good records. He has been gainfully employed and has not had any other law enforcement issues. He acknowledges his poor behavior. Applicant mitigated security concerns for his personal conduct associated with uttering fraudulent checks.

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. Applicant presented sufficient information to show he took reasonable and responsible action to resolve his financial issues. He paid almost all of his delinquent debts and has payment plans in place for the remaining three which are almost paid in full. He is current with his mortgage and student loans. Applicant's management of his finances and debt resolution indicates he will be concerned, responsible, and careful regarding classified information. Also, Applicant's personal conduct of uttering checks with insufficient funds over eight years ago is no longer a security concern. Applicant mitigated security concerns based on his finances and personal conduct. Overall, the record evidence leaves me without questions and doubts as to Applicant's and suitability for a security clearance. I conclude Applicant mitigated security concerns arising from financial considerations and personal conduct and he 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	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