



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



In the matter of:)	
)	
)	ISCR Case No. 10-02246
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 13, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns for financial considerations and personal conduct. Applicant did mitigate the security concern for criminal conduct. Eligibility for access to classified information is denied.

On September 24, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 4) On August 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, criminal conduct under Guideline J, and personal conduct under Guideline E. (Item 1) 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 August 30, 2010. He answered the SOR in an undated response received at DOHA on September 7, 2010. He admitted 12 allegations and denied 1 allegation (SOR 1.f) under guideline F, admitted the 1 allegation under Guideline J, and the 5 allegations under Guideline E. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on October 20, 2010. Applicant received a complete file of relevant material (FORM) on October 25, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on December 9, 2010.

Findings of Fact

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

Applicant is 24 years old and a high school graduate. He is single but has a daughter. He has been employed by a defense contractor for over four years. This is his first request for a security clearance. (Item 4)

Credit reports (Item 7, dated November 4, 2009; and Item 8, dated July 12, 2010) show delinquent debts of \$14,473. These include delinquent medical debts (SOR 1.a, 1.b, 1.c, 1.d, 1.e, and 1.l), telephone accounts in collection (SOR 1.f, 1.k, and 1.m), loans charged off or in collection (SOR 1.g, 1.h, and 1.i), and the largest debt of \$6,654 for a vehicle repossession (SOR 1.j). In his answer to the SOR, Applicant admits 12 of the 13 delinquent debts for a total of \$13,409. He denies the telephone account in collection for \$1,064 at SOR 1.f. (item 3)

In a January 2010 interview with a security investigator, Applicant admitted that the medical debts at SOR 1.a, 1.e, and 1.l were incurred for his child, and he and his girlfriend, the child's mother, were making payments on the debts. He did not provide any proof of payment. He did not provide any information on the medical debt at SOR 1.b. He denied that the medical debts at SOR 1.c and 1.d were his debts. He did not present any information to substantiate his denial. He denied the debt at SOR 1.f, and provided proof he was released from the debt. He also stated that he was making \$20 monthly payments on the debt at SOR 1.g. He did not provide any proof to substantiate these payments. He did not provide any information to the investigator on the delinquent debt at SOR 1.h. He told the investigator that the debt at SOR 1.i was for a fitness club contract that he could not pay after losing a job. He stated the repossessed vehicle resulting in the debt at SOR 1.j was purchased by both him and his girlfriend but she was to make the payments. She did not make the payments and the car was repossessed. He is in contact with the creditor and is trying to arrange a settlement. He said he is not aware of the debt at SOR 1.k but he would research it. He informed the investigator that he intends to pay the account at SOR 1.m. (Item 5)

In his June 28, 2010 Response to Interrogatories, Applicant indicates the delinquent debt at SOR 1.f was incurred when the telephone company went out of business and he was provided a bill. He also stated he tried to reach a settlement with the creditor for SOR 1.k, but he did not receive a response. He wrote he was on a payment plan for the medical debts at SOR 1.c and 1.d, and did not know the remaining balance on the account. He provided no information to verify his payment plan or payments made under the plan. He again said he co-signed for a car loan for someone else who defaulted. He also stated he was making payments on the three medical debts at SOR 1.a, 1.e, and 1.l but provided no documents to verify payments. He also stated it was difficult to take care of children and pay debts on his salary. He is willing to work to pay off his debts. He also provided a personal financial statement showing monthly income of \$1,388, with monthly expenses of \$970, leaving over \$400 in monthly discretionary funds. He listed delinquent debts of over \$11,000 on the personal financial statement with no actual or scheduled payments listed. (Item 6)

Applicant admitted all of the debts except for the debt at SOR 1.f.in his response to the SOR. He stated that the debts "are true and I am working to pay them off. With the blessing of this clearance, it will provide me the job I need to further clear up all my debt. I want [sic] make no excuses, all I am asking is that I be granted a security clearance to better myself." (Item 3)

Applicant was arrested and charged with simple assault on his girlfriend in 2008. They argued and she called the police. He denied striking her but was sentenced to \$50 fine, six months probation, and to attend anger management classes. He completed all parts of the sentence. (SOR 2.a and Item 5)

Applicant answered "no" to question 22 on the e-QIP asking if he had ever been arrested. As noted above, he had been arrested for simple assault in 2008. (SOR 3.a) Applicant admits he deliberately failed to list the car repossession (SOR 3.b), any debts in the last seven years in collection (SOR 3.c), any debts more than 180 days past due (SOR 3.d), and debts currently more than 90 days past due (SOR 3.e) in response to e-QIP question 26(b). As noted above, Applicant had a car repossessed, had debts in collection, and debts more than 180 days and 90 days past due. Applicant admitted to the security investigator that he did not list the arrest or the debts on the e-QIP because he needed the job and was afraid he would not get the job if he listed them. (Item 5)

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 her 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). The failure to pay 12 medical, telephone, and vehicle repossession debts and loans establishes a history and unwillingness to pay debts.

The Government produced substantial evidence 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. 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's various explanations for his financial problems and the action he has taken are inconsistent. When interviewed by security investigators in January 2010, Applicant admits some of the debts but explains he is making payments. He also relates some of the debts are unknown but he would research them. The security investigators in his notes said that Applicant provided some proof that he was relieved of the debt at SOR 1.f. When responding to interrogatories in June 2010, Applicant wrote he incurred the telephone debt at SOR 1.f when the company went out of business. He tried to reach a settlement, but has not received a response. He also wrote that he had payment plans for some debts but provided no documentation to establish the plans or payments. The personal financial statement forwarded with Applicant's response to the interrogatories shows discretionary funds available to make debt payments but no payments being made. In his September 2010 response to the SOR, Applicant admitted all the delinquent debts alleged, but the debt at SOR 1.f. He provided no explanation for his admissions or denial.

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 incurred delinquent debt for medical bills, telephone bills, loans, and car repossession. He admitted to all but one of the debts. There is no indication the debts were incurred under such circumstances that they will not recur. In fact, it appears the debts were incurred by Applicant to cover normal costs of living. He has discretionary funds each month to pay delinquent debts but has not indicated that he is acting or will act responsibly to use the funds to resolve his past financial obligations. Applicant claims he reached payment plans with some creditors or is paying other creditors. However, he presented no

information, evidence, or documentation to verify his claims. Without information from Applicant, it cannot be determined his financial problems are being resolved. With evidence of delinquent debt and no documentation to support reasonable management of his finances, it is obvious that Applicant's financial problems are not under control.

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 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. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. Applicant has failed to establish such a meaningful track record. He has sufficient income to meet his financial obligations and has had sufficient income over four years of steady employment with a defense contractor. However, there is no evidence, information, or documents to show payment of his debts. His lack of documented action is significant, and demonstrated he has not acted reasonably and responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

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, convicted, and sentenced in 2008 for simple assault after a confrontation with his girlfriend. This criminal act 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).

Applicant raised by his testimony Criminal Conduct Mitigating Condition (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). Applicant and his girlfriend were both equally responsible for the incident that led to his arrest. This is the only criminal allegation against Applicant. It is a minor offense, committed over two years ago, under the unusual circumstances of mutual action by both parties. It

is not likely to happen again and the minor offense does not cast doubt on his reliability, trustworthiness, or good judgment. Since the Government did not allege a criminal conduct security concern based on Applicant deliberately providing false information on his security clearance application in violation of federal criminal law as noted below, I have not considered that criminal action as a security concern. I find for Applicant under criminal conduct.

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant answered "NO" to questions concerning his criminal conduct and his finances. Record evidence shows that he was arrested for simple assault, had a vehicle repossessed, in the last seven years had debts in collection and over 180 days past due, and presently had debts more than 90 days past due. The inaccurate negative responses to these questions raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant admits that he deliberately provided false and misleading information on the e-QIP. There is a security concern for any omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance. Applicant admits his falsification of material facts was knowing and deliberate with intent to deceive. I considered all mitigating conditions under personal conduct and determine that none apply. I find against Applicant as to personal conduct.

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 has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems, or even that he has a credible plan to resolve and pay his delinquent debts. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or responsible in regard to classified information. In addition, he deliberately provided false information on his security clearance application with the intent to deceive. This shows poor judgment and indicates he is not reliable, trustworthy, and that he may not safeguard classified information. I find for Applicant as to criminal conduct. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and personal conduct. Eligibility for access to classified information is denied.

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
Subparagraphs 1.a - 1.m:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3: Guideline E: AGAINST APPLICANT

Subparagraphs 3.a - 3.e: 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 access to classified information. Access to classified information is denied.

THOMAS M. CREAN
Administrative Judge