



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 10-03374

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

05/16/2012

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 November 16, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated November 9, 2011, to Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. 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). Applicant acknowledged receipt of the SOR on November 15, 2011.

Applicant answered the SOR on November 22, 2011, admitting the 12 allegations under Guideline F, and denied, with explanation, the allegation under Guideline E. Department Counsel was prepared to proceed on January 18, 2012, and the case was assigned to me on February 21, 2012. DOHA issued a Notice of Hearing on February 27, 2012, scheduling a hearing for March 21, 2012. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified. I left the record open for Applicant to submit documents. Applicant did not submit any documents. DOHA received the transcript of the hearing (Tr.) on March 29, 2012.

Findings of Fact

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

Applicant is 40 years old and has been a data communication technician for a defense contractor since August 2009. He married in 1996, and divorced on September 13, 2010. He has one child. (Tr. 9-10; Gov. Ex. 1, e-QIP, dated November 16, 2009)

Credit reports (Gov. Ex. 3, dated June 22, 2011, and Gov. Ex. 4, dated August 7, 2011), and Applicant's answers to the interrogatory (Gov. Ex. 2, dated August 17, 2011), show the following delinquent debts: a telephone account in collection for \$105 (SOR 1.a); a cable account in collection for \$351 (SOR 1.b); medical accounts in collection for \$222 (SOR 1.c), \$95 (SOR 1.d), \$1,746 (SOR 1.e), \$171 (SOR 1.f), \$35 (SOR 1.h), \$609 (SOR 1.i), \$235 (SOR 1.j), and \$184 (SOR 1.l); another telephone account in collection for \$106 (SOR 1.g); and a car repossession debt for \$7,540 (SOR 1.k). The total debt is approximately \$11,000, with the car repossession debt accounting for over 70% of the debt. Eight of the debts are medical debts.

Applicant's personal financial statement, submitted in response to the interrogatory, shows monthly income of \$2,443, monthly expenses of \$2,356, leaving approximately \$76 in monthly discretionary income. At the time of the hearing, Applicant had been laid off approximately a month because his company completed the contract he was working on and another contract was not yet available. He had not started drawing unemployment, so he has no income. He anticipated being called back to work in a few weeks. (Tr. 30-33)

Applicant attributes his financial problems to his lack of employment, child support payments, and expenses from moving to seek employment. His employment history shows that, since 1999, he had 11 different jobs, many in different locations, in construction, manufacturing, and maintenance. He is willing to work and is seeking employment now that he has been laid off again. Applicant's credit reports show that his accounts for his present debts are paid as agreed. He is also current with his child support payments. (Tr. 13-14; Gov. Ex. 1, e-QIP, dated November 16, 2009, at 15-29)

The delinquent debt at SOR 1.a for \$105 is for telephone service at one of his former residences. He received a settlement offer for a payment of \$52 from the creditor. He has not paid the settlement offer. (Tr. 13, 16, 17, 25-26)

The delinquent debt at SOR 1.b for \$351 is for cable service and equipment. The largest part of the debt is for equipment. When Applicant moved, the cable company came and retrieved the equipment. He telephonically disputed the amount of the debt. He called the cable company to register his dispute, but he has not received any information from them. He is willing to pay the service fees part of the debt, but not the part of the debt for the equipment. He has not been in contact with the cable company or credit collection agency since he called with his initial dispute of the amount of the debt. (Tr. 13, 16-17, 26-27)

The telephone debt at SOR 1.g is for telephone service at a location different from the delinquent telephone debt at SOR 1.a. He has not contacted the creditor about this debt, and it has not been paid. (Tr. 19, 27)

When Applicant could not make payments on his car loan, he returned the car to the dealer, and the car was sold at auction. Applicant purchased the car for approximately \$10,000 in 2000, made monthly payments of \$351 before returning the car in 2001. He believes he owed about \$9,000 on the vehicle when he returned it. The car was sold at auction leading to the debt at SOR 1.k for \$7,540. Applicant requested an accounting from the dealer as to the amount of the debt since he believes he should have received more credit from the sale of the car. He received letters from the creditor stating he owes the debt, but the amount of the debt was different in each of the letters. He has not made any payments on this debt. He does not intend to pay the debt since the dealer received money for the car. He has not been in recent contact with the dealer or the collection company. (Tr. 14-15, 20-23, 27-29)

The eight remaining delinquent debts are for medical services provided to Applicant and his family. He acknowledges that these are his debts. He does not know what each debt is for but he knows that he is responsible for the debts. At times, he had health insurance through his employers. In other jobs, he did not have health insurance. The delinquent debts were incurred through lack of health insurance, failure to pay co-pays, or not paying the remainder of a medical charge not covered by health insurance. He has not inquired about these debts, and he has not made any payments on the medical debts. (Tr. 14, 17-23)

Applicant completed the computerized version of his e-QIP security clearance application On November 16, 2009. He answered "no" to all financial questions indicating there were no financial security concerns. He was not sure of the questions and how the electronic system worked and what it required him to do. He is not sophisticated in the use of computer forms. Applicant completed the form to the best of his knowledge and ability. When he was interviewed by the security investigator, he answered all of the questions, and disclosed all of his finances problems. (Tr. 13, 15-16)

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 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 at risk and 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 and his admissions 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). Applicant incurred delinquent debt through the loss of employment and lack of health insurance. He has not paid any of delinquent debts. The evidence indicates both an inability and an unwillingness to satisfy debt.

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 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 caused by periods of unemployment, and frequent moves to gain employment. While his work history seems to indicate continued employment, he had periods of unemployment as he went from job to job. His jobs were such that they could be lost through circumstances beyond his control, such as lay-offs, or when contracts were completed or lost. He incurred medical debts through lack of health insurance and limited funds to pay medical expenses.

Applicant has not shown that he acted responsibly under the circumstances to resolve these debts. Applicant did not contact some of the creditors, and he has not paid any of his delinquent debts listed in the SOR. He failed to establish that he could not pay his delinquent debts, even when he was employed. Some of the debts are small, less than \$100, and could be paid with minimal impact. Even though his current debts are in a paid-as-agreed status, his finances are not under control because he has not taken the reasonable and necessary steps to resolve his past delinquent debts. Applicant has not established that he acted responsibly towards his debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For 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 demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant has not shown an established plan to pay and resolve his past delinquent debts. He made little or no effort to contact some of the creditors to settle and pay his debts. He has not shown payment of any of his past debts. His lack of a meaningful track record of paying delinquent debts shows he has not been reasonable and prudent in adhering to his financial obligations. His past delinquent debts reflect adversely on his trustworthiness, honesty, and good judgment.

I also considered AG ¶ 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 disputed the amount of a cable bill, as well as the amount of a car repossession debt. While he may have disputed the amount of two of the debts, he did not establish any attempt to resolve the disputes or pay any part of the amount of the debt not in dispute. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's responses to financial questions on his e-QIP. Personal conduct is a security concern 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance 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 or sensitive information is in the best interest of the United States Government.

On his e-QIP application for a security clearance, Applicant responded "no" to all financial questions. His failure to list his delinquent debts could raise a security concern under Personal Conduct Disqualifying Condition 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 denied an intentional falsification for the incorrect or missing material information on the application. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant stated he did not understand the e-QIP computer form and how the system operated. He is not sophisticated in the use of the computer. When he was questioned by the security investigator, he acknowledged all of his debts, and provided the investigator all of his financial information. It is reasonable to understand that Applicant was confused by the electronic version of the security clearance application and did not answer the financial questions correctly. Applicant answered all financial questions presented by the security investigator and provided all of his financial information. I find Applicant's testimony to be credible, and he did not intentionally falsify his e-QIP. I find for Applicant as to personal 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's financial problems may have been caused by circumstances beyond his control. However, he has not been responsible towards his finances. He has not been in contact with many of the creditors to resolve or settle the debts. He has not paid any of the delinquent debts listed in the SOR. He disputes the amount of two of the debts, but has not taken steps to resolve the disputes. Applicant has not established a good-faith effort to pay or resolve his delinquent debts. Applicant's lack of effort to pay and resolve his past financial obligations indicates that he may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns

arising from finances. He mitigated security concerns for his personal conduct. His 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.l:	Against Applicant
Paragraph 2, Guideline E:	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