



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



In the matter of:)	
)	
)	ISCR Case No. 10-04575
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for employment with a defense contractor on April 29, 2009. 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 findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated November 24, 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 December 14, 2010.

Applicant answered the SOR on December 15, 2010. He admitted three and denied five of the allegations under Guideline F. Department Counsel was prepared to proceed on January 27, 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 seven exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant testified on his behalf and offered three exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex) A through C. DOHA received the transcript of the hearing (Tr.) on May 16, 2011.

Procedural Issues

Applicant did not receive the Notice of Hearing until the day of the hearing. 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. 6-7)

At the close of testimony, Department Counsel requested that the SOR be amended to add allegations 1.i, and 1.j to conform to the evidence presented at the hearing. SOR 1.i reads "You failed to file state and federal tax returns for tax years 2009 and 2010." SOR 1.j reads: "You are indebted to the State of Georgia for delinquent taxes owed for tax years 2005, 2006, and 2007, in the approximate amount of \$7,400. As of May 5, 2011, it remains unpaid." Applicant did not object to the motion to add the two allegations. The motion was granted and the SOR is amended. (Tr. 85-86)

Findings of Fact

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

Applicant is 51 years old. He served on active duty in the Army for 20 years as a network administrator. He retired in April 2002 as a sergeant first class (E-7) with an honorable discharge. While on active duty, he had access to classified information. He is separated from his wife. He has four children. Two are on active duty in the Army, one just completed an active duty tour, and the fourth is a college student. He is not required to pay child support or alimony. His monthly retired pay is \$1022, and he receives \$417 monthly in disability pay for a total monthly retirement of \$1,439. He is not now employed since the defense contractor has laid him off because he does not have a security clearance. (Tr. 20-21, 76-82).

Credit reports (Gov. Ex. 3, dated May 6, 2009; Gov. Ex. 4, dated March 5, 2010; Gov. Ex. 5, dated November 15, 2010; Gov. Ex. 6, dated May 3, 2011) show the

following delinquent debts for Applicant: a judgment filed by an attorney for his fee of \$2,500 (SOR 1.a); a federal tax lien for \$123,805 (SOR 1.b); a charged-off telephone debt for \$48 (SOR 1.c); a car repossession debt for \$18,291 (SOR 1.d); a charged-off credit card debt for \$527 (SOR 1.e); and a utility debt in collection for \$863 (SOR 1.f). Also listed is a Chapter 13 bankruptcy filed in July 2002, with the debts discharged in June 2007 (SOR 1.g); and a Chapter 13 bankruptcy filed in August 2008 but dismissed in October 2008 (SOR 1.h)

After retiring from active duty, Applicant and his wife had a difficult time meeting their financial obligations since his pay had been cut in half. He filed a Chapter 13 bankruptcy action in July 2002. Shortly thereafter, he became a real estate agent. When he first began his new occupation, he did very well financially. His income from 2002 until 2007 averaged \$80,000 a year. He was able to complete the wage earners plan and his debts were discharged in June 2007. Included in this bankruptcy were federal taxes owed for tax years prior to 1999. Applicant admitted he owed federal taxes because of a change in the number of dependents. (Gov. Ex. 7, Bankruptcy documents, dated August 2, 2001) Applicant and his real estate partners purchased a few homes to sell. But the real estate market collapsed and they were unable to sell the homes or market other properties. Because of the market downturn, he was unable to meet his financial obligations. From September 2007 until April 2008, he made only about \$9,800. He turned in his car for a voluntary repossession. (Tr. 18-21, 32-36, 67-70)

Applicant talked with an attorney in August 2008 concerning the possibility of filing another Chapter 13 bankruptcy. He paid the attorney an upfront fee of \$500, completed the paperwork, but told the attorney not to file the petition in bankruptcy. He was finding employment at that time that would enable him to meet his financial obligations and he did not want a second bankruptcy on his record. The attorney filed the papers, which led to the judgment filed by the attorney for his fee. (SOR 1.a; Gov. Ex. 7, Bankruptcy Documents, dated August 4, 2008 at 27; App. Ex. A, Bankruptcy Discharge, dated June 12, 2007)

After the collapse of the housing market, Applicant worked a few months for a government contractor but was laid off when the contract was completed. He worked again for a few months as a real estate agent but did not have any income. He worked again for a few months with a government contractor before being laid off. He returned to real estate sales from January to April 2009. In April 2009, Applicant found employment with a company that would send him overseas to work and he could receive sufficient pay to meet his obligations. Applicant worked overseas from April until October 2009. His last pay from this company was in December 2009. He has not worked for them because of the lack of a security clearance. At the end of his tour, he received a signing bonus of \$10,000. Applicant used the bonus to pay some of his small debts, paying the lowest amounts first. Applicant paid at least four debts totaling approximately \$1,000, including a utility debt that is the basic debt listed as in collection at SOR 1.f. He also paid his cable debt which was not listed in the SOR. (Gov. Ex 2, Response to SOR, dated October 26, 2009; App. Ex. B, Statement, dated May 4, 2011) Most of the funds were used to bring his mortgage current. The only income Applicant

has received since December 2009 is his monthly military retirement and disability pay of approximately \$1,400. He relied on his retirement income and his savings for living expenses until he started receiving unemployment in July 2010. (Tr. 36-49, 67-68)

Applicant did not know of the judgment filed by his attorney until he was advised of the judgment by security investigators in late 2009 after returning from overseas. Applicant contacted the attorney about the judgment in November 2009. Applicant did not believe he owed a debt to the attorney since he paid the attorney \$500 up front and told him not to file the papers. The attorney wanted his full fee. He has not been in contact with the attorney since November 2009. He has no plans to pay the debt and satisfy the judgment. (Tr. 21-26)

When Applicant worked as a real estate agent, he did not have a tax preparer assist him in managing his tax requirements. He incurred significant tax liability because he did not pay sufficient quarterly estimated taxes. He admitted the federal tax liability listed at SOR 1.b, for tax years 2002, 2003, 2004, 2006, and 2007. He discussed the tax liability with the Internal Revenue Service (IRS) in February 2011 but did not reach a settlement or agreed payment plan. The IRS wanted a payment plan of \$1,500 month, which Applicant is unable to pay. (Tr. 26-39)

During examination concerning his federal tax liability and lien, Applicant admitted he has not filed his federal and state taxes for tax years 2009 and 2010. (SOR 1.i) In addition, he admitted he did not pay state taxes for tax years 2005, 2006, and 2007, and owes the state \$7,400 in state taxes. (SOR 1.j) In 2008, Applicant did hire a tax service to assist him with filing his taxes. The service assisted him with his 2008 tax return and a refund was applied to the taxes owed. The tax service has not assisted him with the 2009 and 2010 tax returns. His initial intent was to pay the state taxes from pay he received working overseas. However, he was not worked overseas since October 2009 and he is unable to make the payments. He has not been in contact with the state concerning his state tax liability since mid-2010. (Tr. 71-76)

Applicant called the phone company listing the debt at SOR 1.c. They verbally informed him that he did not have a delinquent debt owed them. (Tr. 62-63)

Applicant's car was repossessed because he could not make payments when his real estate business failed, resulting in a debt listed on his credit report as \$18,291 (SOR 1.d). He owed \$18,000 to the creditor at the time the car was repossessed. The car was sold at auction for \$16,000. When he learned that the creditor listed the debt of over \$18,000 on his credit report, he hired an attorney to resolve the debt. The attorney attempted to negotiate with the creditor, but did not receive a reply from the letter he sent to the dealer. (Tr. 63-64; App. Ex. C, Attorney's letter, dated November 20, 2009).

Applicant denied knowledge of the debt at SOR 1.e. He believes it may be a Visa credit card he received in 2007 with a balance for him to pay. He contacted the creditor in 2009 to dispute the charge and the amount of the debt. He has not contacted them since then and does not have any documents to show his dispute. (Tr. 64-67)

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 their obligation 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 as established by credit reports are a security concern. In addition, he admitted at the hearing that he did not file his federal and state income tax returns for tax years 2009 and 2010, and he is indebted on state taxes for tax years 2005, 2006, and 2007. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same)

I considered Financial Considerations Mitigating Conditions (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 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 except for the bankruptcies listed in SOR 1.g and 1.h. Applicant experienced financial problems when he retired from active duty and his pay was cut in half. He filed a Chapter 13 bankruptcy in July 2002. Shortly thereafter, he started working as a real estate agent and made a good income. He was able to pay the Chapter 13 wage earners plan and discharge his debts in June 2007. Bankruptcy is a legal and permissible means of resolving debts. His debts in 2001 were incurred long ago because his pay was cut when he retired from active duty. He took reasonable and responsible action to resolve these debts by bankruptcy. The 2008 Chapter 13 bankruptcy was filed without Applicant's permission by his attorney and does not constitute a security concern.

While he was a real estate agent, Applicant did not manage his income wisely and correctly and incurred significant federal and state tax debts which have not been satisfied. He continued to experience some financial problems because of the collapse of the real estate market, but he did find employment with defense contractors which provided him income. He established that he paid some of his smaller debts. However, his other debts, especially the tax debts, have not been resolved and are current. He

admitted he has not filed his federal and state income tax returns for 2009 and 2010. The conditions causing his financial problems were not beyond his control since they were not caused by the economic downturn, but by his failure to adequately calculate and pay quarterly estimated taxes. These conditions and his actions could recur. Applicant has not established responsible actions to resolve his debts. While he paid some of his debts not listed on the SOR, he has significant unpaid taxes. He has contacted some but not all creditors for his other debts to inquire about his remaining outstanding debts.

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). The mitigating condition does not apply. While Applicant could benefit from financial counseling, he presented no information to establish he even considered or attempted financial counseling. He may have received financial counseling when he filed his Chapter 13 bankruptcy in 2001. But that counseling would have been over ten years ago and before he encountered his most significant debts.

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 reduction of debt through debt payment. An applicant is required to demonstrate that he has an established plan to resolve his financial problems and has taken significant action to implement that plan. Applicant showed a good-faith effort towards his early financial problems by filing a Chapter 13 bankruptcy and having the debts discharged. Applicant's plan for his present debts is to pay his smallest debts first before moving to his large debts. He established that he paid some of his small debts and used his funds to keep his mortgage current. He has not contacted some creditors and does not have payment plans in place. He is not employed and relies only on his military retired pay for income. He has no plans to pay his past due federal and state taxes. In addition, he has not filed his federal and state tax returns for 2009 and 2010 as required. Applicant has not shown he acted with reason and prudence towards his debts, and they are not under control. Applicant has not presented sufficient evidence to mitigate security concerns for financial considerations.

I considered FC MC 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 debt for the repossessed car. He provided information that his attorney has challenged the debt itself and the amount of the debt with the collection agency. He has not received a reply from them. He presented information that he disputes the debt from his attorney on the bankruptcy filing. He paid his attorney an initial fee and told him not to file the bankruptcy action.

The attorney filed the action and charged Applicant. Applicant only called the attorney once to resolve the debt. He has taken no further action to satisfy or contest the judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance 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 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 served 20 years on active duty and retired with an honorable discharge. I considered that while on active duty he had a security clearance with access to classified information. There is no indication he had any issues concerning his access to classified information while on active duty.

Applicant incurred delinquent debt when he left active duty and his pay was cut. He filed and completed a Chapter 13 bankruptcy discharging his debts incurred when he left active duty. However, he has other significant debts that he incurred later that he has not resolved or satisfied. He did not present sufficient information to establish that these financial problems were caused by conditions beyond his control. His tax debts were incurred because he did not take the appropriate steps to account for his income from his employment as a real estate agent and pay estimated taxes. This is the procedure followed by real estate agents to account for their tax liability. He did not establish his good-faith efforts to resolve these taxes and paying his past due obligations. Applicant has not established a sufficient "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of a significant amount of his debts. His efforts to resolve his finances have only been minimal at best. He made limited inquiries concerning his finances and presented evidence of only minimal payment of his delinquent debts. He has not presented enough information to show he is taking reasonable and responsible action to resolve his financial issues. His

management of his finances shows carelessness and unconcern. This indicates he will be unconcerned, irresponsible, and careless regarding the safeguarding of classified or sensitive information. Applicant's failure to take adequate action to manage and resolve his debts establishes that he is not suitable for a security clearance. I conclude Applicant has not mitigated the security concerns arising from his financial situation. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge