



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 10-06023

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2012

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On February 10, 2010, 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 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 May 2, 2011, 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 July 1, 2011.

Applicant answered the SOR on July 11, 2011, admitting the six allegations under Guideline F with explanation. Department Counsel was prepared to proceed on August 31, 2011, and the case was assigned to me on September 28, 2011. DOHA issued a Notice of Hearing on October 20, 2011, scheduling a hearing for November 9, 2011. Department Counsel notified Applicant of the hearing date on October 2, 2011. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified and offered four exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted six additional documents that I marked and admitted into the record as App. Ex. E through J. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 6, e-mail, dated November 28, 2011) DOHA received the transcript of the hearing (Tr.) on November 21, 2011.

Findings of Fact

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

Applicant is 53 years old. He served on active duty in the Navy for four years from 1975 until 1979. During his Navy service, he was an aviation technician and was screened for the Personnel Reliability Program, and he had access to classified and nuclear information. He has had access to classified information since 1992 while employed by defense contractors. He was married twice from 1976 until 1996, and from 1998 until 2006. He has two children who are emancipated. He has been employed by a defense contractor since August 2009 as an aviation technician. His monthly net income is approximately \$3,200. His net monthly expenses are \$3,040, leaving \$160 in discretionary funds. (Tr. 11-13, 30-32; Gov. Ex. 1, e-QIP, dated February 10, 2010; Gov. Ex. 3, Response to Interrogatory, dated October 27, 2010, at 20)

A credit report (Gov. Ex. 5, dated November 3, 2010) and Applicant's responses to the interrogatory (Gov. Ex. 2, dated December 20, 2010; Gov. Ex. 3, and Gov. Ex. 4, dated October 27, 2010) show the following delinquent debts for Applicant: a tax lien by a state for \$15,888 (SOR 1.a); a debt to a storage company in collection for \$475 (SOR 1.b); a medical account in collection for \$8,859 (SOR 1.c); a credit card in collection for \$6,550 (SOR 1.d); and a telephone account in collection for \$302 (SOR 1.e). Also noted as a security concern is Applicant's failure to file a federal income tax return for 2008 (SOR 1.f).

Applicant and his wife ran a computer service business. Applicant was the systems administrator and technician providing the service, and his wife was the bookkeeper and business manager. Funds were available to pay all taxes and Applicant believed that all required taxes were being paid appropriately and on time. When he and his wife were divorcing, he learned that she did not pay the required state employment

taxes. The state tax lien at SOR 1.a pertains to business taxes owed the state. The state lists the taxes as \$5,064.20. After learning of the debt and lien, Applicant contacted the state and settled the debt for \$1,617.64. Applicant paid the settlement. (Tr. 19-20; App. Ex. B, Bank Statement and Tax Documents, dated October 31, 2011; App. Ex. C, Settlement Offer and payment, dated November 2, 2011; App. Ex. E, Release of Lien, dated November 18, 2011)

SOR debt 1.b is a debt for a storage facility that is in collection for \$475. In response to the SOR, Applicant provided information that the debt was paid in full on November 11, 2009. (Tr. 20; See Response to SOR, dated June 10, 2011, Receipt dated November 11, 2009)

SOR debt 1.c pertains to \$8,859 in dental service Applicant received before he was divorced. Applicant traded his computer services to the dentist for the dental services. The dentist was to bill him through the dentist's credit company for the difference in the services rendered and received. Applicant never received a reconciliation of the bills but believes he has not been credited with the provided computer service. At best, he believes he owes only approximately \$2,000. He is not sure the dentist is still in practice, and there is some indication that the dentist was arrested for fraud. Applicant is still in discussion with the collection agency. The debt has not been resolved. (Tr. 22-24, 34)

SOR debt 1.d is in collection and owed to a department store. The \$6,550 debt was incurred by his wife when she purchased items for her own use. Applicant and his wife agreed that she would pay this bill. She has not paid the bill, so Applicant is now required to pay it. Now that he has paid his other debts, he intends to start settlement discussions with the collection agency. (Tr. 24-25, 29-30)

SOR 1.e is a telephone debt incurred by the computer service business not paid by his wife. Applicant settled the debt for \$311.72 and paid the settlement. (Tr. 20; See Response to SOR, Letter, dated May 19, 2011)

SOR 1.f alleges Applicant did not file his 2008 federal income tax return. Applicant was divorcing and moving to another state when the 2008 taxes were required to be filed. He filed the 2008 tax return late. (Tr. 22-24; See Response to SOR, Tax Documents for 2008). It was also noted that Applicant was on extensive travel for his company in the spring of 2011 and had not filed his 2010 federal tax return. Applicant has filed his 2010 tax return and is due a refund of \$204. (App. Ex. F, Postal Receipt, dated November 22, 2011; App. Ex. G, Tax Preparer Statement, dated November 21, 2011; App. Ex. H and I, Form 1040 EZ and tax documents, Tax Return 2010, dated November 22, 2011)

Applicant's performance evaluation shows that he is a valued employee. He was rated as a very hard worker who was goal oriented. He timely completes all tasks. He is constantly teaching other team members how to perform tasks. He was rated at 4.7 on a 5 point scale which is considered outstanding. (App. Ex. A Evaluation, dated January 11, 2011) Applicant also presented information to show he paid in full a loan that was not listed on the SOR. (Tr. 18-19; App. Ex. D, Receipt, dated November 4, 2011)

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 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 and Applicant's admissions raise Financial Considerations Disqualifying Conditions 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, and local tax returns as required or the fraudulent filing of the same). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems from a failed business, a divorce, and a move to a new location.

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 apply. Applicant and his wife owned a computer service company. Applicant's wife managed the business affairs. Applicant believed all business taxes were being paid. The failure to pay the state taxes was caused by his wife and was a condition beyond his control. When Applicant and his wife divorced, he learned that the state employment taxes had not been paid. He settled and paid the state taxes. He traded his computer service for dental service, but the dentist did not credit him with the computer services he provided. He incurred other debts when he was divorcing and moving. These debts have been paid. His wife incurred another debt that she agreed to pay. However, she has not paid the debt, and Applicant is now responsible for the debt. He is making arrangements to settle and pay the debt. He is current with filing all required tax returns and he has paid his taxes.

Applicant acted reasonably and responsibly towards his finances under the circumstances. He contacted the creditors when he learned of the delinquent debts. He settled or paid three of his debts and is current with filing his tax returns and paying any taxes owed. He disputed one debt and will start paying the one remaining debt. He established a clear understanding of the status of his finances. Applicant has sufficient income to pay his debts, and he is current with his present debts. His finances are under control. He has steady and good employment and is well-regarded by his employer. He is living within his means. He is not likely to incur additional debts. Applicant 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 must demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant is resolving his delinquent debts. He contacted the state and settled the state tax debt. He settled and paid two other debts. He is current with filing and paying his federal and state taxes. He disputed a debt for dental service he believes was paid by bartering his computer service for the dental service. He has one debt remaining from his wife that he is starting to pay. His effort with creditors to settle and pay his debts is significant and credible information to show a desire to resolve debt. His settlement and payment of debts establishes a meaningful track record of debt payment. His effort to resolve his delinquent debts shows a reasonable and prudent adherence to financial obligations and establishes a good-faith effort to resolve and pay debts. His past delinquent debts do not 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 a dental debt. Applicant bartered his computer services for the dental service. The dentist did not credit Applicant’s services so Applicant disputed the amount of the debt. The dispute has not been resolved. Applicant established a reasonable and good-faith basis for his dispute of the debt. Based on all of the financial information provided by Applicant, he has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's four years of honorable active duty Navy service. I considered that Applicant has successfully been granted a security clearance in the past. I considered that Applicant is a good employee and highly regarded by his employer. Applicant's financial problems were caused by circumstances beyond his control. His wife was responsible but did not pay the state business taxes owed. He paid the state business taxes. He settled or paid all but two of his delinquent debts. He disputes the amount of one of the debts and will start to repay his remaining delinquent debt shortly. He lives within his means and is not incurring additional delinquent debts. Applicant established a good-faith effort to pay or resolve his delinquent debts. His actions to pay and resolve his past financial obligations indicate that he will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations. He is 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.f: 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