



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



In the matter of:)
)
)
) ISCR Case No. 10-06975
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Ronald C. Sykstus, Esquire

February 9, 2012

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 denied.

Statement of the Case

On January 18, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew 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 16, 2011, to Applicant detailing security concerns for financial considerations under Guideline F. 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 May 25, 2011.

Applicant answered the SOR on July 20, 2011. He admitted all 19 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 10, 2011. I convened the hearing as scheduled. The Government offered seven exhibits which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant and two witnesses testified. Applicant offered nine exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through I. DOHA received the transcript of the hearing (Tr.) on November 22, 2011.

Findings of Fact

Applicant admitted the allegations under Guideline F. His admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 49 years old and has been employed as a field engineer by the same defense contractor for over 18 years. He is a high school graduate but has some college credits. Applicant served as a radar technician on active duty in the Air Force for over nine years from 1983 until 1992. His Air Force position was being converted to a civilian position, so Applicant left the Air Force with a bonus and took a civilian position with the defense contractor doing the same job he did in the Air Force. He continuously worked for the same contractor since then in various locations. He held a security clearance since starting active duty in 1983. He has been married for over 29 years and has three children in their twenties. Two still live at home. He supported six people in his household until recently. Applicant and his wife have a combined monthly income of \$4,998 with monthly expenses of \$4,798, leaving monthly discretionary funds of \$200. (Tr. 20-25, 61-67; Gov. Ex. 1, E-QIP, dated January 8, 2010; App. Ex. A, DD 214))

Credit reports (Gov. Ex. 4, dated January 26, 2010; Gov. Ex. 5, dated November 10, 2010; and Gov. Ex. 6, dated April 18, 2011) and Applicant's answers to interrogatories (Gov. Ex. 2 and Gov. Ex. 3, dated January 14, 2011) show delinquent consumer credit cards and loans for Applicant total approximately \$108,000. Some of the credit card debts are large, including cards that are in collection for \$10,000, \$11,000, \$16,000, and \$25,000. Specifically these debts include a credit card debt in collection for \$6,467 (SOR 1.a); a phone bill in collection for \$453 (SOR 1.b); a utility bill in collection for \$225 (SOR 1.c); a charged-off credit card debt of \$9,076 (SOR 1.d); a charged-off credit card account for \$4,578 (SOR 1.e); a credit card account in collection for \$3,378 (SOR 1.f); a credit card account in collection for \$6,061 (SOR 1.g); a department store credit card account in collection for \$304 (SOR 1.h); a department store credit card account charged off for \$3,747 (SOR 1.i); a credit card account in

collection for \$25,000 (SOR 1.j); a charged-off credit card account for \$16,000 (SOR 1.k); a charged-off credit card account for \$11,000 (SOR 1.l); a mortgage that was foreclosed on a balance of \$270,000 (SOR 1.m); a home improvement store credit card account placed for collection for \$3,939 (SOR 1.n); a credit card account in collection for \$7,046 (SOR 1.o); a credit card account in collection for \$2,459 (SOR 1.p); a credit card account charged off for \$5,500 (SOR 1.q); a department store credit card account charged off for \$1,900 (SOR 1.r); and a charged-off credit card account for \$2,416 (SOR 1.s). It appears that the credit limits on some cards were "maxed out." Most of the credit card purchases were for general merchandise and not necessarily big ticket items. Applicant acknowledges all of these debts, and they are not joint debts with his wife. (Tr. 38-40; See, Answer to SOR, dated July 20, 2011)

Applicant stated his financial problems started because he spread himself too thin in regard to paying his bills. He had to carefully manage his finances to be sure he could pay bills. In early 2008, his phone bill doubled from \$400 to \$800 because his family members used their phones excessively. He paid the phone bill thinking he could catch up with his other bills. He also had accumulated debt for transportation, food, and lodging because he and his entire family traveled to another state to visit his wife's mother who was very ill. His wife did not handle her mother's illness well so they had to make the trips. His mother-in-law passed away in June 2008. His wife's younger brother was slain in 2008, and her father and another brother passed away in 2009. They had to make trips because of these tragedies. (Tr. 25-29)

After Applicant paid the higher phone bill, he was unable to make his mortgage payments. He talked to the mortgage company about paying the arrears and the mortgage company accommodated him by raising his mortgage payments \$400 a month to help in paying the arrears. He was able to make the higher payments for a short time. He sold a high-priced truck and bought a cheaper car. He received an offer from his company to move to a new location for a promotion and a higher-paying position. His company was to help him sell his house and move. He learned that to sell the house, he had to get expensive work done to correct some issues. (Tr. 29-31)

In addition to the expenses associated with his travels to see his in-laws, he purchased gifts and items for his family using consumer credit in 2007 and 2008. He had approximately eight active credit cards at the time. He purchased Christmas gifts, computers, car tires, television sets, video game consoles, and remodeled the kitchen in his former house. Applicant believes he paid the phone account at SOR 1.b, and the utility bill at SOR 1.c. He has no receipts for any payments on these accounts. He made small payments on some of the credit card debts to include \$100 on SOR 1.e, and \$200 on SOR 1.o. He was receiving credit card bills. He would pay some but others he was unable to pay. When he missed payments, the credit card companies raised his interest rates making his payments and debt larger. He believed that he could make the payments on the cards even if the payments were only the minimum required to keep the cards current. Of the over \$108,000 listed in the SOR as delinquent debt, he thinks he charged and purchased approximately \$60,000 to \$70,000 worth of goods acquired.

The remaining debt was interest, fees, and penalties added by the credit card companies or the collection agencies. (Tr. 42-46, 50-61)

When he got the final SOR, he knew that the only means of satisfying his debt and retaining a security clearance was to file for bankruptcy protection. His debts were recently discharged in bankruptcy. His only two remaining debts are his car payment and a payment on a timeshare. He wanted to turn in the timeshare but realized that his wife was on the deed and if his timeshare debt was discharged, she would own the entire debt. He now has only one credit card which is a business credit card. As part of the requirements for a bankruptcy discharge, Applicant received credit and financial management counseling. (Tr. 31-34, 46-50, 61-62; Gov. Ex. 7, Bankruptcy Documents, dated July 15, 2011; App. Ex. E and App. Ex. F, Bankruptcy documents, dated July 15, 2011; App. Ex. G, Bankruptcy Discharge, dated October 12, 2011; App. Ex. H, Credit Counseling Certificate, dated July 1, 2011; Financial Management Certificate, dated September 13, 2011)

Applicant is well regarded by his employer. His performance ratings from 2003 through 2010 consistently show that he is an exceptional contributor, the highest rating possible. The reports note that Applicant is willing to go the extra mile for the company and exceeds key objectives and expectation. He has leadership skills and a can-do, self-starting work ethic. He received an award for outstanding performance and was recognized in the company's newsletter. (App. Ex. B, Performance Appraisals 2003-2010; App. Ex. C, Newsletter, undated; App. Ex. D, Galaxy Award, Summer 2001)

One of Applicant's fellow employees, a retired Army Command Sergeant Major, testified that he worked with Applicant on a daily basis for over a year. The witness held a security clearance for many years and is aware of the requirements for access to classified information. He has no concerns about Applicant having access to classified information. He is aware that Applicant filed for a discharge in bankruptcy and does not consider Applicant to be a security risk. (Tr. 68-71)

Applicant's immediate supervisor for the last two years testified that he sees Applicant daily. He is aware that Applicant's debts were discharged in bankruptcy. He has no concerns about Applicant's security worthiness. He recommends that Applicant be granted access to classified information. (Tr. 71-77)

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 and admitted by Applicant raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); AG ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). The evidence indicates both unwillingness and inability to satisfy debt. The high credit card debt shows frivolous or irresponsible spending beyond one's means with no evidence of a realistic plan to pay the debt except to file bankruptcy.

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 do not apply. There were significant delinquent debts starting in 2007 which were only recently discharged by bankruptcy. His delinquent debt was frequent and recent. Some of the debt may have been incurred when Applicant and his family traveled to care for his in-laws. These debts were not incurred under unusual circumstance and were not beyond his control. He and his wife could have found more economical ways to visit and care for relatives. Applicant also was not able to distinguish the debt attributed to the family travels from other consumer debt.

Almost all of Applicant's delinquent debts were incurred when he used credit cards to purchase non-essential consumer items for his family. Applicant has been employed by the same defense contractor for over 18 years and has the salary and means to provide for his family. His financial problems were well within his ability to control and were not incurred under any unusual circumstances. Since these debts did not happen under unusual circumstances or by conditions beyond Applicant's control, they could recur. Applicant lived beyond his means by incurring significant consumer credit card debt to purchase non-essential items for his family and himself, and then consistently not paying or only paying the minimum due on a credit card account. His credit card financial management shows he has not acted responsibly or reasonably toward his finances.

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 information to show that as part of his bankruptcy

petition he received credit and financial counseling. He filed bankruptcy and his debts have been discharged. This is a clear indication that his financial problems have been resolved.

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 must demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan. In addition, an individual who is financially irresponsible may also be irresponsible in managing and handling 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.

Applicant filed bankruptcy in June 2011, and his debts were discharged in October 2011. As of the hearing, he was debt free except for a car payment and a time share that was not economically feasible to discharge. Bankruptcy is a legal and permissible means of resolving debt. However, for security clearance purposes, the facts and circumstances causing delinquent debt and the steps taken to resolve the debt must be considered to determine an individual's security worthiness. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Applicant overextended his finances by using credit cards to finance the purchase of non-essential items for him and his family. He "maxed out" some of his cards to purchase luxury items like televisions and game consoles. His use of credit to buy items beyond his means to pay could certainly recur. His failure to manage his credit and his continual use of credit cards when he was not even able to make minimal credit card payments is financial irresponsibility and does not show reasonableness, prudence, honesty, and an adherence to financial duty and obligation. It only shows a desire to gain consumer goods without regard to the means and ability to pay for those goods. Even though he is now debt free by virtue of his bankruptcy discharge, he has not established for security clearance purposes good-faith financial action or a meaningful track record of debt payment. He has been steadily employed for over 18 years and he should have the ability to live within his means. By accumulating large credit card debt that he is unable to resolve, he failed to establish that he acted reasonably or prudently based on an adherence to duty or obligation in regard to his debts. His unreasonable and irresponsible financial actions indicate that his past delinquent debts still reflect adversely on his trustworthiness, honesty, and good judgment. He has not 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. Applicant incurred delinquent debt when he overextended himself financially by using credit cards to purchase non-essential items. He paid little if any of his delinquent SOR debts. Since he was unable to make payments, he filed a bankruptcy petition and the debts were discharged. He is debt free but his actions in accumulating the large credit card debt raise significant security concerns. Applicant's management of his finances and debt resolution show an unreasonable, irresponsible, and self-serving disregard for rules and regulations. Applicant is gainfully employed and should have sufficient funds to live within his means. He has chosen not to do so.

A decision on access to classified information takes into account a person's reliability, trustworthiness, and ability to protect classified information. A person's self-discipline and integrity is the most effective means of protecting classified information. Evidence from a person's life history of unreliability, untrustworthiness, and failure to follow rules and regulations is an indication that the person will not properly protect classified information. Applicant's management of his finances as shown by his use of credit card debt shows that he is unreliable, untrustworthy, and has no intention of following rules and regulations. His unwillingness to resolve his just and legitimate debts through a normal payment process indicates he may not show sufficient concern, responsibility, and care protecting classified information. Applicant failed to mitigate security concerns based on his finances. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. I conclude Applicant has not mitigated security concerns arising from financial considerations. 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

Subparagraphs 1.a – 1.s: 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 a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge