



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 10-08186

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: Dennis Sysko, Esquire

01/15/2013

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 24, 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 Department of Defense (DOD) 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, DOD could not make the preliminary affirmative findings required to issue a security clearance. DOD issued a Statement of Reasons (SOR), dated July 18, 2012, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on July 26, 2012. He admitted allegations 1.b and 1.c under Guideline F but denied allegation 1.a. He denied the three allegations under Guideline E. Department Counsel was prepared to proceed on October 16, 2012, and the case was assigned to me on October 19, 2012. DOD issued a Notice of Hearing on November 2, 2012, scheduling a hearing for November 27, 2012. I convened the hearing as scheduled. The Government offered 15 exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 15. Applicant and one witness testified. Applicant offered 17 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through Q. I received the transcript of the hearing (Tr.) on December 5, 2012.

Findings of Fact

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

Applicant is a 43-year-old technology analyst for a defense contractor. He is a high school graduate with certificate training in technology. He has been employed by the defense contractor for almost four years. He married in April 1996 and has three children ages 11, 13, and 14. He has held a security clearance since the early 2000s. Applicant's present yearly income is \$111,000, and his wife's yearly income is \$48,000 providing them a combined yearly income of over \$150,000. Their total monthly net income is \$9,146, with monthly expense of \$7,366, leaving a net monthly remainder of \$1,779. Applicant is current with his rent and his other debts and bills. (Tr. 40-43, 81-86; Gov. Ex. 1, e-QIP, dated February 24, 2010; Gov. Ex. 2, Response to Interrogatories, dated March 27, 2012; Gov. Ex. 5, Applicant's Performance Growth Account Statement; Gov. E. 13, e-QIP, dated September 26, 2008; Applicant's Declaration for Federal Employment, dated December 4, 2007; Gov. Ex. 15, e-QIP, dated December 18, 2007; App. Ex. J, Tax History, 2007 to 2011; App. Ex. K, Credit History dated November 11, 2012; App. Ex. L, Pay Stub, dated November 16, 2012; App. Ex. O, lease, dated July 15, 2011; App. Ex. P, Personal Financial Information)

Under the financial consideration security clearance guideline, the SOR alleges that from October 2010 to February 2011 Applicant used his company-issued credit card for personal expenses in violation of company policy (SOR 1.a); that Applicant filed a Chapter 7 bankruptcy in March 2010 with liabilities of \$685,951.34 which was discharged in November 2010 (SOR 1.b); and that Applicant filed a Chapter 13 bankruptcy in April 2003 which was discharged in February 2005 (SOR 1.c). Under the personal conduct security clearance guideline, the SOR alleges that Applicant deliberately failed to disclose in response to a question on his security clearance application that he owed approximately \$30,000 in federal and state taxes from 2006 (SOR 2.a); that he deliberately failed to report on the security clearance application a criminal charge for confining an unattended child in February 2008 (SOR 2.b); and as noted in SOR allegation 1.a that he used his company-issued credit card for personal expenses in violation of company policy (SOR 2.c). Applicant admitted the bankruptcies but denied using the company-issued credit card in violation of company policy. He denied deliberately providing false information in response to questions on his security clearance application.

Applicant was attending technology courses when he married in 1996. He completed his schooling in 1998 and starting his career in technology. He was not making a good salary at that time. His wife had been employed in her family's business and was the primary source of their income. Her yearly income was approximately \$50,000, and his yearly income was approximately \$30,000. They purchased a home in 1998 for approximately \$160,000 with monthly mortgage payments of approximately \$1,100. In four years, they had three children (1998, 1999, and 2001). His wife had to stop working in 1999 shortly after the birth of their first child. The children all had medical issues associated with being diagnosed with autism, Asperger's syndrome, attention deficit disorder, and learning disabilities. The children's medical condition required Applicant's wife to stay home to care for the children. There were also significant monthly expenses from the children for professional care, prescriptions, treatment, and special training. Applicant and his wife modified their living expenses to attempt to accommodate the lower income. (Tr. 43-46, 93-99; App. Ex. M, Medical Conditions, undated)

During the early part of their marriage, Applicant's wife managed the family finances since she was at home and had the financial ability. They were unable to continue to meet all of their expenses in part because of the significant medical expenses. Applicant did have health insurance but it did not cover all of the children's medical expenses and special training. In 2003, Applicant's wife told him that they were having financial problems and the bank intended to start foreclosure proceedings on their house. They decided to file a Chapter 13 bankruptcy to gain some time to restructure their finances or sell the house. They made the \$435 monthly bankruptcy payments for approximately 18 months until they sold the house in September 2004 for a profit and had a net gain of \$10,000. Applicant was required to pay rent on a new place to live for a year in advance because of their poor credit rating from the bankruptcy. The profit from the sale of the house was used to pay the advanced rent. (Tr. 46-48; App. Ex. D, Settlement Documents, dated August 19, 2004)

Applicant's wife subsequently received a significant inheritance of between \$300,000 and \$400,000. The funds were used in part to pay the approximately \$25,000 remaining bankruptcy debts. All debts in the bankruptcy, except for a car, were paid in full and the bankruptcy debts discharged in May 2005. The car loan was also paid in full later. (Tr. 48-52, 100-106; Gov. Ex. 6, Bankruptcy Documents, dated April 9, 2003; Gov. Ex. 10, App. Ex. E, Bankruptcy Discharge, dated May 18, 2005)

Applicant and his wife wanted to move to a location having better schools for the children, providing opportunities for his wife to be employed, and having a better work commute for Applicant. They wanted the children in special schooling with better access to care givers. In August 2006, Applicant and his wife used over \$300,000 of her inheritance to make a down payment on a new house. They also used the funds to purchase other items including a motorcycle and furniture. The price of the house was approximately \$700,000. The large down payment was required because of the status of their finances from the previous bankruptcy. They had now used all of the inheritance. The initial mortgage was an adjustable rate with monthly payments of \$2,600. They had anticipated that his wife would find employment and there would be financial stability. She initially found employment but was laid off a number of times.

There was a point where it was more economically feasible for her to stay home than to pay child care expenses. At this time, his monthly net income was approximately \$3,800. (Tr. 53-62, 106-111, 117-120)

Applicant and his wife refinanced the house twice to obtain funds to renovate the house. In November 2006, they received over \$53,000 from a refinancing and used the funds to finish the basement. However, the mortgage broker fees were over \$37,000 increasing their mortgage. In August 2007, they again refinanced realizing \$47,000 to build a deck and do other work. Again, the mortgage broker fees were over \$29,000 again increasing their mortgage. Applicant and his wife at the time did not realize the high mortgage broker fees. If they had realized the cost of refinancing, they would not have refinanced the mortgage. The monthly mortgage payments were now approximately \$3,700. (Tr. 63-67, 112-115; App. Ex. F, Settlement Documents, dated November 29, 2006; App. Ex. G, Settlement Document, dated August 8, 2007)

The housing market collapsed and Applicant's house was now worth less than his mortgage. (App. Ex. H, Housing Valuations, undated) His wife was also unemployed for at least eight months in 2008. Applicant was unable to pay the mortgage and meet his other expenses. He tried to refinance the mortgage but it lowered the monthly payments less than \$100. An increase in the property taxes negated any savings. In addition, Applicant and his wife found a new autism program to assist with the education and socialization of their children. They wanted to enroll their children in the program even though the monthly expenses were significant. (Tr. 52-62; App. Ex. N, Pamphlet)

Applicant made the mortgage payments until sometime in early 2010. They were using payday loans to get by each month. There came a point where they had to decide how they could manage their finances and have their children in the autism program which was an unanticipated expense. They moved from the house in August 2010, and were unable to pay other bills because of the medical demands. They filed for a Chapter 7 bankruptcy in March 2010, and their debts were discharged on November 8, 2010. In completing the bankruptcy Applicant and his wife attended the mandatory credit and financial counseling. He learned a lot about financial planning from the counseling. (Tr. 79-80, 115-124; Gov. Ex. 4, Bankruptcy Documents, dated March 23, 2010; Gov. Ex. 7, 8, 9, 10, and 11, Credit Bureau Reports, various dated in 2007, 2008, 2010, and 2012; App. Ex. I, Credit Counseling Statements, dated March 18, 2010)

Applicant received a credit card from his employer issued by a major credit company to use for his travel expenses with the company. He would charge travel expenses to the card, submit the charges to his company, receive reimbursements, and pay the credit card company bill. The credit card bill came to Applicant and the only notice to the company was when the bill had not been paid on time. When Applicant received the reimbursement from the company, he would give the check to his wife who was to pay the credit card bill. Applicant believed that the card could be used for personal expenses as long as the bill was paid in full at the end of the month. Applicant signed the policy documents provided by his employer outlining the policy that the card would not be used for personal expenses but just business expenses. He did not read the documents when he signed them because they were in a file with other employment information. (Tr. 62-69, 129-140, 165-168)

In October 2010, Applicant's wife asked him to use the company credit card for personal expenses so their bank debit card could be used as a resource to pay other debts. He used the card for everyday personal purchases and expenses. Applicant believed that his wife was paying the credit card bill in full each month. He did not know that there was a large balance of over \$6,000, and the card was not paid until he was confronted about the debt by his company in February 2011. He was counseled and now clearly knows that he cannot use the company-issued credit card for personal expenses. Applicant agreed to a payment schedule on February 17, 2011, and the debt was paid in full by May 31, 2011. (Tr. 69- 71, 125-129; App. Ex. C, Payment schedule and paid in full notice, dated May 31, 2011)

A part of the inheritance received by Applicant's wife was subject to federal taxes. While the tax debt was to his wife, Applicant was also liable because they filed their taxes jointly. Applicant's wife thought she may have some taxable income in the inheritance but did not believe it was very much. They used the entire inheritance as a down payment on the second house and make other purchases. In 2007, they were advised that they had a tax debt of approximately \$34,000. They established a payment plan with the Internal Revenue Service. (Tr. 71-72,146-152)

When Applicant completed his security clearance application in February 2010, he knew of the payments of the inheritance tax to the IRS. In response to question 26 which asked if he failed to pay Federal, state, or other taxes required by law, Applicant responded "no." Applicant believed that he did not have to list this tax debt because he was paying the taxes per the agreement. They were current with all payments so he did not believe he owed a tax obligation. The tax obligation has now been paid in full. (Tr. 72-73, 152-160; Gov. Ex. 2, Response to Interrogatory, dated March 27, 2012, at 518-519)

In February 2008, Applicant had his two youngest children, ages nine and seven, in his car with him. The age in the state to leave a child unattended in a car was eight. They had stopped to get something to eat so the boys had food and toys with them. Applicant saw a sale on electronics at a store and he wanted to make a purchase. The boys did not want to leave the car since they were occupied. Applicant parked the car close to the store, found the item he wanted, but he had to go into the store to complete the purchase. An individual reported to the state police that the children were in the car unattended. When Applicant exited the store, a state policeman was at the car. Applicant was never handcuffed, placed in a jail cell, or required to post bail. The police officer merely took Applicant's phone number. The policeman consulted the state's attorney who decided to pursue the matter. The officer called Applicant and asked him to come to the police station to sign a document. Applicant did go to the station and signed the document. The police officer advised him to hire an attorney. The attorney advised him that he would take care of the matter since it was a family court issue. He later met the attorney at the courthouse and was told the matter was settled and on the stet docket. He was advised if he got in any additional trouble the matter could be reinstated. He was told he was free to go. It appears the police officer did not follow the proper procedures for this type allegation. (Tr. 73-77; Gov. E. 12, Case Information Record; App. Ex. B, Statute for Unattended Child and Letter, dated September 6, 2012)

In completing the security clearance application, Applicant answered no to question 22 asking if he had ever been issued a summons, citation, ticket, or appeared in court in a criminal proceeding against him. The statute that Applicant was charged under is a family court statute with trial in the state district court. When completing the security clearance application, Applicant was confused since he was told it was a family court matter. Prior to completing the security clearance application, Applicant discussed his responses with his wife. They concluded that the matter did not fit the requirement to be reported on the application. Applicant signed a charging sheet at the police station. However, because his attorney told him it was a family court matter, he believed the matter was not criminal but a family court issue. (Tr. 77-79, 160-165; App. Ex. B, State Statute, Unattended Child)

Applicant's wife testified that she worked in her family's business for 13 years as an accountant. She was employed in the family business when she and Applicant married. She stopped working in 2001 to care for her children and was unemployed until 2006. She then had some sporadic employment until the middle of 2008. In 2001, her income was more than her husband's. When she stopped working in 2001, the family lost a lot of income. In addition, they had significant medical expenses for the children. Their house was to be foreclosed because they could not pay the mortgage. They filed a Chapter 13 bankruptcy in 2003 to stay the foreclosure. The house was sold in 2005 and the bankruptcy paid off. At the time, she was managing the family finances. She did not tell Applicant that they had significant financial issues. She tried to manage the problem herself. (Tr. 169-180)

Applicant and his wife used the remainder from the sale of the first house to pay a year's rent on a place to live because of poor credit from the bankruptcy. Her mother passed away and she inherited approximately \$400,000. They used most of her inheritance for a down payment on a new home. They refinanced the home twice to finish the basement and add a deck. They also used the refinance funds to pay some of the taxes owed on the inheritance. They negotiated a payment plan with the IRS for the remaining taxes that were owed. She could not return to work because she had to care for the children. One child was unable to be sent to a babysitter or go to school because of his condition. She tried working but could not keep a job because of the demands of child care. They found a program for autism that would help the children learn life skills with their illness. It was expensive, costing about \$400 monthly. The results for the children were good. Their mortgage payments were high and they could no longer afford the house which had decreased significantly in value because of the housing financial crisis. The only option to keep the children in the program and care for them was to get out from under their housing costs and file a Chapter 7 bankruptcy. She and her husband attended financial and budget counseling as part of the bankruptcy and they learned a lot of good practices. (Tr. 180-190, 194-196)

Her understanding of the use of the company credit card was it could be used for other than business expenses as long as the bill was paid each month. She told her husband to use the card for personal expenses to free up some other funds. She did not realize that the card could not be used in this manner. She paid the credit card bills when received but fell behind at times. (Tr. 190-191)

She and her husband discussed his response to the question on the security clearance application concerning taxes owed. She read the question as asking if they had any taxes that had not been paid or not being paid. Since they had an agreement with the IRS to pay the taxes and were current with the payments, she did not believe that the taxes needed to be reported. (Tr. 191-192)

She and her husband discussed whether to list the unattended child matter. They were under the impression it was a family court matter and not criminal. Her husband had not received any information about the charges and only signed a document at the police station at the request of the police officer. (Tr. 192-193)

Her children are currently doing well in school. The situation with their children has improved greatly since 2001. However, their out-of-pocket medical expenses after insurance are now about \$12,000 yearly. She and her husband have stable employment, are stable financially, and meet their bills and expenses with funds remaining. They sparingly use credit cards. They have made financial mistakes in the past and have learned from those mistakes. They want to maintain their financial stability so they can continue to care for their children. (Tr. 194-206)

Applicant presented 11 character letters of reference from government employees, contractors he worked with, friends, and fellow employees. They all attest to his strong character in caring for his children. They also note that he is an excellent employee and has good working relationships with everyone. He is efficient and effective in the performance of his duties. The individuals providing character letters have access to classified information. They all attest to Applicant's excellent reliability, judgment and trustworthiness. They all believe he should have access to classified information. (App. Ex. A (3), letter, dated September 6, 2012; App. Ex. Q, Letters, various dates)

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 filed a Chapter 13 bankruptcy in 2003 and a Chapter 7 bankruptcy in 2008 raising Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). Even though the bankruptcies were either paid off or discharged, the evidence indicates both an inability and an unwillingness to satisfy debt.

Applicant used his company-issued credit card to purchase personal items in violation of company policy. This raises Financial Considerations Disqualifying

Condition AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust).

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.

Bankruptcy is a legal and permissible means of resolving debt. Bankruptcy as a result of financial irresponsibility is of security concern. Also of concern is a failure to change financial practices after the bankruptcy or continued financial irresponsibility. For security clearance purposes, the causes leading to the filing of a bankruptcy should be examined to determine if an applicant acted reasonably and responsibly. Applicant incurred debt because of medical expenses for his children with autism, Asperger's syndrome, and developmental disabilities. The family lost his wife's income when she was unable to work because she had to care for the children. He filed a Chapter 13 bankruptcy in 2003 to stave off foreclosure of his house. The bankruptcy payments were made and the house sold realizing a profit. The debts were paid off. He acted reasonably and responsibly under the circumstances.

The family purchased a house using a large inheritance to make a significant down payment. They twice refinanced the house to take funds to make improvements on the house and pay inheritance taxes. His wife still was unable to work full-time because of the need to care for the children. The children were still incurring significant medical expense beyond insurance. The housing market collapsed and the house was valued less than the mortgage. Applicant could no longer afford the mortgage, pay his children's medical expenses, and pay his other bills when due. He filed a Chapter 7 bankruptcy in 2010 and their debts were discharged.

Applicant acted reasonably and responsibly under the circumstances. In hindsight, he may have purchased a bigger and more expensive house than he could afford on his salary only. However, he wanted to move to an area where the schooling was better for his children and his wife could find good steady employment. Applicant and his wife used an inheritance to make a large down payment to afford the house. Unfortunately, the demands of child care prevented his wife from steady employment. The cost of medical care and therapy for the children continued to increase, and the housing market collapsed. These were conditions beyond his control and are likely not to recur. Under the circumstances, he acted reasonably and responsibly by filing the Chapter 7 bankruptcy. His present finances are under control and he has not incurred any additional debt. He has sufficient funds each month to meet his financial responsibilities with funds remaining. Applicant established that he acted responsibly towards his debts under the circumstances.

I also considered the mitigating conditions in AG ¶¶ 20(a) and (c) in regard to the allegation that Applicant used his company-issued credit card for personal expenses in violation of company policy. I also considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) in regard to this allegation. 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.

Applicant mistakenly believed he could use the company-issued credit card for personal purchases as long as the bill was paid each month. Applicant's wife asked him to use the company-issued credit card for personal purchases to free other credit cards for normal family purchases. When confronted with the policy on company credit card use, Applicant established a payment plan and the debt is paid in full. Applicant has resolved his past delinquent debts showing a meaningful track record of paying debts. He established a reasonable and prudent adherence to his financial obligations. His past financial issues do not reflect adversely on his trustworthiness, honesty, and good judgment.

I also considered Financial Consideration Mitigating Condition 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). Applicant and his wife received the required financial counseling when they filed a Chapter 7 bankruptcy in 2010. They learned budgeting and good financial practices from the counseling and their finances are now stable and under control. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has mitigated security concerns based on financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's responses to financial and criminal 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.

Applicant and his wife owed federal taxes from an inheritance she received. At the time he completed the security clearance application, he was current on an IRS payment plan to pay the taxes. On his e-QIP application for a security clearance, Applicant responded “no” to the question concerning whether he failed to pay taxes as required by law. Also, Applicant had received a citation for an offense concerning leaving a child unattended in a car. He answered “no” to a question concerning whether he had been issued a summons, citation, or ticket to appear in court on a criminal proceeding against him. His failure to list his tax debt and the unattended child criminal charge raises 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 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 was confused whether the inheritance tax qualified as a failure to pay taxes since he had an agreement with the IRS and he was current with his payments. He did not believe he owed any taxes because they were being paid. As for the unattended child issue, he did not believe it was criminal because he was never arrested, jailed, or placed on bail. His attorney advised him and it was adjudicated in family court. I find Applicant’s testimony concerning his confusion responding to the security clearance application questions to be reasonable and credible. He is not an attorney and not sophisticated in understanding the intent and meaning of the questions. He did not intentionally and deliberately fail to respond accurately to the questions on the security clearance application.

In regard to the allegation concerning using the company credit card for personal purchases in violation of company policy, I considered Personal Conduct Disqualifying Condition AG ¶ 16(f) (violation of a written or recorded commitment made by the individual to the employer as a condition of employment). Applicant’s was issued a credit card by his company to use only for business travel expenses according to the company policy. He signed the documents outlining the company policy on use of the credit card. However, he did not read the document because it was given him with other human resource documents. When he and his wife were having financial issues in October 2010, he used the card as requested by his wife for personal purchases rather than his personal credit card. They were trying to keep a good cash flow for their personal finances so they were spreading the purchases over different cards.

Applicant reasonably and honestly believed he could use the card for personal purchases as long as the bill was paid each month. Unknown to Applicant, his wife, who was managing the family finances, did not pay the debt when due. I have considered Personal Conduct Mitigating Condition AG ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur). When advised of the debt and the correct policy interpretation, Applicant established a payment plan, and the debt has been paid in full. He understands the company policy and his finances are under control. This problem is unlikely to recur. Applicant did not deliberately fail to provide accurate information on his security clearance application and other personal conduct problems are unlikely to recur. I find for Applicant as to security concerns under the personal conduct guideline.

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 consider the favorable information provided by Applicant's friends, coworkers, and colleagues. I considered that Applicant is an excellent employee and successfully held a security clearance since 2000. I considered that Applicant's financial problems were caused by circumstances beyond his control. He acted reasonably and responsibly towards his finances under the circumstances. He appropriately filed for bankruptcy protection to hold off foreclosure. He filed bankruptcy again because he had debts he could not pay because of his children's medical expenses, his wife's inability to work because she had to care for the children, and the downturn in the housing market. He is current with his present debts. Applicant established a good-faith effort to pay or resolve his debts. Applicant's efforts to pay and resolve his financial obligations indicates that he will be concerned, responsible, and careful regarding classified information. He did not deliberately fail to provide correct and accurate information on his security clearance application. In addition, he did not deliberately fail to follow the company guidance on use of his company credit card. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations and personal conduct guidelines. Eligibility for access to classified information is granted.

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.c: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a – 2.c: 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