



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08789

Appearances

For Government: Richard Stevens, Esquire, Department Counsel

For Applicant: *Pro se*

October 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 granted.

Statement of the Case

On July 30, 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 20, 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 June 8, 2011.

Applicant answered the SOR on June 10, 2011. He denied the four allegations under Guideline F with an explanation. Department Counsel was prepared to proceed on July 6, 2011, and the case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on August 4, 2011, scheduling a hearing for August 23, 2011. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant and one witness testified on his behalf. He offered four exhibits that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through D. I kept the record open for Applicant to submit additional information. Applicant timely submitted two documents which I marked and admitted to the record as Applicant Exhibits E and F. Department Counsel had no objection to admission of the documents. (Gov. Ex. 5, dated September 5, 2011) DOHA received the transcript of the hearing (Tr.) on September 7, 2011.

Procedural Issues

Applicant does not remember the date he received the Notice of Hearing. He discussed the hearing date with Department Counsel prior to the notice being sent on August 4, 2011. Applicant is entitled to 15 days advance notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on August 23, 2011, and he had sufficient time to prepare. He waived the 15-day notice requirement. (Tr. 5-6)

Findings of Fact

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

Applicant is a 39-year-old high school graduate employed as a security officer for a defense contractor since May 2010. He served over 20 years on active duty in the U.S. Army retiring in January 2010 with an honorable discharge as a Sergeant First Class (E-7). He served overseas in Korea for one year. He also went on two one-year deployments to Iraq, and a one-year deployment to Afghanistan. He also served a tour away from his family in the United States from February 2008 until November 2009. He first married in 1995 and divorced in 1999. He married again in 1999 and is still married. He has three stepchildren. Two are at home and the oldest is grown and on his own.

Applicant's personal financial statement attached to his response to interrogatories shows a monthly income of \$3,399, with monthly expenses of approximately \$2,950, leaving approximately \$450 in discretionary funds. Applicant's wife is a teacher and she started employment just prior to the hearing. She believes her salary will be \$24,000 yearly. (Tr. 10-14; Gov. Ex. 1, e-QIP, dated July 30, 2010; Gov. Ex. 2, Response to Interrogatory, dated March 25, 2011; App. Ex. B, DD 214)

Credit reports (Gov. Ex. 3, dated August 13, 2010, and Gov. Ex. 4, dated April 21, 2011), and Applicant's response to an interrogatory (Gov. Ex. 2, dated March 25, 2011) show the following delinquent debts for Applicant: a credit card collection account for \$1,105 (SOR 1.a); a credit card in collection for \$3,089 (SOR 1.b); a charged-off home equity account for \$14,050 (SOR 1.c); and a credit account in collection for \$350 (SOR 1.d) The total amount of the debt listed on the SOR is approximately \$19,000.

Applicant was unaware of the debts listed in the credit reports until he received the SOR. After receiving the SOR, he investigated the debts and learned that they were opened by his wife while he was either deployed overseas or living apart from the family at another military post in the United States. He had been sending an allotment from his pay to his wife for her to pay the family debts. He was unaware that she had not been paying their bills as they were incurred. His wife has not been honest, truthful, or forthcoming with providing him information on the accounts and debts. The debt for \$1,105 at SOR 1.a is for a credit card his wife opened in both of their names without his knowledge or permission. He researched the debt at SOR 1.b and learned that it was a credit card his wife used to fund some college courses. She opened the account in both of their names using his financial information without his knowledge or permission. (Tr. 29-32, 35-38)

He and his wife opened the account at SOR 1.c to establish a line of credit to use for house repairs and other bills. The original amount of the debt was \$10,000. His wife was to make payments on the debt from the funds she received from his military allotment. She did not pay the debts as required. While he was deployed to another location in the United States, his mail was going to his home address and not to his address at his deployed location. His wife received an offer to settle the debt for a lump-sum payment of \$2,100. She did not give the settlement offer to Applicant until approximately the time he received the Notice of Hearing. His wife made payments of approximately \$1,600 towards the settlement offer. Since the initial settlement offer was for a lump-sum payment, it was not clear if the payments would satisfy the debt. Applicant just prior to the hearing received an additional offer from the creditor for payment of \$300 monthly to satisfy the debt. Applicant will make the payments and satisfy the debt. (Tr. 34-37, 39-40; App. Ex. D, Settlement offer and payments, dated July 2010; App. Ex. F, Settlement offer, dated September 8, 2011)

Applicant does not know the origin of the debt at SOR 1.d. He researched the account but still cannot determine if it is an old account that was paid off or a new account opened by his wife without his knowledge. He and his wife have a joint account with the bank holding the account but it is a savings and checking account which is current. He disputed the debt and the creditor has advised the credit reporting agency to remove the account from his credit report. (Tr. 29-34, 40-42; App. Ex. E, E-Mail, dated August 26, 2011)

Applicant's wife testified that she and Applicant have been married for 12 years and she has three children from a prior marriage. Two are still at home and one is on his own. When they purchased a house in 2004, they opened a joint account to pay

house bills. Her husband was assigned in another part of the United States, but she was unable to accompany him because they could not sell their house. Since they have been married, her husband maintained an account in his name but provided her funds by allotment from his pay for family expenses. The allotment provided was approximately \$3,500 monthly. She also worked as a part-time teacher earning about \$1,000 monthly. She made most of the monthly \$800 mortgage payments but did fall a month or two behind. After paying her expenses, she had about \$400 in monthly discretionary funds. (Tr. 44-55)

Applicant's wife admitted she opened accounts without her husband's knowledge. She was attending school and needed money for tuition, fees, books, and other expenses. She specifically admitted opening the accounts at SOR 1.a and 1.b without her husband's permission and knowledge. Since she was not working, she opened the accounts in their names providing her husband's financial information to open the accounts so she could continue to go to school. The last account she remembers opening was in 2005. She initially felt she could make payments on the accounts. She did make some payments but she incurred other expenses and could not make the required payments. She did not tell her husband of the account or the debts until recently when he applied for a security clearance. She admitted that for a time she had the mail to the house stopped and kept at the post office for her to pick up. She did not want the bills to come to the house for her husband to see them. Her husband provided her funds to pay the account at SOR 1.c but she did not make the payments until she received a settlement offer. (Tr. 44-47, 55-58, 60-62)

Applicant's wife also tried to help her husband get information concerning the debts. She thought the debt for \$350 (SOR 1.d) was an old debt from before they married. She asked for information on the account but has not received a reply. The credit information shows the debt was incurred in 2008 and went delinquent in 2010. Applicant disputed this debt and it has been removed from his credit report. (Tr. 58-62; App. Ex. E, Report, dated August 28, 2011)

Applicant recently took back the responsibility for their finances after learning of the debts. He now manages all of their debts. He tried to go to court to have the debts transferred only to her but was not successful since they are married. She just started a new teaching job that will pay her about \$24,000 a year. (Tr. 62-66)

Applicant's efficiency reports show that while on active duty he was successfully responsible for equipment worth over \$1,000,000. He received many awards and medals and was highly rated. He held a security clearance for almost his entire active duty service. He also attended a credit counseling course while on active duty to be a command credit counselor. (Tr. 22-29; App. Ex. A, NCO Evaluation Reports, various dates; App. Ex. C, Certificate of Command Financial NCO Training, date February 28, 2003)

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 raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). Even though Applicant denied the debts, the debts create a security concern since they are listed in the credit reports. Applicant's testimony concerning his finances was candid and forthright. He provided information to establish the he did not know of the debts and has taken action since learning of them to resolve them.

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. Two of the debts were incurred by Applicant's wife without his knowledge or permission. Applicant provided his wife sufficient funds to pay another debt but she did not make the payments. He did not know of her failure to pay the debt until recently. He successfully disputed a fourth debt since he did not have any information on the debt. These debts were incurred under the unusual circumstance of his wife's action and her failure to tell him of the debts. Her actions in incurring debt were beyond his control since she took affirmative steps to hide her actions from him. Since Applicant has taken control of the family finances, the debts are unlikely to recur. He acted reasonably and responsibly under the circumstances by taking control of the finances, doing what he could to learn of the debts, paying those that he could, and entering a settlement agreement.

I considered AC ¶ 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 took a course in financial counseling while on active duty and became the command financial counselor. He acted responsibly toward this family finances by providing his wife a significant allotment of fund to pay the family expenses when he was deployed. His financial problems are being resolved.

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 an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant incurred the delinquent debts at SOR 1.a, SOR 1.b, and SOR 1.c only because of the improper actions of his wife. He presented information to show his wife opened two accounts without his knowledge or permission and failed to pay them. He provided her funds to pay a joint account but she did not make the payments. The debts that are in his name were not incurred by any of his actions or a failure by him to provide funds to pay the accounts. Applicant did what he reasonably was expected to do to provide funds for his wife to pay and manage the family finances while he was deployed and not at home. The family financial problems stem from her failure to act and not any action on his part.

I also considered AG ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). Applicant disputed the debt at SOR 1.d, and the dispute was resolved in his favor.

Applicant's reasonable actions and methods to manage the family finances provide significant and credible information to establish a good-faith effort to manage and resolve family finances. His actions were reasonable and prudent under the circumstances and show honesty and an adherence to his financial duties and obligations. His reasonable and responsible efforts indicate that the delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment. He 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 over 20 years of honorable service in the Army. I considered that he had successfully managed and had responsibility for very expensive military equipment. I considered his excellent duty performance, and his many deployments away from his family. I considered that he was a financial counselor for his unit.

Applicant's financial problems arose from conditions beyond his control. Three of the SOR debts were incurred by his wife's failure to act responsibly towards the family finances. She incurred debt in his name without his knowledge or permission. He provided her sufficient funds to pay debts but she did not pay the debts. His actions show a good-faith and reasonable attempt at a "meaningful track record" of debt payment. He successfully disputed one of the debts. The family financial problems are the responsibility of Applicant's wife and not him. Applicant's actions to manage and pay his financial obligations indicate 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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