



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-09489
)
Applicant for Security Clearance)

Appearances

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

05/30/2012

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 18, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance 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 explain 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 September 20, 2011, detailing security concerns for financial considerations. 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).

Applicant answered the SOR on December 23, 2011. He admitted all of the 13 allegations, except one (SOR 1.a) under Guideline F. Department Counsel was ready to proceed on March 27, 2012, and the case was assigned to me on April 2, 2012. DOHA issued a Notice of Hearing on April 3, 2012, scheduling a hearing for April 16, 2012. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified, and submitted four documents that were 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 documents. Applicant timely submitted eight documents, which were marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) E through L. DOHA received the transcript of the hearing (Tr.) on May 1, 2012.

Findings of Fact

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

Applicant is 50 years old, and has been an aircraft weapons systems mechanic for a defense contractor since June 2002. He previously served on active duty in the U.S. Air Force from February 1980 until September 2002. He deployed for over a year to the Middle East in support of the Operation Desert Storm. He retired with an honorable discharge as a master sergeant (E-7). After retiring from active duty, he worked for defense contractors on aircraft weapons systems. His jobs were both overseas and in the United States. He first worked overseas for the defense contractor as a weapons engineer in support of a foreign country's air force for approximately three years from June 2002 until the contract was completed in October 2004. His cost of living in the foreign country was high. At the time, he received \$1,300 monthly in retired pay and \$3,000 in direct pay. He paid all of his own relocation expenses. He was unemployed from October 2004 until February 2005. He then worked for a defense contractor in the United States as an aircraft weapons engineer from February 2005 until July 2006. Again, the contract he worked on was completed, and he was unemployed from July 2006 until November 2006. He returned overseas in November 2006 on his present position with a defense contractor as a weapons systems engineer in support of a foreign air force. His pay is still about the same, and he has about \$1,000 to \$1,200 in monthly discretionary funds. He has held a security clearance since 1980. He married in 1985 but is now separated. His wife lives in the United States and he lives overseas. He has a grown child from a prior relationship for whom he pays \$350 a month in child support. (Tr. 10-12, 30-37; Gov. Ex. 1, e-QIP, dated July 29, 2010; Gov. Ex. 2, Response to Interrogator; DD 214, at 9.)

In his last years of active duty, Applicant and his wife used credit cards since the cost of living was high where he was assigned. They basically lived paycheck to paycheck. When he retired, he had significant credit card debt. While the credit reports show over \$42,000 of delinquent debt, Applicant believes that his use of the credit cards was only between \$15,000 and \$20,000. His remaining delinquent debt is for interest and penalties. He thought by working overseas he could make sufficient income to start paying his delinquent debts. However, he incurred additional expenses living in high

cost areas overseas while his wife lived in the United States. His financial and living situations affected his ability to pay delinquent debts. Because he was living overseas, Applicant encountered difficulty contacting his creditors and the collection agencies to make arrangements to settle and pay his delinquent debts. (Tr. 36-42, 49-51).

Credit reports (Gov. Ex. 4, dated March 21, 2008; Gov. Ex. 5, dated September 2, 2010; and Gov. Ex. 6, dated August 29, 2011), Applicant's answers to an interrogatory (Gov. Ex. 2, dated July 2, 2011), and Applicant's testimony to a security investigator, (Gov. Ex. 3, Personal Subject Interview, dated September 28, 2010) show the following delinquent debts for Applicant: telephone bills in collection for \$452 (SOR 1.a), \$174 (SOR 1.e), and \$351 (SOR 1.k); credit card debts in collection for \$2,583 (SOR 1.b), \$1,527 (SOR 1.c), \$3,469 (SOR 1.d), \$1,108 (SOR 1.f), \$732 (SOR 1.g), \$1,339 (SOR 1.h), \$13,687 (SOR 1.i), \$8,112 (SOR 1.j), \$5,461 (SOR 1.l); and \$4,000 on a car loan (SOR 1.m). The total debt is approximately \$42,000.

Applicant disputed the telephone debt at SOR 1.a since he never had phone service with the telephone company listed on the credit reports. The debt has been deleted from credit reports by the collection agency. (Tr. 18, 22-23; App. Ex. B, Letter, dated January 15, 2012)

The credit card debt at SOR 1.e has been paid. (Tr. 23-26, 28; App. Ex. L, Letter, dated April 16, 2012) The credit card debt at SOR 1.g has been settled and paid as of February 5, 2008. (Tr. 27-28; App. Ex. K, Letter, dated May 2, 2012) Applicant notes that the credit card debt to the same collection agency at SOR 1.h has also been settled and paid but he has not received a paid letter from the credit agency. (App. Ex. K, e-mail, dated May 14, 2012) The car loan at SOR 1.m has been paid. Now that the car is paid, he will sell it and used the proceeds of the sale to pay other delinquent debts. (Tr. 26-27, 42-43, 54-55; App. Ex. C, Note, undated; App. Ex. F, credit report, undated; App. Ex. I, Letter, dated April 10, 2012) Applicant has also received a tax Cancellation of Debt Notice. He is not sure what debts they cancelled since the amounts do not match any debts on the SOR. (Tr. 27-28; App. Ex. D, Cancellation of Debt Notice dated June 1, 2011 and August 10, 2011)

Applicant hired a law firm in January 2011 and pays \$60 monthly to assist him to understand the status of his credit and finances. They are working on, but have not located, any information on the debts at SOR 1.b, 1.k, and 1.l. (Tr. 51-54) Applicant presented a letter from a department store noting that they were unable to locate a credit card debt for him. A debt owed to this department store is not included on the SOR. (Tr. 28-30; App. Ex. A, Letter, dated February 14, 2012; App. Ex. H, Notice, dated April 5, 2012)

Applicant employed a debt consolidation company to assist him in paying his delinquent debts in approximately 2004. However, this arrangement did not work since he paid over \$200 a month for ten months and saw no payment on his debts. He recently employed a new debt consolidation company to assist him to resolve and pay the credit card debts at SOR 1.c, 1.d, 1.f, 1.i, and 1.j He pays the company approximately \$662 a month for use in paying debts. The company estimates that his delinquent debts will be paid in 62 months. He is current with payment of his present

debts and taxes. He does not use credit cards. (Tr. 43-48; App. Ex. J, Letter, dated April 26, 2012)

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 exhibits a 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); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems when he lived in a high cost area while on active duty and used credit cards to meet living expenses.

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 have some application to Applicant's financial situation. The debts were incurred over ten years ago when Applicant was on active duty living in a high cost area. He and his wife voluntarily used credit cards to make purchases. These circumstances could recur and the use of credit cards was under his control.

However, Applicant has now acted responsibly towards his finances. He took employment with defense contractors to have good and steady employment. He employed a law firm to get a clear understanding of the status of his finances. He paid some of his debts, and has employed a debt consolidation company to assist him to pay his remaining debts. His remaining debts are either under review or being paid. He has sufficient income to live within his means and pay the debt consolidation company. He is current with his present debts, has not incurred additional delinquent debts, and does not use credit cards. He is current with payment of his taxes. He has steady and good employment, and is not likely to incur additional debts. His finances are under control. 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 periodic payment to reduce debts. Applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant has 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 established that he paid four of the debts, and he is paying another five through a debt consolidation company. He disputed one debt and it has been deleted from his credit report. He does not have adequate information on the four remaining debts but he employed a law firm to assist him in learning about these debts. His efforts to learn about, settle, and pay his debts are significant and credible information to show a desire to resolve debt. His payment of debts establishes a meaningful track record of debt payment. These efforts show a reasonable and prudent adherence to financial obligations, and establish a good-faith effort to resolve and pay debts. His past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment. 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 22 years of honorable active duty service in the U.S. Air Force. I considered that Applicant deployed in support of combat operations. I considered that he successfully held a security clearance for over 30 years. I also considered that Applicant has only recently resolved some of his delinquent debts even though the debts were incurred over ten years ago. I

also considered that he has been working overseas which created difficulties in learning about his debts, contacting creditors and collection agencies, and having a payment plan in place. However, Applicant settled and paid four of his delinquent debts, and has a credible plan to pay the remaining debts. Applicant established a good-faith effort to pay or resolve his delinquent debts. His actions to 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.m: 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