



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



In the matter of:

)	ISCR Case No. 11-00780
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

On January 3, 2008, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the Department of Defense on September 1, 2006. Applicant received the SOR on September 29, 2011. (Item 3)

Applicant answered the SOR on October 11, 2011, admitting the ten allegations under Guideline F. Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on November 23, 2011. Applicant received a complete file of relevant material (FORM) on December 8, 2011, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on February 6, 2011.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 35 years old and has worked for a defense contractor as a systems engineer since November 2006. Applicant is a high school graduate with approximately a year of college credit. He was married in May 2001, and divorced in July 2011. He has two young children. His employment history shows continued employment from at least November 1999. (Item 5) Applicant listed his net monthly income as \$10,346. He has monthly child support, spousal support, and child care payments in excess of \$2,000. His other monthly expenses are over \$6,000, leaving a net monthly remainder for discretionary expenses of approximately \$157. (Item 7 at 7)

Credit reports (Item 8, dated May 11, 2011; Item 9, dated July 14, 2010; and Item 10, dated January 23, 2008) show the following delinquent debts for Applicant: a credit card debt in collection for \$10,018 (SOR 1.a); a telephone debt in collection for \$207 (SOR 1.b); a credit card debt in collection for \$12,125 (SOR 1.c); a credit card account in collection for \$1,914 (SOR 1.d); a car repossession debt in collection for \$10,953 (SOR 1.e); a credit card debt in collection for \$6,840 (SOR 1.f); a credit card debt in collection for \$3,936 (SOR 1.g); a credit card debt in collection for \$1,104 (SOR 1.h); a medical account in collection for \$100 (SOR 1.i); and a credit card account in collection for \$35,656 (SOR 1.j). Applicant admits all the debts listed in the SOR. The debt at SOR 1.j is the consolidation of other credit card debts not listed in the SOR. He is not aware of the medical debt at SOR 1.i since he always had medical insurance. The total delinquent debt alleged in the SOR is approximately \$82,853.

Applicant and his wife had well-paying jobs and enjoyed good credit until 2007 when his wife left the workforce to take care of their two children. The couple lived off credit cards when they lost her almost \$100,000 a year salary. Applicant's wife became addicted to prescription drugs costing between \$500 and \$600 per month. Applicant and his wife divorced in July 2011. Applicant has kept his present bills current. The debts are marital debts and have not been paid. Applicant told a security investigator that he planned to satisfy his delinquent debts and he would consult with a debt consolidation company. (Item 6 at 11-12) In his response to the SOR, Applicant admitted he does not have an agreement with a debt consolidation company, does did not have the financial

ability to resolve or pay his debts due to his court-ordered child and spousal support obligations, and has no options available to remedy the situation. (Item 4)

Policy

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 for obtaining 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 of 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, thereby raising 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 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, listed in credit reports and admitted by Applicant, raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debts show a history of both an inability and an unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition. The burden does not shift to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) 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 ¶ 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. Applicant incurred delinquent debt starting in 2007 when his wife left employment to stay home to take care of their two children. She also incurred a significant monthly expense because of an addiction to prescription drugs. The information presented by Applicant shows that he and his wife continued their same lifestyle by incurring significant credit card debts. He presented no information to indicate that the debts were incurred under such unusual circumstances that the debts would not recur. In fact, it appears the debts were

incurred by Applicant in the normal course of living. His wife leaving the work force to care for their children was a foreseeable circumstance. The resulting financial situation was not beyond his ability to control. He did not adjust his financial situation so he did not act financially responsibly under the circumstances. Applicant indicated to a security investigator that he would make an agreement with a debt solution company to assist him to pay his credit card debts. Applicant presented no information, evidence, or documentation to verify his assertions of an agreement with the debt resolution company or any payments on the debts. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control.

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 no information to indicate an agreement with a debt solution company which may require that Applicant receive credit counseling. There is no indication his financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 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. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant failed to establish such a meaningful track record. Applicant did not present sufficient evidence to show either an agreement with creditors or any payments on the debts. He has sufficient income to meet his financial obligations and has many years of steady employment. Applicant's lack of documented action to pay his debts is significant and disqualifying. Based on the acknowledged delinquent debts and failure to establish payment of the debts, Applicant has not acted responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The 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 eligibility for access to classified information 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 has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. He has not even shown that he has a credible plan to resolve and pay his delinquent debts. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Eligibility for access to classified information is denied.

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.j:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge