



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



In the matter of:)
)
) ISCR Case No. 11-00790
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Timothy Clay Kulp, Esquire

05/03/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On July 23, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued 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, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated July 12, 2011, to Applicant detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines

(AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 22, 2011.

Applicant answered the SOR on August 11, 2011. He admitted all 15 allegations under Guideline F with explanation. Department Counsel was prepared to proceed on August 31, 2011. The case was assigned to another administrative judge on October 12, 2011. DOHA issued a Notice of Hearing on November 17, 2011, scheduling a hearing for December 7, 2011. Applicant's attorney's request for a delay of the hearing was granted. The case was reassigned to me on January 10, 2012. DOHA issued a Notice of Hearing on February 6, 2012, that set the hearing for February 27, 2012. I convened the hearing as scheduled. The Government offered five exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant and four witnesses testified. Applicant offered eight exhibits, which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through H. I left the record open for Applicant to submit additional documents. Applicant timely submitted three additional documents, which I marked as App. Ex. I, J, and K. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 6, Memorandum, dated March 28, 2012) The documents are admitted into the record. DOHA received the transcript of the hearing (Tr.) on March 13, 2012.

Findings of Fact

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

Applicant is 46 years old and has been employed as an independent contractor for a defense contractor since 2007. He is a college graduate with a degree in electrical engineering. While in college, he worked as an intern for a Government agency. After receiving his degree, he worked for that government agency for a year before switching to employment with a defense agency. He worked for the defense agency from 1989 until 2006. He then worked as an employee of a defense contractor for a year before working for the same contractor as an independent contractor. As an independent contractor, he is responsible for paying all his own expenses to include benefits. He married in 1990 and divorced in 2010. He married again in 2010. He has two children from his first marriage. He pays \$2,500 monthly in alimony and child support. He has a child from his second marriage in addition to two step-children. (Tr. 15-21, 56-57, 75-76, 88-89; App. Ex. A, Resume; App. Ex. B, Family Photographs)

Applicant's response to the interrogatory (Gov. Ex. 2), as well as credit reports of February 24, 2012 (Gov. Ex. 3); April 25, 2012 (Gov. Ex. 4); and August 3, 2010 (Gov. Ex. 5) show delinquent credit card, cable, mortgage, and home equity loan debts for Applicant that total over \$1,000,000. These debts include a cable company debt in collection for \$75 (SOR 1.a); a credit card debt charged-off for \$6,555 (SOR 1.b); a credit union account charged-off for \$10,338 (SOR 1.c); a home equity loan past due for

\$7,718, with a balance of \$65,038 (SOR 1.d); another home equity loan past due for \$525 with a balance of \$144,000 (SOR 1.e); a credit card account charged-off for \$28,817 (SOR 1.f); a credit card account charged-off for \$22,533 (SOR 1.g); a department store credit card account in collection for \$4,526 (SOR 1.h); a mortgage account past due for \$13,297 with a balance of \$77,420 (SOR 1.i); a mortgage account charged-off for \$807,000 (SOR 1.j); a medical debts in collection for \$232 (SOR 1.k), \$361 (SOR 1.l), \$561 (SOR 1.m), and \$1,474 (SOR 1.n); and a credit card account in collection for \$4,031 (SOR 1.o). Applicant acknowledges all of these debts. The debts are Applicant's debts and not joint debts with his wife. Applicant's plan is to pay the medical debts first and continue to make the required payments to his first wife. When finished with those payments, he plans to pay whatever settlements he can make with the credit card creditors. The credit card creditors are not now willing to negotiate a payment plan except for large up-front payments. (Tr. 51-52)

Applicant and his first wife purchased a house in 1991 with a mortgage of \$115,000. In 2007, he took a second home equity mortgage on the house for \$65,000 to start a business. He made regular monthly payments on the original mortgage from 1991 until July 2010. The balance on that mortgage in 2010 was \$77,000. At the time, Applicant's salary was approximately \$10,000 monthly. His wife was a draftsman and her salary was about \$40,000 yearly.

Applicant's wife had a mental illness that resulted in her purchasing excessive consumer goods and "hoarding" them in the house. The house was cramped from these items and became unlivable. There was so much merchandise in the house that the children could not sleep in their beds, the family could not cook on the stove, and no one could visit them, even close family. There were hundreds of cans of the same food items in the house. Applicant's wife paid for her purchases herself since she was working and had a monthly income of \$3,000 to \$4,000. Applicant incurred no debt from these purchases. The house also sustained substantial water damage in December 2007 that prevented them from having running water in the house. The family moved into his wife's parent's house in January 2008. In mid-2008, his wife hit him causing injury to his face. At the suggestion of his pastor, he filed a police report to convince his wife she needed mental health assistance. He sought help for his wife from her family but did not receive any assistance. (Tr. 21-30, 56-61, 88-91, 100-101, 105; App. Ex. C, Police Report, dated May 1, 2008; App. Ex. G, Picture of water damage)

Applicant's solution to the problem was to build a bigger house. He and his wife had purchased a lot for \$43,500 in 1996 with the intent to someday build a bigger house. They put \$15,000 down and financed the remaining approximately \$28,000. They were able to pay off the loan for the lot by 2001. They broke ground for the new house in 2006, and completed it in July 2008. In 2006, Applicant's credit rating was sufficient for him to obtain a construction loan of over \$800,000. Applicant hoped his wife's parents would also move into the house and assist paying the mortgage and bills. He had no guarantee that his wife's mental condition would improve and she would stop her hoarding practices. Applicant and his family occupied the house for a few months. His wife continued her hoarding practices. Applicant moved out in October 2008 and his

wife had the locks changed. He moved to their original house even though there was no running water. Applicant finally had the water problem repaired in this house in early 2009 at a cost of over \$5,000. There was also water damage to the new house because of construction mistakes discovered in June 2008. Even with these water issues, Applicant and his family moved into the house. The water caused over \$40,000 in damages. The insurance company paid \$30,000 in settlement. That water issue was finally repaired in 2009, and Applicant paid over \$10,000 of his own funds for the repairs. (Tr. 32-36, 96-100)

Applicant and his first wife divorced in 2010. The divorce and child custody litigation cost Applicant over \$25,000. Applicant did not sell the original house because it required extensive repair and clean-up to make it marketable. The monthly payment for the first house was \$2,500, which included the mortgage and the home equity loan. As part of the divorce, Applicant's wife was responsible for the mortgage of approximately \$2,500 monthly on the first house. Applicant provides her \$2,500 in alimony to pay the mortgage. She did not make the payments, which resulted in the SOR debts at SOR 1.d, and 1.i. He did not make any inquiries to ensure his wife made the required payments. The house is now being cleaned and repaired by the family so it can be ready for sale. He anticipates selling this house at a short sale, but it has not yet been placed on the market. (Tr. 60-67, 90-92; App. Ex. F, Letter, dated February 17, 2012)

The monthly mortgage payment for the second house was \$4,500, which was an interest-only construction loan. This did not include the \$1,000 monthly payment on the home equity loan of \$144,000. This resulted in the debts at SOR 1.e, and 1.j. At this time, Applicant was responsible for over \$8,000 in monthly mortgage or home equity payments. His monthly income at the time was approximately \$12,000. Since Applicant could not make the loan payments, the house was foreclosed. Applicant has no continued liability for the construction loan but he still is responsible for the home equity debt at SOR 1.e. Applicant contacted the creditor for the home equity loan to reach a settlement. There is no settlement agreement. (Tr. 70-75, 92-96; App. Ex. E, Letter, dated October 24, 2011)

Applicant and two partners formed a business in September 2006 and started construction of a facility. The business was to provide an entertainment and educational venue for children. Applicant invested over \$100,000 in the business, which he leveraged from his home equity loans. The business opened in March 2007. The business is not yet making a profit, and Applicant pays about \$2,000 yearly into the business. He expects the business to start making a profit in a few years.

Applicant suffered a neck injury while working in his business, which cost him over \$10,000 in medical expenses. He and his present wife pool their financial resources. His present monthly income is between \$10,000 and \$12,000, depending on the contracts his employer receives. His wife also has approximately \$3,000 in monthly income. Their expenses are approximately \$12,000, leaving about \$1,500 to \$2,000 in

monthly discretionary income. They are able to meet their financial obligations because of his wife's income. (Tr. 37-38, 78-88, 100-103; App. Ex. D, Pictures)

Applicant paid the delinquent debt at SOR 1.a. (Tr. 42, 103; App. Ex. I Bank Statement, dated December 8, 2011) Applicant paid or is paying the medical debts at SOR 1.k, 1.l, 1.m, and 1.n. (Tr. 46-47; App. Ex. J, Medical Account Statements, various dates) Applicant has not paid the delinquent credit card debt at SOR 1.b. He is attempting to negotiate a settlement with the creditor. There is no agreement yet. (Tr. 43) Applicant has not paid the credit union debt at SOR 1.c. However, he believes it may be part of the home equity loan for the second house that has been foreclosed. He has not made any inquiries concerning the account or direct payments for this account. (Tr. 43-44, 103-105). He has not inquired about or paid the delinquent debts at SOR 1.f, 1.g, 1.h, and 1.o. (Tr. 43-47, 105)

A friend since high school testified that he knows both Applicant and his first wife. He visited their first house twice, once for a housewarming and again after the couple separated. For years, Applicant told him about his wife's hoarding. On his second visit, he observed that the house was completely full of merchandise that she had purchased. There was only a small path through the material in which to walk. He did not speak to Applicant's wife about the problems but talked to her father. He did nothing about the issue. He understands that she now lives with her parents, and has continued her hoarding. Now, no one can even visit her parent's house. Applicant has an excellent relationship with his children. He considers Applicant to be reliable, trustworthy, and he exercises good judgment. He also considers Applicant to be responsible financially with good business judgment. He believes Applicant is capable of working out his financial problems. (Tr. 106-115)

A potential business partner testified he has known Applicant for over three years. He and Applicant are part of a business arrangement to build a full service resort in the Bahamas. Applicant would provide expertise in security, but he probably has put a few thousand dollars into the project. Applicant had good business contacts that could be used for the project. The partners intend to borrow a substantial sum to fund the project. Applicant will not be liable for the funding since he will be considered only an employee. He considers Applicant to be reliable, trustworthy, and to exercise good judgment. He has no reason to doubt Applicant's loyalty to the United States. He considers Applicant to be a "top-notch" individual. (Tr. 115-122)

A defense contract employee testified that he has known Applicant for over 17 years since he worked on a project supervised for the Government by Applicant. He is aware of Applicant's divorce and remarriage. He would see Applicant at least a few times a month. He considers Applicant to be very reliable and trustworthy. Applicant exercises good judgment. He is a family man who is loyal to the United States. (Tr. 123-128)

One of Applicant's partners in the children's entertainment and learning business testified that he has known Applicant since they were in the sixth grade. He knows

Applicant's former wife and visited their home. He observed the house crammed full of merchandise from floor to ceiling throughout the house. He described the children's entertainment business as an after-school program for play and learning. It is used on week-ends for children's parties. He and Applicant took out a personal loan for \$350,000 to start the business. They got behind on the loan, and settled with the bank for a reduction of the principal to \$119,000. They have been current on the smaller loan payments. If there is a default, both he and Applicant are personally and severely liable on the loan. At present, the business generates enough income to pay the expenses and make the loan payments. He is aware of Applicant's finances. He considers Applicant to be reliable and trustworthy. Applicant exercises good judgment. (Tr. 129-138).

Applicant presented eight letters of recommendations from friends, colleagues, and co-workers. Some have known Applicant for over 30 years from their time together as high school students. They attest to his work ethic, honesty, dedication, trustworthiness, and reliability. They trust his judgment and his loyalty to the United States. (App. Ex. H, Letters, various dates).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by credit reports and admitted by Applicant raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); AG ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). The evidence indicates both unwillingness and inability to satisfy debt. Applicant incurred two significant mortgages and entered into business arrangements with significant financial obligations. He has a high debt-to-income ratio considering all of his alimony, child support, mortgage, home equity, and credit card payments. Applicant's actions, in which he incurred substantial financial obligations, show frivolous or irresponsible spending beyond his means. Applicant did not present sufficient evidence of a realistic plan to pay the debt.

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 do not apply. Applicant incurred delinquent debts, starting in 2006, which are current and are not resolved. Applicant's first wife had a mental health issue that caused the family to move from their first home. While her condition was a condition beyond his control, it was not the cause of his financial problems. Applicant chose to solve the family problem caused by his first wife by building a large new home with a significant mortgage. He was unable to sell the first house so he was carrying two substantial mortgages. He had home equity loans on both houses which he leveraged to have funds to invest in a business. His second house has been foreclosed and sold and he no longer has liability for that large mortgage. He is responsible for the home equity loan for this house. He hopes to sell the first house at a short sale, but again he will have the home equity loan to pay. He is jointly and severely responsible for a substantial business loan. He has significant credit card debt that he has not paid or addressed with the creditors. All of Applicant's financial issues were caused by his own voluntary actions. The circumstances can recur because they were independent voluntary actions by Applicant. The actions in incurring significant debts for houses and a business show he has not acted responsibly or reasonably toward his finances.

I considered 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 did not present information to show that he received credit and financial counseling. There is not a clear indication that his financial problems have been resolved. This mitigating condition does not apply.

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

Applicant presented information to show that he has paid or is paying a cable debt (SOR 1.a), and medical debts (SOR 1.k, 1.l, 1.m, and 1.n). Applicant is given credit for resolving these debts.

His second house has been foreclosed, resolving that debt (SOR 1.j). While this debt is resolved, it was not by any of Applicant's actions. He merely acceded to the foreclosure. This is not considered a good-faith effort to pay the debt since it was not a prudent, honest, and reasonable effort on his part to pay the debt. He still has a debt from this house for the home equity loan. He hopes to sell his first house at a short sale, but it is still not on the market. He has called some of his other creditors but he has not reached agreements with them or made any payments to resolve these debts. He hopes to reach settlement agreements with these creditors in the future. A hope in the future to reach an agreement or resolve a debt is not a good-faith effort. AG ¶ 20(d) does not apply to these debts.

Applicant has not established, for security clearance purposes, good-faith financial actions or a meaningful track record of debt payment for most of his debts. He has been steadily employed for over 20 years at a good salary, and he should have the ability to live within his means. By accumulating large mortgage, business, and credit card debt that he is unable to resolve, he failed to establish that he acted reasonably or prudently based on an adherence to duty or obligation in regard to his debts. His unreasonable and irresponsible financial actions indicate that his past delinquent debts still reflect adversely on his trustworthiness, honesty, and good judgment. He has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the opinions of Applicant's friends, acquaintances, and co-workers that he is an excellent worker who is loyal to the United States. I considered their opinions of his reliability, trustworthiness, and good judgment.

Applicant incurred delinquent debt when he overextended himself financially by constructing a large house with a substantial mortgage to resolve a family issue. He leveraged his investment in his houses to obtain funds to invest in a business that is only breaking even. He has significant home equity, business, and credit card debt that is not resolved or addressed. He paid only limited amounts on the debts in the SOR. His actions in accumulating the large mortgage, business, and credit card debt raise significant security concerns. Applicant's management of his finances and his lack of significant debt resolution shows an unreasonable, irresponsible, and self-serving disregard for rules and regulations. Applicant is gainfully employed and should have sufficient funds to live within his means, but he chose not to do so.

A decision on access to classified information takes into account a person's reliability, trustworthiness, and ability to protect classified information. A person's self-discipline and integrity is the most effective means of protecting classified information. Evidence from a person's life history of unreliability, untrustworthiness, and failure to follow rules and regulations is an indication that the person will not properly protect classified information. Applicant's management of his finances shows that he is unreliable, untrustworthy, and has little intent to follow rules and regulations. His actions in incurring substantial financial obligations and his unwillingness to resolve his just and legitimate debts indicates he may not show sufficient concern, responsibility, and care protecting classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. I conclude Applicant has not mitigated security concerns arising from financial considerations. He should not be granted access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.j:	Against Applicant
Subparagraphs 1.k – 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge