



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-01304

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

05/23/2012

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 August 18, 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 November 10, 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 acknowledged receipt of the SOR on November 22, 2011.

Applicant answered the SOR on November 22, 2011, admitting six and denying nine allegations under Guideline F of the AG. Department Counsel was prepared to proceed on December 22, 2011, and the case was assigned to me on February 21, 2012. DOHA issued a Notice of Hearing on February 27, 2012, scheduling a hearing for March 20, 2012. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant and two witnesses testified. Applicant offered eight exhibits that I marked and admitted into the record without objection as Applicant Exhibits A through H. I left the record open for Applicant to submit additional documents. Applicant timely submitted one document that I marked and admitted into the record without objection as App. Ex. I. DOHA received the transcript of the hearing (Tr.) on March 28, 2012.

Findings of Fact

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

Applicant is 34 years old and has been an assistant security officer for a defense contractor since 2008. He was married from January 2002 until divorcing in 2004. He married again in 2005 and has two children from this marriage. (Tr. 9-10; Gov. Ex. 1, e-QIP, dated November 16, 2009)

Applicant's personal financial statement, submitted in response to the interrogatory, shows monthly income of \$1,893.18, monthly expenses of \$1,539.64, leaving approximately \$315 in monthly discretionary income. Applicant noted that this amount varies from month to month because of the needs of his family. Applicant's wife is in nursing school. She receives grants to assist with her tuition and expenses. Some of the grant funds are also applied to household needs. His wife has almost completed her schooling, and hopes to start work as a nurse in September 2012. At that time, the family will have two incomes and will be better able to pay debts. His primary focus now is to use his present income to stay current with the family's every day financial obligations. He is current with both his first and second mortgage payments, which he has been making for over five years. He and his wife have only one credit card, and they are current with the required payments. His future financial plan is to pay his delinquent debts when he receives extra income after being granted a top secret security clearance and his wife is working and receiving income. He and his wife have received financial counseling through his church. He has over \$6,000 in his 401(k) account. He will incur a tax penalty if he withdraws these funds. (Tr. 21-22, 27-28, 30-34, 42-45; Gov. Ex. 3, Personal financial Statement, dated August 29, 2011; Gov. Ex. 6, Memorandum, dated October 6, 2011; App. Ex. C, W-2 for 2008; App. Ex. D, W-2 for 2009; App. Ex. E, W-2 for 2010; App. Ex. F, W-2 for 2011; App. Ex. G and H, Mortgage Statements, March 19, 2012)

A credit report (Gov. Ex. 4, dated August 29, 2011), Applicant's interview with a security investigator (Gov. Ex. 5, dated September 15, 2010, and Applicant's answers to an interrogatory (Gov. Ex. 2, dated October 3, 2011), show the following financial actions and delinquent debts: a Chapter 7 Bankruptcy filed on September 8, 2004, with

debts discharged on January 6, 2005 (SOR 1.a); a medical debt for \$80 (SOR 1.b); medical debt for \$150 (SOR 1.c); a credit card account charged off for \$525 (SOR 1.d); another credit card debt to the same creditor charge off for \$420 (SOR 1.e); a credit card account charged off for \$4,146 (SOR 1.f); a repossession debt for \$8,976 (SOR 1.g); an insurance account in collection for \$81 (SOR 1.h); medical accounts in collection for \$299 (SOR 1.i), \$187 (SOR 1.j), \$82 (SOR 1.k), \$82 (SOR 1.l), \$122 (SOR 1.m), \$122 (SOR 1.n); and a telephone account in collection for \$299 (SOR 1.o). The total debt is approximately \$15,000, with the car repossession debt accounting for over 50% of the debt. Eight of the debts are medical debts.

Applicant admits the bankruptcy in SOR 1.a. He filed for Chapter 7 bankruptcy when he and his first wife were divorcing in 2004. His debts were discharged in 2005. The majority of his debts at the time were discharged but a few are still listed on his credit report. He was employed at the time of the bankruptcy action, but was fired in 2005. He again found good employment later in 2005. He has been promoted and his yearly salary increased from about \$30,000 in 2005 to approximately \$50,000 in 2007. He was laid off in late 2007 when his company lost the contract he was working on. His yearly salary dropped to about \$25,000, where it is at present. (Tr. 17, 35-40; Gov. Ex. 7, Bankruptcy documents, dated September 8, 2004)

Applicant denied the delinquent medical debt at SOR 1.b because he was not able to identify the creditor. He had health insurance at times and he does not understand the debt. He finds it difficult to get information from any creditors or the collection agency. He admits the medical debt at SOR 1.c because he knows it is for crutches he received. He has not paid the debt because he does not have sufficient funds after taking care of a family of four people on his salary. (Tr. 17-19, 40-41) He denies the medical debt at SOR 1.j for \$187 because he does not know the origin of the debt. He has not inquired about the debts. (Tr. 28) He admits the medical debt at SOR 1.k. He can identify the debt and he is disputing it. It should have been paid by his health insurance. He has not made additional inquiries concerning the debt since his first inquiry and noted his dispute of the debt. He denies the medical debt at SOR 1.l as a duplicate of the debt at SOR 1.k. (Tr. 28-29) He admits the medical debt at SOR 1.m, but he has not been able to make arrangements for payment with the creditor. (Tr. 29)

Applicant denies the credit card debts at SOR 1.d, and 1.e. He believes the debts may be from his former wife's credit cards. He has not inquired about the debts, but believes he may be making payments on these debts. He did not provided any proof of payment. (Tr. 19-22)

Applicant has not paid the delinquent debt of \$4,146 at SOR 1.f. He received an offer a few months ago from the creditor to settle by making \$200 monthly payments. He is unable to make the payments. (Tr. 22-23)

The delinquent debt at SOR 1.g is from the involuntary repossession of his truck. He purchased the truck for approximately \$14,000, and made monthly payments for about two years. The debt is the difference owed after the truck was sold at auction. He has not made any payments on this debt. (Tr. 23-25)

Applicant denied the insurance debt of \$81 at SOR 1.h. He does not remember having insurance with the company listed on the credit report. He currently has insurance with another company. He has not called or inquired about this debt. (Tr. 25-26)

Applicant denied the debt to an animal hospital listed at SOR 1.i. Applicant and his wife had a dog, and he knows his wife took the dog to the animal hospital for treatment. He has not inquired into this debt. He will make calls about the debt when he has funds for payment of any arrangements he makes with the creditor. (Tr. 26-27)

Applicant denied the debt at SOR 1.n. He has not been able to identify the collection agency. (Tr. 29) He denies the cell phone debt at SOR 1.o. The debt was for a phone used by his former wife that should have been included in the 2004 bankruptcy. There is a debt to the cell phone company listed on the bankruptcy Schedule F. (Tr. 29-30; Gov. Ex. 7, Bankruptcy Documents, dated September 8, 2004, at 30)

Applicant's former immediate supervisor testified that he hired Applicant for his present position in 2008. Applicant has been a responsible employee with absolute integrity. He has been in positions requiring trust and good judgment and has performed excellently in those positions and situations. He is a trusted employee. He is a good family man who is intent on taking care of his family. He is not intimately familiar with Applicant's financial situation. He strongly recommends that Applicant be granted access to classified information. (Tr. 46-52)

Applicant's present supervisor testified that Applicant has worked for him for about 18 months. Applicant quickly learned and became familiar with the government requirements for facility security. He is an excellent worker with good judgment. He is a vital and trusted employee. (Tr. 53-54)

Applicant presented letters of recommendation and commendation. A coworker has known Applicant since November 2010. The coworker has worked in the national security area for over 24 years. Based on his experience, he believes Applicant is worthy of trust and confidence. Applicant exhibits honesty, reliability, discretion, trustworthiness, and diligence. He recommends that Applicant be granted access to classified information. (App. Ex. A, Letter, dated March 9, 2012) Applicant was commended for reporting a suspicious contact activity as required by the NISPOM. (App. Ex. B, e-mail, dated March 5, 2012) A senior supervisor wrote that Applicant has worked hard to get his personal affairs in order. He has confidence that Applicant will have his financial matters in order shortly. Applicant is a valuable and talented member of their organization. He has every confidence in Applicant and recommends he be granted access to classified information. (App. Ex. I, e-mail, dated March 22, 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 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 a credit report raises Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debt through the loss of employment, a significant reduction in income, and lack of health insurance. He has not paid any of his delinquent debts. The evidence indicates both an inability and an unwillingness to satisfy 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 debt caused by job loss and reduction in pay from lay-offs when contracts were completed or lost. At times, he lacked health insurance for him and his family. All of these conditions were caused by circumstances beyond his control. However, he has not shown that he acted responsibly under the circumstances to resolve these debts. Applicant did not contact some of the creditors, and he has not paid any of his delinquent debts listed in the SOR. He failed to establish that he could not pay his delinquent debts, even though he has been employed since 2008. Some of the debts are small, less than \$100, and could be paid with minimal impact. He has at least \$315 in monthly discretionary funds that he has not used to pay delinquent debts. He has no plan to pay his past delinquent debts beyond a future hope he will receive additional pay and his wife will be employed. Even though his current debts are in a paid-as-agreed status, his finances are not under control because he has not taken the reasonable and necessary steps to resolve his past delinquent debts, and he does not have a reasonable plan to pay them. Applicant has not 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 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 demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant has not shown an established plan to pay and resolve his past delinquent debts. He made little or no effort to contact some of the creditors to settle and pay his debts. He has not shown payment of any of his past debts. A promise to pay debts in the future when his job conditions have improved and his wife's financial prospects have changed is not a good-faith action showing reasonableness, prudence, honesty, and adherence to duty and obligation. He denied certain debts because he believes they were incurred by his former wife while they were married. These are family debts which he has a responsibility to resolve. His lack of a meaningful track record of paying delinquent debts shows he has not been reasonable and prudent in adhering to his financial obligations. His past delinquent debts reflect adversely on his trustworthiness, honesty, and good judgment.

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 one medical debt because he believes it should have been paid by his health insurance. He did not establish any attempt to contact the creditor or otherwise resolve the dispute. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant 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 opinion of Applicant's supervisors that he is an excellent employee who should be granted access to classified information. I considered that the bankruptcy filed in 2004 is a legal and permissible means of resolving debt, and that the filing did not create a security concern. I considered that the debt at SOR 1.0 was resolved in the bankruptcy. I considered that Applicant's financial problems may have been caused by circumstances

beyond his control. However, he has not been responsible towards his finances. He has not been in contact with many of the creditors to resolve or settle the debts. He has not paid any of the delinquent debts listed in the SOR. He has not taken steps to resolve the debt he disputes. Applicant has not established a good-faith effort to pay or resolve his delinquent debts. An intention to resolve debts in the future is not a good-faith effort. Applicant's lack of effort to pay and resolve his past financial obligations indicates that he may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising from finances. His 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.n:	Against Applicant
Subparagraph 1.o:	For 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