



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



In the matter of:)
)
) ISCR Case No. 11-02657
)
Applicant for Security Clearance)

Appearances

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

January 27, 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 15, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain 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 July 25, 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 July 29, 2011.

Applicant answered the SOR on August 8, 2011, admitting all 13 allegations under Guideline F. He provided an explanation for his answers and his delinquent debts. Applicant originally requested a decision on the record. However, he requested a hearing on September 12, 2011. (Hearing Exhibit I) Department Counsel was prepared to proceed on September 28, 2011, and the case was assigned to me on that date. DOHA issued a Notice of Hearing on October 20, 2011, scheduling a hearing for November 8, 2011. Department counsel notified Applicant of the hearing date on September 28, 2011. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified on his behalf and offered one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant did not submit any additional documents. (Gov. Ex. 6, e-mail, dated December 7, 2011) DOHA received the transcript of the hearing (Tr.) on November 21, 2011.

Findings of Fact

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

Applicant is 49 years old. He served on active duty in the Navy from 1984 until 1988. He graduated from college in 1993 with a bachelor's degree in management. He worked with a defense contractor from 1996 until September 2011, when he was laid off. He started employment with another defense contractor in October 2011. (Tr. 12) He married in 1992 and divorced in 2005. He has one son he supports from this marriage. He married again in 2006 and is still married. (Tr. 12-15)

Applicant's yearly salary with his previous defense contractor employer was \$75,000. On his personal financial statement submitted with his response to interrogatories, Applicant lists his monthly income as \$3,868 and his wife's at \$2,400 for a combined monthly income of \$6,268. He lists recurring monthly expenses of approximately \$3,677, leaving a monthly net remainder of \$2,500. At the hearing, Applicant stated his income and expenses on that statement are wrong and he was actually living paycheck to paycheck at the time. His net monthly remainder is actually about \$225. (Tr. 20-21, 42-48)

Applicant's yearly salary with his new employer is approximately \$68,000. His wife just recently returned to the work force in 2010 after being sick. Her yearly salary is approximately \$15,000, the same amount she made before she was sick. When he left his initial employer in September 2011, he received a severance payment of approximately \$13,000. He placed the funds in his savings account. He is current with

his federal and state taxes. In the past, he received federal tax refunds of approximately \$5,000 each year. (Tr. 25-27, 46-49)

Credit reports (Gov. Ex. 4, dated July 28, 2010, and Gov. Ex. 5, dated June 8, 2011) and Applicant's response to interrogatories (Gov. Ex. 2 and 3, dated May 27, 2011) show the following delinquent debts for Applicant: a debt for a computer for \$1,300 (SOR 1.a); a department store debt for clothing for \$740 (SOR 1.b); a charged off credit card debt for \$14,054 (SOR 1.c); two credit card debts to the SAME creditor for \$6,956 (SOR 1.d) and \$11,761 (SOR 1.e); a department store account in collection for \$962 (SOR 1.f); two telephone service debts to the same company in collection for \$666 (SOR 1.g), and \$2,091 (SOR 1.h); a credit card debt in collection for \$315 (SOR 1.i); a mortgage debt of \$103,000 (SOR 1.j); a vehicle repossession debt of \$9,019 (SOR 1.k); another vehicle debt in collection for \$19,764 (SOR 1.l); and a second mortgage debt of \$25,914 (SOR 1.m). The total amount of the unsecured debt listed on the SOR is approximately \$35,000. The debt without the repossession is approximately \$16,000.

When Applicant married his second wife in 2006, both of them had good jobs. They purchased a new home and car in June 2007 based on their incomes. Applicant's wife became sick in 2007 with a spine and back medical condition that prevented her from working. She required extensive medical care. Some of the medical expenses were covered by health insurance, but other expenses were not covered and they had to be paid out-of-pocket. Applicant and his wife are current with the medical expense incurred by his wife. (Tr. 18-19, 50-51; App. Ex. A, Medical Bills, dated September 15, 2011)

Applicant's wife's inability to work led to a loss of income causing the couple financial problems. Applicant concentrated on making mortgage and car payments with their reduced income. He used credit cards for some household and living expenses. Since his wife is again working and drawing a salary, Applicant anticipates that he and his wife will be able to shortly stabilize their finances and pay their debts. In his interview with a security investigator in August 2010, and in his May 2011 response to interrogatories, Applicant stated his intent at the time was to start paying the debts. (Tr. 19-22; Gov. Ex. 2 and 3, Response to Interrogatory, dated May 27, 2011)

When Applicant purchased his new home in June 2007, he still owned his previous house which he was unable to sell. The house was new when purchased in 1993 for \$80,000. He believed the current mortgage balance was approximately \$60,000. After his wife became sick in 2007, Applicant fell behind a few months on his mortgage payments for his old house which caused him to try to sell the house since he could not carry two mortgages. Applicant claims he received an offer of \$90,000 for the sale of the house but the mortgage holder would not accept the sale. He claimed he gave the creditor a deed in lieu of sale and the creditor sold the house for over \$100,000. He was only a few months behind on his mortgage payments at the time. He intended to use the profits from the sale of the house to improve his financial situation, but he received nothing from the sale of the house. This scenario does not make

financial sense. Applicant did not provide a reasonable and financially sound reason for him not to receive any profit from the sale of the house.

SOR debt 1.a is for a laptop computer Applicant purchased for his wife in 2006. He has not made any payment on this debt but intends to shortly. (Tr. 29-30) SOR debt 1.b is to a clothing store for purchases made by his wife. He has not made any payments on this debt. (Tr. 29-30)

SOR debt 1.c is for a credit card used for living expenses that became delinquent in 2009. He believes the real amount of credit used was only \$7,000. Applicant has not made any payments on this debt. (Tr. 30-32)

SOR debt 1.d is for a bank issued credit card that was used for living expenses when Applicant's wife was unable to work. The bank made a settlement offer of 50% of the debt. He has not paid the settlement offer and is trying to renegotiate it. (Tr. 32-33)

SOR debt 1.e is another credit card issued by the same bank that issued the credit card at SOR 1.d. He is anticipating a payment plan for the debt from the creditor. He has not received the payment plan and has not made any payments on the debt. (Tr. 33-34)

SOR debt 1.f is a debt in collection for a department store. Applicant's wife charged purchases from the store. Applicant anticipated using the profit from the sale of his first house to pay this debt. Since he did not receive funds from the sale of the house, he has not made any payments on this debt. He now anticipates using a tax refund in 2012 to pay the debt. (Tr. 34-35)

SOR debts 1.g and 1.h are with a telephone company. He is disputing the amount of the \$666 bill at SOR 1.g for cell phone service. The debt at SOR 1.h is for terminating a cell phone contract early. Applicant's wife is still trying to resolve the disputes with the telephone company. The debts have not been paid. (Tr. 35-36) Applicant is not sure of the creditor for the debt at SOR 1.i. He has not made any payments on the debt. (Tr.36-37)

SOR debt 1.j is for the first mortgage on Applicant's new house he purchased in 2007. SOR debt 1.m is for the second mortgage on the house. He requested and received a mortgage modification for both mortgages. He paid a lump sum of \$4,100 to bring the mortgage current. His payments on the first and second mortgage are now current. He received a mortgage modification for his new house in June 2011. He made a lump sum payment of \$4,100 from tax refunds, and the first and second mortgages on this house are current. (Tr. 37, 41)

SOR debt 1.k is for Applicant's wife's car. The car was purchased new in 2007 for approximately \$19,000. The car loan was paid until the summer of 2011 when Applicant and his wife were unable to continue to make payments. Applicant fell a number of months behind on the car payments and voluntarily returned the car to the

dealer. He has not been notified of any sale of the vehicle. He believes the debt of \$9,000 for the vehicle in the SOR is accurate. SOR debt 1.I is for Applicant's truck. He is current with his payments on this loan. (Tr. 37-41)

Applicant did not present a clear picture of the status of his finances. He attached documents, including a personal financial statement and pay records from his previous employer, to his response to interrogatories. His yearly salary of \$75,000 is confirmed by the pay records. In the personal financial statement, he lists his net monthly pay as \$3,868. This is consistent with his \$75,000 yearly salary. He lists his wife net monthly pay as \$2,400. Their combined monthly income was \$6,268. Applicant listed his recurring monthly expenses of approximately \$3,592, leaving approximately \$2,500 in a net remainder. At the hearing, he stated this information was inaccurate, that his net remainder was only about \$225, and that he lived paycheck to paycheck. The information in the personal financial statement was provided directly by Applicant. (Tr. 21-28)

Applicant showed a lack of knowledge or understanding of his finances. He did not pursue the lender to see if he was due anything from the sale of the house. His statements concerning his finances were inconsistent and illogical.

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 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 both an inability and an unwillingness to satisfy debt. Applicant incurred financial problems when his wife was unable to work from 2007 until 2010 because of illness, and he used credit cards to pay living expenses. He was unable to pay all of his debts as agreed.

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. Applicant incurred delinquent debt when his wife became ill in 2007 and was unable to work. She returned to work in 2010 and now contributes as much to the family finances as she did before she became ill. When his wife was out of work, Applicant was able to stay current with his wife's medical bills but feel behind on his mortgage, car payments, and credit card debts. His wife's illness and inability to work were unusual circumstances or conditions that were beyond his control. But Applicant did not act reasonably and responsibly towards his finances under the circumstances. He was unable to show a clear understanding of the status of his finances. He provided conflicting information concerning the funds available to pay his debts. While current with his mortgage and his own car payments, he has not paid any of his credit card, store, telephone, or repossession debts. He 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 restructured his mortgage and is current with the first and second mortgage on his house. He is current with his wife's medical bills and his own car payment. However, he has taken no action to repay his credit cards, telephone bills, department store debts, or wife's car repossession debt. His failure to address these debts is significant and credible information showing a lack of a systematic plan to pay debts and the lack of a meaningful track record of debt payment. A promise to pay debts in the future does not show a reasonable and prudent adherence to financial obligations leading to a good-faith effort to pay debts. His failure to take action shows his approach to his finances is unreasonable, lacks honesty, and does not indicate prudence and an adherence to his financial duties and obligations. He has not established a good-faith effort to repay his creditors and resolve debt. His past delinquent debts continue to 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 is disputing the amount of the debts at SOR 1.g,

and SOR 1.h. He has not articulated a good basis for the dispute. 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 Applicant's four years of active duty Navy service. I considered Applicant's long service with his defense contractor employer. I also considered that some of Applicant's financial problems were caused by his wife's inability to work when ill. He was able to modify his mortgage and is current with the mortgage payments, his wife's medical bills, and a car payment. However, he has credit card bills, department store debts, telephone bills, and a car repossession that he has not even started to pay. A year ago, he was to start payment arrangements on these debts, but he has not made any payments to date. Applicant did not establish a "meaningful track record" of resolution or payment of his delinquent debts. His lack of action to pay most of his past financial obligations and resolve his debts indicates he will 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 Applicant failed to mitigate security concerns arising from financial considerations. He is denied 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
Subparagraphs 1.a – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l – 1.m:	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