



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-02805
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: John A. Moody, Esquire

01/29/2013

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 June 25, 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 Department of Defense (DOD) issued interrogatories to Applicant so that he could explain potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOD adjudicators could not make the affirmative findings required to issue a security clearance. DOD issued a Statement of Reasons (SOR), dated August 8, 2012, detailing security concerns for financial considerations and personal conduct. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines,

effective within the DOD on September 1, 2006 (AG). Applicant acknowledged receipt of the SOR on September 11, 2012.

Applicant answered the SOR in an undated response. He admitted all allegations under both guidelines. Department Counsel was prepared to proceed on October 22, 2012, and the case was assigned to me on October 31, 2012. DOD issued a Notice of Hearing on November 19, 2012, scheduling a hearing for December 11, 2012. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant and one witness testified. Applicant offered 13 exhibits that I marked and admitted into the record without objection as Applicant Exhibits A through M. I received the transcript of the hearing (Tr.) on December 20, 2012.

Procedural Issue

During the hearing, Applicant stated that he understood that a judgment was entered against him as noted in SOR 1.a, but he had no knowledge of the underlying debt. Based on his assertions, I amended his response to SOR 1.a to be a denial. (Tr. 15-17)

Findings of Fact

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

Applicant is 59 years old and has been a weapons systems analyst for the same defense contractor for over 34 years. He served on active duty in the Navy from 1972 until 1976. He received an honorable discharge in the grade of petty officer second class (E-5). He has maintained a security clearance since serving in the Navy. He is a high school graduate with technical training in the Navy. Applicant now lives cheaply and is current with his present bills. His monthly pay is approximately \$3,000. However, he has a \$600 garnishment to pay a delinquent debt, and he voluntarily sends his wife \$700 monthly. Accordingly his net pay is only \$1,600. His monthly expenses are approximately \$1,400, leaving approximately \$200 in discretionary funds each month. (Tr. 27-28, 59-60, 64-68, 101-103; Gov. Ex. 1, e-QIP, dated June 25, 2010)

Applicant has been married five times. He married for the first time in 1972 while in the Navy and divorced in 1979. He married again in the early 1980s and divorced in 2001. He had two children from this marriage who are now adults. He married a third time for a short period in 2001, and for the fourth time in 2002 again for a short period. He married for the fifth time on May 3, 2003. He and his fifth wife are still married but have lived separately since 2009. At the time they married, his wife owned a demolition company. Shortly after the marriage, the company was lost to mismanagement and fraud. Unbeknownst to Applicant when they married, his wife had been convicted of embezzlement and theft while managing the company in 1998. She was sentenced and served a few months in jail. (Tr. 28-32, 60-61, 68-70; App. Ex. A, Court Records, dated December 8, 2012)

A credit bureau report (Gov. Ex. 3, dated July 26, 2012), Applicant's responses to interrogatories (Gov. Ex. 4 and 5, dated June 22, 2012), and his admissions establish the following delinquent debts; a judgment for \$8,499 (SOR 1.a); a judgment on a credit card for \$3,410 (SOR 1.b); a judgment on another credit card for \$11,477 (SOR 1.c); a credit card debt in collection for \$10,000 (SOR 1.d); a credit card debt charged off for \$1,324 (SOR 1.e); a credit card debt in collection for \$8,620 (SOR 1.f); a credit card debt charged off for \$11,000 (SOR 1.g); a credit card debt charged off for \$2,277 (SOR 1.h); a mortgage past due for \$83,000 on a balance of \$325,000 (SOR 1.i); a corporate credit card debt in collection for \$3,319 (SOR 1.k); a defaulted mortgage for \$414,000 that was foreclosed (SOR 1.l); a credit card debt charged off for \$5,110 (SOR 1.m); a credit card debt in collection for \$1,875 (SOR 1.n); and a mortgage account in default for \$414,000 (SOR 1.o). It was agreed that SOR 1.l and SOR 1.o are the same debt.¹ The total consumer debt is approximately \$62,000.

Applicant is considered a good employee by his supervisors. One supervisor wrote that he has worked for the same defense contractor as Applicant for over 41 years. He has supervised Applicant and is acquainted with his professional work. Applicant has a high level of systems engineering expertise from his Navy experience and training. Applicant has been an extremely reliable asset in support of Navy and other programs. He demonstrated his trustworthiness, integrity, and dedication to the job. (Tr. 32-35; App. Ex. B, Letter, undated)

Another supervisor for over 12 years noted that Applicant's work performance is flawless. He is punctual and accurate at work. There has never been a question concerning his integrity, honesty, or reliability. He is a dedicated professional who consistently proved to be trustworthy. (App. Ex. C, Letter, undated)

Applicant's immediate supervisor for the last year, who has access to classified information, testified he has known Applicant for almost three years. He works closely with Applicant and sees him at work almost daily. He has no questions concerning Applicant's trustworthiness based on his close daily professional association with Applicant. (Tr. 121-128)

Applicant finances and credit were good until he married in 2003. Shortly after they married, his wife's business failed because of her sister's illness and the fraudulent actions of a supervisory employee. Both Applicant and his wife each owned a house before they married. Applicant purchased his house in 1997 for \$174,000. He refinanced the house in 2007 for \$325,000. He used the refinance funds to pay bills, pay some debts from his wife's business, buy cars for his sister-in-law and wife, and buy some items for his nephews. In 2007, he also purchased in his name his wife's house for \$414,000. When they married, Applicant and his wife moved into her house, and rented his house to his wife's sister and nephews. The sister and nephews were to pay rent but they never paid the rent. (Tr. 76-79)

In addition, Applicant's wife was using credit indiscriminately to purchase a lot of items affecting her personal and business cash flow. Applicant's wife did not work after

¹ There is no SOR 1.j.

the business failed. Applicant's wife continued to overspend. Starting in approximately 2005, they had discussions and serious arguments over her spending. Applicant's wife purchased items on-line in hopes of reselling them at a profit. She purchased items for her nephews without regard to the availability of funds. In addition, she opened credit card accounts in his name without his authorization. She incurred large bank debts because she used their bank card when insufficient funds were in their account to cover the charges. These fees and expenses because of insufficient funds added to the debt. Applicant sent his wife messages asking her to stop her indiscriminate purchases. She promised she would but never did stop. He believes his wife is responsible for at least \$40,000 of the \$62,000 listed as his delinquent consumer debt, (Tr. 42-46, 88-89; App. Ex. E, House Settlement Proposal; App. Ex. F, e-mail, dated March 3, 2005; App. Ex. G, Bank Statement, dated October 18, 2009)

Applicant tried to negotiate and settle some debts but the cost was too high. He was able to pay some debts. (Tr. 50-52; App. Ex. I, Settlement Proposal, dated March 8, 2012) He did not pay some credit card debts so he could pay his utility bills. (App. Ex. L, Receipts, dated April 6, 2012; See App. Ex. J, E-mail, dated June 29, 2009)

By 2009, Applicant and his wife could not pay the mortgages on the two houses. Applicant attempted to refinance the mortgage on his house. He also put the house up for sale but it did not sell. He attempted to modify the mortgage on his wife's former house. This house was also subject to flooding and sustained some damage. (Tr. 35-39; App. Ex. D, Letters to Bank, dated May 27, October 1, and October 14, 2009) He was unsuccessful and both houses were foreclosed. The mortgage on his wife's house was cancelled and he received a cancellation of debt notice for that mortgage. (Tr. 46-48, 79-83; App. Ex. H, Form 1099-C, dated April 1, 2011)

Applicant received a credit card from his employer to use for travel expenses per the corporate policy (Gov. Ex. 2, Incident Report, dated May 27, 2010; SOR 2.a). He discovered on his company system that he had a large debt for this credit card. He had not used the card recently so he was unsure of the debt. He checked his wallet for the card and it was missing. He asked his wife if she had seen or used the card, and she admitted that she took the card from his wallet and used it. Since the debt had to be paid, he borrowed money from his mother to pay the bill. He deposited his mother's check in the bank and waited for it to clear. He attempted to make an electronic payment on the credit card debt. The payment was denied because there were no funds in his account. His wife had taken the funds out of the bank before his electronic payment cleared. He had to pay a utility bill so he could not make an additional payment for the corporate credit card. This debt has not been satisfied. (Tr. 62-64, 92-99; App. Ex. J, e-mail, dated June 29, 2009; App. Ex. K, Electronic Payment, dated June 19, 2009)

Applicant is not sure of the debt underlying the judgment listed at SOR 1.a. He knows there is a judgment but he is not sure for what debt. His attorney tried to determine the underlying debt from the documents on file at the courthouse but he was unsuccessful. (Tr. 90-91) The credit card debt at SOR 1.b was paid by garnishment. The credit card debts at SOR 1.c and SOR 1.d have not been satisfied. The personal credit card (SOR 1.e) from the same credit company that issued the corporate credit card (SOR 1.k) has not been satisfied. The mortgage debts at SOR 1.i and SOR 1.l

were foreclosed. He has not paid or satisfied any other debt listed in the SOR. His wages are being garnished monthly for approximately \$634. He does not know the debt underlying the garnishment, and he has not made inquiries to learn the reason for the garnishment. He stated he satisfied a garnishment but presented no order showing the garnishment was satisfied. (Tr. 99-101; App. Ex. M, Court Order, dated February 1, 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 credit report, his answers to interrogatories, and his 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). He has not paid almost all of the 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 have limited application. Applicant's finances were good until he married in 2003. He claims his wife indiscriminately used credit cards, opened credit accounts in his name without his knowledge, and took funds from their accounts without his knowledge. This is some indication that the debts were incurred by circumstances beyond his control. However, Applicant did not provide any credible information to establish that he was proactive in attempting to curb his wife's spending. Knowing of his wife's financial actions, he did not show any reasonable and responsible action to protect his accounts and funds. His inaction is evident because his wife was able to take funds from his account immediately after he deposited a check. He still supports his wife by voluntarily sending her \$700 monthly. His lack of action and his continued voluntary financial support of his wife after she caused the financial problems is evidence that his poor financial circumstances may likely recur. He has not established reasonable and responsible action under the circumstances to manage his finances and his finances are under control.

Applicant has not shown that he acted responsibly under the circumstances to resolve the remaining debts. He only has a payment plan to pay two of the remaining debts. He did not contact creditors, and he has no credible plan to pay his other delinquent debts listed in the SOR. He has been employed for over 34 years and he has not established that he did not have sufficient funds to pay his delinquent debts. 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(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). This mitigating condition does not apply because Applicant presented no information on financial counseling and there are no clear indications that the problem is being resolved or is under control.

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 a good-faith established plan to pay and resolve his past delinquent debts. Some debts were paid by garnishment under a judgment, but garnishment is an involuntary means of paying debt and not a reasonable, prudent, honest adherence to duty and obligation. He has not made any effort to contact creditors or settle and pay his debts. He has not shown payment of his past-due debts or a meaningful plan to pay them. 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. 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.

Personal Conduct

A security concern is raised for personal conduct based on the use of the corporate credit card in violation of corporate policy. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Personal conduct is always a security concern because it asks

whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. (AG ¶ 15)

In regard to the allegation concerning using the company credit card for personal purchases in violation of company policy, I considered Personal Conduct Disqualifying Condition AG ¶ 16(f) (violation of a written or recorded commitment made by the individual to the employer as a condition of employment). Applicant's was issued a credit card by his company to use only for business travel expenses according to the company policy. Unbeknown to Applicant, his wife took the credit card from his wallet and used it for non-travel purposes. Since it was his wife and not Applicant who used the card in violation of company policy, I find for Applicant as to the personal conduct security concern.

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 that Applicant served for over four years honorably on active duty in the Navy. I also considered that he has been employed for over 34 years by a defense contractor in support of the armed forces, and that he successfully had access to classified information during this time. I considered that the debt may have been incurred mainly through his wife's fraudulent actions. However Applicant did not take reasonable action to manage and control his finances in view of his wife's indiscriminate spending. In addition, Applicant has not been responsible towards the debts because he has not made a reasonable good-faith effort to resolve, settle, or pay the debts. Applicant's lack of effort to control his finances and pay or 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 his finances. The personal conduct security concern has not been established. 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

 Subparagraphs 1.a – 1.o: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

 Subparagraph 2.a: 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