



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



In the matter of:)
)
) ISCR Case No. 11-029553
)
Applicant for Security Clearance)

Appearances

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

January 31, 2012

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On July 22, 2009, 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 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 August 4, 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 August 18, 2011.

Applicant answered the SOR on August 24, 2011, admitting the nine allegations under Guideline F. Department Counsel was prepared to proceed on September 22, 2011, and the case was assigned to me on September 28, 2011. 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 four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified and offered three exhibits that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through C. I left the record open for Applicant to submit additional documents. Applicant timely submitted six additional documents that I marked and admitted into the record as App. Ex. D through I. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 5, e-mail, dated December 2, 2011; Gov. Ex. G, Memorandum, dated December 6, 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 39 years old. He served on active duty in the Navy for nine years from 1990 until 1999. He left the Navy with an honorable discharge because his specialty was being phased out. He was unable to find steady work after leaving the Navy. He attended college, graduating in 2004 with a bachelor's degree in information technology. After college, he again did not find good steady work until he was hired as a cable technician by his defense contractor employer in May 2009. He is now an integration technician for the defense contractor. He has never been married and has no children. Applicant's monthly net pay is \$2,068. He also works part-time as a fitness instructor and receives another \$200 a month. His monthly net expenses are approximately \$1,900 leaving him with approximately \$300 in monthly discretionary funds. He does not have any credit cards. He did not file federal taxes in tax year 2008 because of a problem with his tax preparer. However, he filed his 2010 tax return and his 2010 tax refund was used to pay his 2008 taxes. He filed his 2009 tax return and is due a refund. He is current with his federal and state income taxes. (Tr. 9-11, 25-30, 32-345, 47-48; Gov. Ex. 1, e-QIP, dated July 22, 2009; App. Ex. D, Form 1040EZ 2009 Tax Return; App. Ex. E, Form 1040EZ 2010 Tax Return; App. Ex. F, Turbo Tax Receipt; App. Ex. G, IRS Notice of Tax Refund Allocation, for 2008, dated September 19, 2011)

Credit reports (Gov. Ex. 3, dated July 31, 2009, and Gov. Ex. 4, dated May 5, 2011) and Applicant's response to the interrogatory (Gov. Ex. 2, dated May 6, 2011) show the following delinquent debts for Applicant: medical debts for \$942 (SOR1.a),

\$1,119 (SOR 1.b), \$1,503 (SOR 1.f), \$1,304 (SOR 1.g), and \$20,541 (SOR 1.h); student loan accounts charged off for \$21,477 (SOR 1.c), \$17,759 (SOR 1.d), and \$21,443 (SOR 1.e); and a bad debt to a tax preparer for \$325 (SOR 1.i). The total amount of the medical debt is approximately \$25,410, and the total amount of the student loans is approximately \$60,000.

When Applicant left the Navy in 1999, he found it difficult to find employment. It took him six months to find his first part-time position. His car was repossessed because he did not have the funds to pay his loan. He moved to different locations as dictated by his financial situation. He found part-time work only occasionally to assist with his finances. None of his positions provided benefits and he did not have health insurance. He enrolled in college and used his G.I. benefits and student loans to live and attend school. He received his bachelor's degree in 2004. He moved back to the state he was originally from in 2005 to find better employment and to be near his family for support. He moved in with his mother to save expenses, and he now helps to support her. (Tr. 13-15)

Applicant developed a severe allergy and asthma condition in February and March 2005 after graduating from college and while he was looking for full-time employment. His condition was severe enough to require two visits to an emergency room and eventually two hospitalizations in a critical care unit. He did not have health insurance at the time. The medical debts at SOR 1.a, 1.b, 1.f, and 1.g are from his emergency room visits. The large medical debt of \$20,541 at SOR 1.h is for the hospitalizations in the critical care unit. Since moving, he has had other asthma-related problems that required medical care. However, he saved funds to have the medical treatments before seeking medical help. He paid as he saw the doctors, and he has no recent medical debts. He now has health insurance with his present employer. (Tr. 15-16, 18-21)

Applicant attempted to resolve his medical debts. He contacted the collection agency to arrange a payment plan. The collection agency could not find an account for Applicant and advised him to call the hospital where he was treated. Applicant contacted the hospital and was referred to their billing department. He called the billing department and was advised that the debt was no longer in collection but he could contact another department to see if he could make some payments on the debt. A clerk in that department sent Applicant the only information available on the debt. It showed a debt of approximately \$18,000 for hospitalization. It also showed a contractual adjustment decrease of approximately \$6,000. Applicant is still working with the hospital to determine the extent of his debt, if any, and if there still is a debt owed, how to pay it. (Tr. 36-42)

When Applicant left the Navy in 1999 to attend college using his G.I. Bill benefits, he was advised by the Navy career counselors that he was eligible for student loans and would not have to repay the student loans until after he graduated. Applicant used student loans to pay his tuition. The SOR debts at 1.c, 1.d, and 1.e are for his tuition costs for four years paid for by student loans. After completing his first semester of

studies, he received a notice from the student loan guarantor that he had to start repaying his student loans. He was advised the loans were private loans that required the start of payment at the completion of a semester. Each subsequent semester was a new loan that requiring him to pay. He contacted the student loan center and his loans were consolidated. He received a payment plan for \$187 monthly. Since he did not have full time employment from 2005 until 2010, he could not make all of his student loan payments. He had a payroll deduction for \$187 at times while employed. Since he is now working full time, he contacted the collection agency for the student loan creditor. He recently received information that his student loan debt is \$22,234.51. He made his first payment of \$80 in November 2011 to the collection agency. (Tr. 21-25, 43-45; App. Ex. H, Letter, dated November 20, 2011; App. Ex. I, Payment Receipt, dated November 29, 2011).

SOR debt 1.i is from a tax preparer. Applicant went to the tax preparer to have his 2008 return completed and filed. He did not have the funds to pay them immediately. However, he believed they filed his 2008 return. He subsequently contacted the Internal Revenue Service (IRS) and learned the tax return had not been filed. Applicant himself prepared and filed the 2008, 2009, and 2010 tax returns. He disputes this debt with the tax preparer since they did not complete and file the 2008 tax returns. (Tr. 45-51; App. Ex. D, Form 1040EZ, Tax Return 2009; App. Ex. E, Form 1040EZ, Tax Return 2010; App. Ex. F, Turbo Tax Receipt; App. Ex. G, IRS Notice of Paid Taxes, dated September 19, 2011)

Applicant is highly regarded by his employer. His senior manager noted that Applicant has exceptional skills and is dedicated to his job. Applicant advised him of his financial issues and his efforts to resolve them. He recommends Applicant be granted access to classified information. (App. Ex. B, Letter, dated November 7, 2011)

Applicant's immediate supervisor noted that Applicant displays a positive attitude, willingness to learn, and willingness to go the extra mile on the job. He is an excellent team player. He is a skilled, dedicated, and determined technician. He has been forthcoming about his financial problems and difficulties. His supervisor does not see any reason to question Applicant's character or trustworthiness. She recommends he be granted access to classified information. (App. Ex. C, letterer, undated)

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 an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems after leaving the Navy and used student loans to earn a college degree. He also did not have health insurance when he suffered a severe medical problem requiring extensive hospitalization.

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 apply. Applicant incurred two series of delinquent debt. One is student loans used to obtain a college degree. The other is medical debts for emergency medical treatment when he did not have health insurance. The medical debts were caused by unusual circumstances and conditions beyond Applicant's control. He contacted the hospital and creditor to make payments on the debt. They were unable to provide him information on the debts and a process to pay them.

Applicant was advised he did not have to start repaying student loans until after receiving his degree. The student loan center sought payment after each semester for the loan paying that semester's tuition. He was not working while in school and did not find good employment enabling him to repay the loans after receiving his degree. He made some student loan payments when he could. Since being fully employed for the last few months, he contacted the collection agency for the student loans and is making payments.

Applicant acted reasonably and responsibly towards his finances under the circumstances. He contacted the creditors when he found good employment to start making payments on his debts. He was unable to pay the medical debts because the creditors could not provide him payment procedures. He is paying his student loans. He established a clear understanding of the status of his finances. Applicant has sufficient income to pay his debts, and he is current with his present debts. His finances are under control. He has steady and good employment and is well regarded by his employer. He is living within his means. He is not likely to incur additional debts. Applicant established 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 an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant is resolving his delinquent debts. He contacted the creditors to arrange resolution of his medical debts. The creditors were unable to provide adequate information to establish the extent of the debt and a payment plan. He is starting to repay his student loans since he has good employment. His efforts with his creditors and payments towards his student loans are significant and credible information to show a desire to resolve debt. His arrangement to pay student loans as well as his initial payment establishes a systematic plan to pay the student loans and a meaningful track record of debt payment. His efforts to find and pay his medical debts as well as his effort to pay student loans shows a reasonable and prudent adherence to financial obligations and establishes a good-faith effort to resolve and pay debts. His past delinquent debts do not 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 disputes the debt to the tax preparer at SOR 1.i. The tax preparer did not prepare Applicant's 2008 tax return and file it with the IRS. Applicant prepared and filed his own tax return. Applicant established a reasonable and good-faith basis for his dispute of the debt. Applicant has 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 nine years of active duty Navy service. I considered that Applicant is a good employee and highly regarded by his employer. I considered that Applicant's medical financial problems were caused by emergency care that was beyond his control. He made attempts to repay the debts but has not been able to get sufficient information to make payments. He is starting to repay his student loans now that he is gainfully employed. He lives within his means and is not incurring additional delinquent debts. Applicant established a good-faith effort to pay or resolve his delinquent debts. His actions to pay and resolve his past financial obligations indicate that he will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations. He is 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: FOR APPLICANT

Subparagraphs 1.a – 1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge