



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-03637

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2012

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 October 7, 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 explain 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 March 16, 2012, 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 effective in

the Department of Defense on September 1, 2006 (AG). Applicant acknowledged receipt of the SOR on March 29, 2012.

Applicant answered the SOR on April 9, 2012, admitting seven and denying seven allegations under Guideline F of the AG. Department Counsel was prepared to proceed on May 29, 2012, and the case was assigned to me on June 11, 2012. Department counsel received information that Applicant was about to be deployed overseas and an expedited hearing for his security clearance was required. On May 29, 2012, Department Counsel notified Applicant by e-mail that an administrative judge was assigned to his case and would schedule a hearing by video tele-conference on June 14, 2012. (Hearing Exhibit I) DOHA issued a Notice of Hearing on June 11, 2012, scheduling the hearing for June 14, 2012. 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 14 exhibits that I marked and admitted into the record without objection as Applicant Exhibits A through N. DOHA received the transcript of the hearing (Tr.) on June 21, 2012. Applicant waived the requirement for 15 days notice of a hearing (Tr. 5-7)

Findings of Fact

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

Applicant is 33 years old and has been a helicopter mechanic for a defense contractor since October 2010. He served in the Army from August 20, 1997, until August 2003. During his Army tour, he served overseas in Bosnia and Korea. He received an honorable discharge. He also served for 18 months in the Air Force Reserve, and again received an honorable discharge. He enlisted in the Navy Reserve and received an enlistment bonus. He was unable to meet his service obligations which resulted in the debt at SOR 1.a. Applicant first married in March 1998 and divorced in March 2008. He had two children from this marriage for whom he is required to pay child support. One of the children now lives with him and his present wife. He married again in May 2010 and has one child from this marriage. He is a high school graduate with some technical courses taken in the military. (Tr. 36-40; Gov. Ex. 1, e-QIP, dated October 7, 2010)

After leaving the Army, Applicant and his first wife had family issues and they separated. Applicant had difficulty finding good steady employment. He was being laid off or his hours were cut in his many jobs. His job history on the security clearance application shows sporadic jobs in various locations since 2003. He worked as a refrigeration service technician, assistant manager at an auto parts store, warehouse worker, pest control technician, waste water plant operator, taxi driver, and aircraft mechanic. He was only able to meet his basic financial obligations of paying rent and providing food for his family. (Tr. 40-42, 45-51; Gov. Ex. 1, e-QIP, dated October 7, 2010)

Appellant's monthly budget reflects that his monthly net income is \$2,500, with monthly expenses of \$3,278. Included in the expenses are \$600 for child support and \$272 for medical expenses. Applicant's wife has medical problems that require extensive medications, and prevent her from working. She has applied for Social Security disability. (App. Ex. N, Letter, dated June 5, 2012) His son has some medical and developmental issues that also caused increased medical expenses. (App. Ex. M, Medical Records, dated April 4, 2012) Most of the family medical expenses are paid by health insurance. But there are additional expenses for co-pays or what health insurance does not pay. The extra child support payment and the medical expenses are a significant cause of his monthly expenses being more than his income. (Tr. 46-47)

Applicant's expenses exceed his monthly income by \$738. Applicant and his wife have managed to pay current debts by overdrafts of their accounts by about \$300 to \$400 monthly. They have also pawned some items and sold other household goods. He has been able to pay and stay current with the rent and utilities. He included copies of the bills that he pays including his rent and utilities. He has one credit card but he does not know the balance on the card. (Tr. 15-20, 43-45, 50-51; App. Ex. A, Monthly Budget, undated; App. Ex. B, Pay Stub, dated May 27, 2012; App. Ex. C, Lease and Payment, dated June 2, 2012; App. Ex. D, Payment Receipts, dated May 31, 2012; App. Ex. L, Medical Insurance Statement, dated June 1, 2012)

Applicant also listed the status of his debts. Four debts are shown as paid, two as being paid, and eight as not being paid. Applicant has not been able to address these debts due to a lack of income. When he has the income, he will pay them. (Tr. 18-21; App. Ex. E, Creditor List, undated) Child support payments of \$600 are taken directly from Applicant's pay. Since one of his children is now living with him, his child support payments should be reduced to \$300. He has not contacted the state agency responsible for child support to have the payments reduced. (Tr. 37-38)

Credit reports (Gov. Ex. 3, dated February 1, 2012; and Gov. Ex. 4, dated November 2, 2010), and Applicant's answers to an interrogatory (Gov. Ex. 2, dated January 24, 2012), show the following delinquent debts: a \$15,183 debt in collection for the Defense Finance and Accounting Agency (SOR 1.a); a credit card debt in collection for \$2,094 (SOR 1.b); a credit card debt in collection of \$523 (SOR 1.c); child support payments in collection for \$6,787 (SOR 1.d); student loans in collection for \$4,821 (SOR 1.e); an apartment rent in collection for \$3,874 (SOR 1.f); a credit card debt in collection for \$434 (SOR 1.g); a car loan debt in collection for \$4,404 (SOR 1.h); a telephone debt in collection for \$161 (SOR 1.i); a credit card debt in collection for \$1,184 (SOR 1.j); a medical debt in collection for \$100 (SOR 1.k); a cable bill in collection for \$194 (SOR 1.l); a medical account in collection for \$313 (SOR 1.m); and a medical account in collection for \$235 (SOR 1.n). The total debt is approximately \$40,000.

Applicant admits the debt to the Defense Finance and Account Office at SOR 1.a. He incurred this debt when he enlisted in the Navy Reserve and received a bonus because he did not require training. He was unable to fulfill his commitment to the Navy Reserve because of work and family issues so he resigned. He has to pay the bonus back because he did not meet his commitment. (Tr. 39-41)

The debt at SOR 1.b is listed on his credit report as a \$0 balance. Applicant believes it has been paid, but he did not have a receipt for a payment. (Tr. 20-22; App. Ex. F, Credit report, undated) He has not made any payments on the debt at SOR 1.c. (Tr. 32)

The debt for child support arrears at SOR 1.d, and the student loans at SOR 1.e have been paid by his tax refund being garnished for the payments. (Tr. 22-24; App. Ex. G, IRS Letter, dated February 21, 2012; App. Ex. H, Student Loan Paid in Full Letter, dated April 16, 2012)

Applicant has not paid the apartment rent debt at SOR 1.f. Applicant and his wife separated. He moved from the state but his wife stayed in their apartment. She moved a few months later without paying the rent or telling him of her move. He tried to talk to the apartment agent to dispute the debt but he has not been able to contact them. His attempts to contact the agent have been by telephone and not by letter or by any other documents. (Tr. 33-34)

Applicant started to make payments on the credit card debt at SOR 1.g. However, he has not had the income to continue making payments and he has not made a payment recently. (Tr. 25-26, 33-34; App. Ex. I, Money Order, dated November 18, 2011) Applicant has not been able to make payments on the debts at SOR 1.h, and SOR 1.i. (Tr. 27-34) He is not aware of the debt listed at SOR 1.j, and does not know the company listed as the creditor in the credit report. He has not paid the debt at SOR 1.k because of a lack of funds. (Tr. 27, 34-35)

Applicant stated that he paid the cable bill at SOR 1.l. He has a statement from the cable company that shows his current balance as \$0. (Tr. 26-27, 35) Applicant has not made any payments on the medical debts at SOR 1.m and 1.n. (Tr. 35-36)

Applicant presented letters of recommendation from his employer. A retired military member and a pilot for the company wrote that Applicant is a superior helicopter mechanic. He is hard-working, reliable, and a problem solver. Applicant is trustworthy, honorable, motivated, and highly intelligent. He has impressed others with his candor, clarity of vision, and ethical attitudes and practices. The writer recommends that Applicant be granted eligibility for access to classified information. (App. Ex. K, Letter, dated May 30, 2012)

The maintenance supervisor for his company wrote that Applicant has worked for him for almost two years. Applicant has not had any disciplinary problems, and is a tireless worker. He recommends that Applicant be granted access to classified information. (App. Ex. K, Letter, undated)

A co-worker wrote that he has known Applicant for about two years. Applicant is a model employee who maintains the utmost professionalism. He is the company's go-to-mechanic. He is trustworthy and has good character traits. He recommends that Applicant be granted access to classified information. (App. Ex. K, Letter, dated June 4, 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 credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). Applicant incurred delinquent debt through low employment, job changes, his wife's medical condition preventing her from working, family medical expenses, and extra child support payments. His monthly expenses far exceed his monthly income. The evidence indicates an inability and not 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 only partially apply.

Applicant's employment history shows that since he left the Army in 2003, he had many job changes and frequent moves to gain better employment. He and his first wife separated and divorced causing increased financial issues of housing and child support. His present wife has an illness that increases their medical expenses and prevents her from working. His son has a disability causing increased medical costs. These issues are unusual and beyond his control. These issues are ongoing and will continue to cause financial problems. In addition, Applicant has not acted responsibly towards his finances. While some of the debts were paid, most of the payments were due to the IRS using tax refunds to pay the debts. Applicant has little disposable income to use himself for debt reduction. Of greater concern is that he is living beyond his means. His monthly expenses exceed his income by \$736. He could lower his expenses by reducing his child support payments but he has not taken the necessary steps to do so.

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 shows 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 has shown some significant payments on some debts in the last few years. However, the payments were made by the IRS using tax refunds. He is making some payments on two small debts on a monthly basis. However, he has no plans in place to pay most of his debts. He stated his intent to pay the debts when funds are available. A promise to pay debts in the future when his job conditions have improved is not a good-faith action showing reasonableness, prudence, honesty, and adherence to duty and obligation. His lack of a meaningful track record of paying delinquent debts, except by use of tax refunds, shows he is not being financially reasonable and prudent in adhering to his financial obligations. His past delinquent debts reflect adversely on his trustworthiness 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 some of the debts because he does not know about the debts or the creditors. He did not establish a reasonable 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 opinions of Applicant's supervisors and co-worker that he is an excellent employee who should be granted access to classified information. I considered his service in the Army and Air Force Reserves. I considered that Applicant has attempted to resolve his delinquent debts by always seeking better employment. I considered that Applicant's financial problems were caused by circumstances beyond his control. His wife and son have medical issues that prevent his wife from working and cause additional medical expenses. 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 many of the delinquent debts listed in the SOR. Some debts were paid by the IRS using tax refunds. He disputes some debts but he has not taken steps to resolve the 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. Of greater concern is that Applicant is living beyond his means. His monthly expenses far exceed his monthly income. Applicant has resorted to using overdrafts and pawning items to maintain some financial stability. Applicant's inability to resolve his financial obligations and live within his means indicates that he may not be concerned, responsible, and careful regarding classified information. His failure or inability to live within his means, satisfy debts, or meet financial obligations is the exact financial circumstance that causes a security concern. It is the type of circumstance that indicates poor self-control or lack of judgment. It raises questions concerning his reliability, trustworthiness, and ability to protect classified information. His living beyond his means and financial overextension show he may be at risk of having to engage in illegal acts to generate funds.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d – 1.f:	For Applicant
Subparagraphs 1.g – 1.k:	Against Applicant

Subparagraph 1.l: For Applicant

Subparagraphs 1.m – 1.n: Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge