



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



In the matter of:

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| |) | ISCR Case No. 11-07441 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns for financial considerations under Guideline F and personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On April 8, 2008, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 4) Applicant was interviewed by a security investigator on May 19, 2008 (Item 5 at 5-6), and on February 4, 2011. (Item 5 at 6-11). On April 10, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was 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 in the DOD on September 1, 2006.

Applicant received the SOR on April 17, 2013. (Item 2) He answered the SOR on May 30, 2013. He denied four financial allegations, claiming that they had been paid in full (SOR 1.d, 1.j, 1.m, and 1.o). He admitted the remaining 15 financial allegations. He denied the one allegation under Guideline E alleging that he had used his company's credit card for personal expenses in violation of company policy. Applicant elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on September 10, 2013. Applicant received a complete file of relevant material (FORM) on September 18, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM. The case was assigned to me on October 23, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 43 years old and has been employed as a combat profiler for a defense contractor since January 2008. Prior to his present position, Applicant worked in construction, to include his owning his own business. He was also employed as a deputy sheriff and an installer. He was first married in August 1988, and divorced in January 1995. He married his present wife in June 1997. He has four children or step-children. Applicant's personal financial statement attached to his response to interrogatories shows a varied monthly income between \$4,000 and \$8,000. He also shows monthly expenses of approximately \$4,000. In some months, there is a sizable remainder. (Item 5 at 14)

The SOR lists, and credit reports (Item 6, dated April 22, 2008; Item 7, dated May 11, 2011; and Item 8, dated February 16, 2013) confirm the following delinquent debts for Applicant: an account placed for collection for \$752 (SOR 1.a); a medical account for \$1,490 (SOR 1.b); \$2,802 (SOR 1.c); and \$25 (SOR 1.d); a college tuition debt in collection for \$5,822 (SOR 1.e); a medical account for \$101 (SOR 1.f); a debt to a bank for \$6,471 (SOR 1.g); medical accounts for \$134 (SOR 1.h), \$101 (SOR 1.i), \$40 (SOR 1.j), \$142 (SOR 1.k), \$114 (SOR 1.l), \$66 (SOR 1.m), \$101 (SOR 1.n), and \$66 (SOR 1.o); a charged off account for \$13,000 (SOR 1.p); and a charged off account for \$840 (SOR 1.q. Also listed as financial security concerns are a Chapter 13 Bankruptcy filed in December 2000 and dismissed in March 2002; and the use of a company credit card for personal expenses in violation of company policy in June 2010. An incident history from his employer verifies the misuse of the company credit card. (Item 9) The misuse of the company credit card is also alleged as a personal conduct security concern. The total delinquent debt is approximately \$31,000, of which approximately \$6,000 is due to the misuse of the company credit card.

Applicant denied the debts at SOR 1.d, 1.j, 1.m, and 1.o. He presented money order receipts and certified letters in response to the SOR to establish his payments of these debts. (Response to SOR at Exhibit B) I find for Applicant as to SOR 1.d, 1.j, 1.m, and 1.o.

When first interviewed by security investigators, Applicant attributed his financial problems to not making enough money while employed as a deputy sheriff, trying other businesses that failed, his son's illness, and his wife's inability to find a job after they moved. Applicant also experienced medical problems from a car accident that affected his ability to work. In the interview, he acknowledged some of the accounts but could not verify the medical accounts. He believed that the medical accounts could be for treatment for his family. He was in the process of selling his house, and he intended to use some of the proceeds from the sale to pay his debts. (Item 5, Response to Interrogatories, dated February 20, 2013, Interview summary, dated May 19, 2008 at 1)

Applicant, in response to questions in a financial interrogatory dated March 4, 2013, stated that 19 medical debts remain unpaid and two more were are duplicates. He also stated that the debt associated with the use of the company credit card remains unpaid, as well as a car repossession debt, and a credit card debt. He provides information that some large medical debts were paid by wage garnishment and a property debt paid by a deed in lieu of foreclosure. He also provided information concerning an effort to gain information on his medical debts.

Applicant answered "yes" to questions on his e-QIP of April 5, 2008, that he filed a bankruptcy that was dismissed. He reported that he had wages garnished or property repossessed, had a lien placed on property for failing to pay taxes, and had judgments that had not been paid. In response to questions from security investigators, he provided information on the bankruptcy and civil suits terminating in judgments. (Item 5).

In response to the SOR, Applicant stated he contacted a credit counseling service in May 2013. The documents include a debt management plan for the bank debt listed at SOR 1.g. This is the debt resulting from Applicant's personal use of the company credit card alleged at SOR 1.s and SOR 2.a. Applicant agrees the debt is his. He states he was issued the credit card as a business credit card but he was not informed that it could not be used for personal purchases. He mainly used it for business purposes until June 2010, when his wife lost her job to care for their son and he needed to use the card for personal purchases. When he traveled and received reimbursement, he used the funds to pay for his personal purchases rather than the business expenses. The debt grew to over \$6,000. Under the debt management plan, he should make payments of \$158 monthly on the debt. There is no verification that the plan has been implemented and payments made. (Response to SOR, Exhibit C)

Applicant outlined his financial plan in response to the SOR. He intends to pay the SOR 1.f and 1.h debts through the debt management plan in July 2013, the SOR debts 1.i and 1.k in August 2013, and SOR 1.l and 1.n in September 2013. The remaining debts will be paid in turn at the discretion of the debt management service.

He presented no documentation that any of the debts had been paid or that his plan was implemented. Applicant also states he paid \$4,500 towards outstanding medical bills and that he voluntarily liquidated assets to pay bills. Other than the funds he received from the sale of his house which he used to pay a judgment, Applicant presented no documentation to corroborate the payment of medical debts or liquidation of assets. (Response to SOR at Exhibit A)

Applicant timely responded to the issues raised by Department Counsel in the FORM. He stated he is an independent contractor but is being sponsored by another defense contractor for access to classified information. The defense contractor provided a compelling need statement for his services. He also remarked that he paid over \$11,000 in past due debts, and all judgments and liens have been paid or resolved. He resolved his mortgage debt through a Deed in Lieu of Foreclosure. He again stated his payment of the debts at SOR 1.d, 1.j, 1.m, and 1.o. Applicant explained his use of the company credit card for non-business purchases and his failure to pay the credit card debt. He admits he is responsible for the balance on the card. He claims to have a payment arrangement with the card creditor and he has made payments under the plan. He presented no documentation to verify the arrangement or payments. (Response to FORM, dated October 10, 2013)

Applicant provided nine letters of recommendation from his co-workers. All of the co-workers have extensive law enforcement or military experience. They all attest to his trustworthiness, honesty, hard work, high moral character, and sense of patriotism. They all recommend he be granted eligibility for access to classified information. (Response to SOR, Exhibit D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 for obtaining 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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, thereby raising 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 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 finances in such a way as to meet financial obligations. Applicant’s credit reports showing a history of delinquent debts raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). This history of delinquent debts shows both an inability and unwillingness to the debt.

The Government produced substantial evidence by way of credit reports, Applicant's answers to Interrogatories, and Applicant's responses to security investigators to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations.

I considered all of the Financial Consideration Mitigating Conditions and find that there is only limited application of the mitigating conditions. I specifically considered Financial Considerations Mitigating Condition 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). Applicant lists the causes of his financial problems as his son's illness, a car accident that revealed a medical problems causing the loss of his job, his wife's inability to find work, trying different lines of work that did not succeed, and low pay as a deputy sheriff. These issues are not so unusual that they will not likely happen again. Some of the issues may have been beyond his control, but Applicant did not connect the unusual conditions beyond his control to his inability to resolve his debts. Applicant failed to provide information to show that his actions to resolve his financial issues under the circumstances were responsible and reasonable. Applicant's debt is current and has not been resolved. While some of the financial issues may have been resolved, most of the debts in the SOR have not been resolved and are not being paid.

I also 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). Applicant contacted a credit counseling company but there is no clear indication that his financial problems are resolved or 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. A systematic, concrete method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant failed to establish such a meaningful track record. Applicant presented evidence that he paid four small debts and used the proceeds from the sale of his house to resolve some other debts. However, he presented no other information on payment of most of his SOR debts or verification of some of the debts he stated he

paid. He indicated he had a plan to pay and resolve the debts. He claims to have paid debts not listed in the SOR but presented information only on a limited amount of these payments. With evidence of delinquent debt and limited documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. It is clear that Applicant has not acted reasonably and responsibly in regard to his finances. His failure is a strong indication that he will not act reasonably and responsibly to protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

A security concern is raised by Applicant's misuse of the company issued credit card in violation of company 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. (AG ¶ 15) 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.

Applicant admits that he used his company-issued credit card for personal items. The card was to be used only for work-related expenses. When Applicant was reimbursed for his expenses by his company, he reimbursed the credit card company for personal expenses and not his business-related expenses. This resulted in Applicant incurring a significant debt on the card. His actions manifest a security concern under Personal Conduct Disqualifying Conditions:

AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information);

AG 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rules violation):

AG 16(f) (violation of a written or recorded commitment made by the individual to the employer as a condition of employment).

I considered Personal Conduct Mitigating Conditions AG 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and AG 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur). I find that none of the mitigating conditions apply. Applicant deliberately used the company-issued credit card to purchase items he was not authorized to purchase with the card. He did not reimburse the credit card company for his business purchases. His deliberate actions show untrustworthiness and unreliability.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The 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 eligibility for access to classified information 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 recommendations of Applicant's co-workers and his employer's need for his services. However, Applicant has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information. He also used his company credit card for unauthorized purchases. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not

established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and personal conduct. Eligibility for 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a -1.c: | Against Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraphs 1.e -1.i: | Against Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraphs 1.k -1.l: | Against Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraph 1.n: | Against Applicant |
| Subparagraph 1.o: | For Applicant |
| Subparagraphs 1.p – 1.s: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge