



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-09196
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

11/27/2012

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On April 18, 2011, 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 June 20, 2012, detailing security concerns based on Applicant's finances. 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on June 25, 2012.

Applicant answered the SOR on August 3, 2012. He admitted 17 and denied 4 (SOR 1.b, 1.s, 1.t, and 1.u) of the 21 allegations. Applicant did not initially request a hearing. On September 14, 2012, Applicant requested a hearing. (Hearing Exhibit I) Department Counsel was ready to proceed on September 20, 2012. The case was assigned to me on September 27, 2012, and DOHA issued a Notice of Hearing on October 2, 2012, scheduling a hearing for October 31, 2012. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified, and submitted four documents that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents, which I marked and admitted into the record without objection as Applicant Exhibits E and F. Department Counsel had no objection to admission of the documents. (Gov. Ex. 6, e-mail, dated November 19, 2012). DOHA received the transcript of the hearing (Tr.) on November 8, 2012.

Findings of Fact

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

Applicant is a 49-year-old high school graduate with an associate's degree in aircraft maintenance. He worked at times as an aircraft power plant technician. He has been employed by his defense contractor employer as a senior electronics field technician since January 2011. He has been married twice. He married in January 1997, and was divorced in April 2005. He married again in January 2006, and is now separated. He has no children. Applicant's hourly pay is \$25.44, resulting in monthly net pay of \$2,800. His monthly expenses are approximately \$2,600, leaving him \$200 in monthly discretionary funds. (Tr. 15-17, 30-31, 60-63; Gov. Ex. 1, e-QIP, dated April 15, 2011; Gov. Ex. 4, Response to Interrogatories, dated August 24, 2011) .

Credit reports (Gov. Ex. 2, dated September 12, 2011; and Gov. Ex. 3, dated April 30, 2011), and Applicant's answers to interrogatories (Gov. Ex. 4 dated August 24, 2011), enumerate 21 delinquent debts. These debts include a judgment for \$3,001 (SOR 1.a); a credit union personal loan in collection for \$4,687 (SOR 1.b); credit card debts in collection or charged off for \$667 (SOR 1.c), \$2,321 (SOR 1.d), \$1,116 (SOR 1.e), \$567 (SOR 1.f), \$425 (SOR 1.g), \$674 (SOR 1.h), \$420 (SOR 1.i), \$558 (SOR 1.k), \$236 (SOR 1.l), \$1,016 (SOR 1.m), \$765 (SOR 1.n), \$496 (SOR 1.o), \$401 (SOR 1.p), and \$631 (SOR 1.u); telephone bills in collection for \$188 (SOR 1.j), \$602 (SOR 1.q), and \$359 (SOR 1.t); a \$1,297 cable service debt (SOR 1.s); and a credit union personal loan debt of \$4,372 (SOR 1.r). Department Counsel acknowledges that the

debts at SOR 1.b and 1.r are the same debt. The total amount of delinquent debt is approximately \$19,565. (Tr. 12, 14-15; Response to SOR, dated August 3, 2012)

Applicant had short periods of unemployment. He was unemployed for two months in 2004, two months in 2006, two months in 2009, and four months in 2010. When unemployed, he drew unemployment compensation. Most of the delinquent debts started before 2008, with five or six new delinquent debts originating in 2009 and 2010. Applicant attributes most of his delinquent debts to impulse buying. He buys now but regrets later with a lot of buyer's remorse. He does not have a budget, has no savings except for a small 401(k) account, and has little funds left each month. In addition to the delinquent debts listed in the SOR, he also admits he has another \$4,000 delinquent credit card debt and two phone debts totally approximately \$1,000. (Tr. 34, 54-57, 60-61)

The judgment debt at SOR 1.a has been paid through garnishment. The last payment has been taken from his salary and paid to the court. (Tr. 22, 25-28, App. Ex. B, Earning Statement, dated October 15, 2012)

The personal loan debt at SOR 1.b, the gas credit card debt at SOR 1.c, and the credit card debt at SOR 1.d have not been paid and are still delinquent. Applicant has not inquired about these accounts. The credit card debt at SOR 1.e has not been paid. Applicant made some inquiries about this debt but is unsure of the current creditor or collection agency holding the debt. The delinquent credit card debts at SOR 1.f and 1.g have not been paid and Applicant has not inquired about the debts. (Tr. 36-39)

Applicant has a settlement agreement for the debts at SOR 1.h and 1.i. He has made payments on the agreements and he has one payment remaining. (Tr. 21, 39; App. Ex. C and App. Ex. D, Settlement Letters, dated October 30, 2012; App. Ex. F, Bank Statement, November 1, 2012 to November 19, 2012)

The delinquent debts listed at SOR 1.j and 1.t are the same debt. The debt was paid in full in September 2011. (Tr. 40-41; Response to SOR, dated August 3, 2012)

The delinquent credit card debts at SOR 1.k, 1.m, 1.n, 1.o, and 1.p have not been paid. Applicant has not made any contact with the creditors concerning the accounts. (Tr. 41-45)

Applicant has a settlement agreement for the \$236 delinquent credit card debt at SOR 1.i. He has made payments according to the settlement agreement and the debt has been paid in full. (Tr. 25-27, 41-43; App. Ex. A, Bank Statement, September 22, 2012 to October 19, 2012; App. Ex. E, Letter, dated November 6, 2012; App. Ex. F, Bank Statement, dated November 1, 2012 to November 19, 2012)

Applicant has no information on the telephone debt at SOR 1.q. He has service with the telephone company now and his bill is current. The debt may have originated

from long distance overseas service he had from another provider that was purchased by his present provider. He has not inquired about this debt. It remains unpaid. (Tr. 45-46). The delinquent personal loan debt at SOR 1.r has not been paid. (Tr. 46) The cable service debt at SOR 1.s has been paid. The debt was for equipment that he did not initially return to the company. The equipment was returned and the debt resolved. (Tr. 47-48; Response to SOR, date August 3, 2012). Applicant states that the \$631 credit card debt at SOR 1.u has been paid. He has no documentation to verify payment of the debt. (Tr. 49-52)

Applicant's plan is to take one or two of his debts at a time and pay them. He will pay the small debts first and then move to pay the larger debts. He hopes to be on travel and save some per diem to make larger payments on his debts. His plan is to eliminate almost all of his debts by December 2013. Part of his plan is to make a good game plan, stick to the plan, get credit reports so he knows about each debt, be diligent in contacting creditors, establish payment arrangements, make payments, and receive payment documentation. (Tr. 20, 59-63)

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 or her 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 exhibits a 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 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). The evidence indicates both an inability and unwillingness to satisfy debt. Applicant incurred delinquent credit card debt through impulse buying.

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 do not apply. Applicant admitted his credit card debt was caused by impulse buying and indiscriminate use of credit. He has credit card debts

from as early as 2003 that he has not resolved. He was unemployed for short periods of time but the delinquent debts were not caused by his unemployment. The conditions causing his debts were well within his control since he made the decision to indiscriminately use his credit cards. He has not acted responsibly under the circumstances. He has not contacted many of his creditors and he has paid only a limited number of his delinquent debts. He has no solid plan to pay his debts. He has no budget and little discretionary money to pay debts. His only plan is to go on per diem and use any extra money he gets to help pay his debts. He has not established that he is or will act responsibly towards his debts.

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 periodic payments to reduce debts. Applicant is not required to establish that he paid each and every debt listed. All that is required is that applicant has an established plan to resolve his financial problems, and shows he has taken significant actions to implement that plan.

Applicant established that the debts listed at SOR 1.b and 1.r are the same debt. Likewise, he established that the debts at SOR 1.j and 1.t are the same debt. He paid 7 of the remaining 19 debts. However, he has not contacted the other 12 creditors or made any attempt to pay those remaining debts. While he has paid some debts, his failure to act on the remaining debts show he has no systematic means of managing his finances. He has not established a meaningful track record of paying his debts. His only plan is based on speculative future events. He will pay his small debts first, get some funds from extended per diem and travel, and use those funds to pay his remaining debts. This type of a plan is not a reasonable, prudent, and honest attempt to resolve debt. He has not established a good-faith effort to resolve his debts.

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). Applicant has not established that he sought or received financial counseling.

Applicant's indiscriminate use of credit leading to delinquent debt, and the lack of management of his finances, shows that his financial problems are not being resolved and are not under control. His lack of effort to learn about and resolve his debts is significant and credible information to show that he does not have a firm good-faith desire to resolve debt. His payment of some of his debts does not establish a meaningful track record of debt payment. One debt was paid through wage garnishment and does not show a meaningful effort on his part to resolve the debt. The other debts

that he paid are small debts and some were paid some time ago. He has not established a reasonable and prudent adherence to financial obligations, or established a good-faith effort and plan to resolve and pay debts. His past and present delinquent debts and lack of good financial effort reflect adversely on his trustworthiness, honesty, and good judgment. Based on all of the financial information provided by Applicant, I conclude that he 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. Applicant incurred delinquent debts through his own action using credit cards indiscriminately. He has not made significant good-faith efforts to resolve the debts. I have considered that he paid some of the debts but his efforts are not significant and meaningful. Applicant's plan is to rely on paying his debts in the future and gaining more funds through travel per diem. This type of plan is not a good-faith effort to resolve his debts. Applicant has not established that he will make a good-faith effort to pay or resolve his delinquent debts. His finances are not under control. His lack of actions in regard to his financial obligations indicate that he will not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated security concerns arising from financial considerations. He is not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1. b – 1.g:	Against Applicant
Subparagraph 1.h – 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m – 1.r:	Against Applicant
Subparagraph 1.s – 1.u:	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