



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



In the matter of:

)	ISCR Case No. 11-13180
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2013

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 under Guideline F for financial considerations and Guideline J for criminal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On January 4, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Gov X 5) He was interviewed by security investigators on January 11, 2011, and August 23, 2011, and verified the accuracy of the interview summaries on November 27, 2012. (Gov X 9) On January 14, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and criminal conduct under Guideline J. (Gov X 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 January 24, 2013, and answered it on February 1, 2013. He admitted all but two of the 18 allegations under Guideline F, and three of the four allegations under Guideline J. (Gov X 3) Applicant elected to have the matter decided on the written record. (Gov X 4) Department Counsel submitted the Government's written case on March 18, 2013. Applicant received a complete file of relevant material (FORM) on April 11, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. On May 6, 2013, he provided additional information in response to the FORM. Department did not object to consideration of the additional material. The case was assigned to me on May 23, 2013.

Findings of Fact

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

Applicant is 41 years old and has worked as a program analyst for a defense contractor since January 2006. He left a previous job in January 2006 because of differences with his supervisor. There are no periods of unemployment listed. The pay for his new job is less than the pay for his previous employment. A Personal Financial Statement shows his monthly income is \$2,400, with monthly expenses of \$1,100. He has other debt payments of \$556, leaving him a net monthly remainder of \$544. (Gov X 8 at 27; Gov X 9 at 16)

Credit reports (Gov X 6, dated January 12, 2011; Gov X 8, dated November 14, 2012; and Gov X 10, dated March 13, 2013) show the following delinquent debt for Applicant; a \$347 judgment on a medical account (SOR 1.a); a drug store collection account for \$285 (SOR 1.b); unpaid medical accounts for \$133 (SOR 1.c), and \$106 (SOR 1.d); a medical debt in collection for \$282 (SOR 1.e); a charged off personal loan for \$3,547 (SOR 1.f); a mortgage deficiency account after foreclosure of \$56,358 (SOR 1.g); a telephone account in collection for \$407 (SOR 1.h); a grocery store account in collection for \$64 (SOR 1.j); a medical account in collection for \$27 (SOR 1.k); an account past due for \$381 (SOR 1.l); a student loan account in collection for \$3,663 (SOR 1.m); an account past due for \$7,064 (SOR 1.n); a medical account in collection for \$87 (SOR 1.o); a credit card account in collection for \$500 (SOR 1.p); an account in collection for \$1,401 (SOR 1.q); and a Chapter 13 bankruptcy filed on May 1, 2008 (SOR 1.r). Applicant admitted the financial allegations except for SOR 1.e and 1.m. He denied the student loan debt at SOR 1.m because he stated it was paid by a federal tax refund.

The SOR also lists criminal conduct security concerns. Applicant was allegedly arrested for driving while intoxicated in 2009. The charges were dismissed. (SOR 2.a) Applicant was arrested on December 16, 2010, on a military installation for driving while

intoxicated. He pled guilty to the offense and was fined \$625, placed on supervised probation for a year, and his driver's license was suspended for 90 days. (SOR 2.b) Applicant violated his probation in June 2011 when he was apprehended for outstanding warrants. (SOR 2.c) He violated his probation when he was arrested for driving while intoxicated in July 2011. (SOR 2.d) Applicant admits SOR allegations 2.a, 2.b, and 2.c, but denied allegation 2.d.

Applicant filed a Chapter 13 bankruptcy on May 1, 2008. An automobile loan, a home mortgage loan, a medical debt, and two open accounts are listed as secured and unsecured creditors. Applicant did not provide any information to identify which SOR debts were included in the bankruptcy. However, I find that the listed debts correspond to SOR debts 1.e, 1.f, and 1.g. As to SOR debt 1.g, a second mortgage, the bankruptcy will pay only \$3,200 of the \$56,000 debt. Applicant provided no information concerning payment of the \$52,800 difference. Applicant told security investigators at the second interview that all of his creditors were listed in his bankruptcy, He filed the bankruptcy after he was fired from his previous employment and had a large pay cut. He has been making bi-weekly payments of \$277 to the bankruptcy trustee since May 16, 2008. He is current with the payments and the payment plan will be completed in May 2013. Applicant claims his financial situation has been good since he filed the bankruptcy. He is capable of meeting his financial obligations. He is not delinquent with any current creditor. (Gov X 9 at 18-20)

In his first interview with security investigators, Applicant states that he was only familiar with the debts listed in the bankruptcy petition. He had no knowledge of the accounts listed in the SOR, but stated he would check with the creditors and credit agencies concerning these accounts. (Gov X 9 at 25) He presented no information of any attempt to contact creditors or collection agencies to resolve these accounts. There is no information presented to establish that the debts have been resolved.

The case file contains a Federal Bureau of Investigation (FBI) criminal record report that shows a driving while intoxicated arrest on April 5, 2008. (Gov X 7) In his response to the SOR, Applicant admits this offense and noted that it happened in the summer of 2008. (Gov. Ex. 3) Applicant admitted to security investigators that he was stopped by police after leaving a club where he had a few beers. He passed a field sobriety test but was arrested and charged anyway. He spent a night in jail. He hired an attorney and appeared in court. The attorney had the charge dismissed. Applicant is unaware of the reasons the case was dismissed. (Gov X 9 at 22-23)¹

In the second interview with security investigators, Applicant admitted that he drank alcohol at a bowling center on a military base in December 2010. As he was leaving the base, he crashed into a road barrier. He refused to take a breathalyzer test or a field sobriety test. He was arrested for driving while intoxicated. Applicant pled guilty to driving while intoxicated and was fined \$625, received one year probation, and his driver's license was suspended to 90 days. He completed an alcohol awareness

¹ The SOR lists this offense as taking place in 2009. Both the FBI report and Applicant stated it happened in 2008. I find that the date of the offense is 2008.

program in September 2011. Applicant claims this was his only alcohol-related arrest. (Gov X 3; Gov X 9 at 17-18, 33) The report of the federal probation office states that Applicant appeared in federal court on February 8, 2011, and was sentenced to one year probation and fined. He paid his fine, completed DUI School, and successfully terminated the probation on April 18, 2012. (Gov X 9 at 35)

Applicant admits in response to the SOR that he violated his probation when he was arrested for an outstanding warrant in June 2011. The warrant was for an unpaid traffic ticket that Applicant had paid. (Gov X 3)

SOR 2.d states that Applicant violated the condition of his probation when he was arrested for driving while intoxicated in July 2011. In the FORM, Department Counsel cites to Applicant's answer to questions on the Interrogatories where he admits to violating parole in July 2011 based on a new driving while intoxicated charge. He admitted that his probation was extended to April 2012. Applicant also responded "yes" to a question on the interrogatories that he spent eight days in jail, completed two driving while intoxicated classes and was fined \$455. (Gov X 9 at 33)

There is some discrepancy concerning Applicant's driving while intoxicated offenses. Applicant initially stated he had only one driving while intoxicated offense, the December 2010 offense. However, Applicant later admitted the 2008 offense. In response to the interrogatories, he responded "yes" to questions concerning a July 2011 offense. Based on Applicant's admissions and answers to the interrogatories, I find that Applicant was involved in three driving while intoxicated offenses, the first in the summer of 2008, the second in December 2010, and the third July 2011.

In response to the FORM, Applicant noted that his financial and criminal problems were temporary and the result of unfortunate situations due to other issues in his life. He believes his problems have or are in the process of being corrected. He stated that the foreclosure debt at SOR 1.g was being reviewed under an independent foreclosure action because of bank mismanagement of the foreclosure action. He anticipates receiving partial compensation for the bank's misdeeds. He did not present any information to verify that the mortgage debt would be resolved because of misdeeds by the mortgage lender. He again claims that the student loan at SOR 1.m was paid by forfeiture of his federal tax refund. He did not provide any information to verify the debt was paid.

As to his criminal conduct, he states he was only convicted of driving while intoxicated once in 2010. He realizes that the arrests were the result of being foolish and he took classes to ensure the behavior would not be repeated. (Response to FORM, dated May 6, 2013)

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 his finances in such a way as to meet his financial obligations. Applicant's delinquent debts, listed in credit reports and admitted by Applicant, 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 delinquent debt shows a history of both an inability and unwillingness to resolve the debt.

The Government produced substantial evidence 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 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). These mitigating conditions do not apply.

Applicant has been continuously employed since 1996. He has been employed by his present employer for five years. He did have a reduction in pay when he changed jobs in January 2006 after a disagreement with his previous supervisor. He lost his original employment with good pay because of his own actions and not through any circumstances beyond his control. He presented no information of any efforts to modify or change his life style and expenses. The only information Applicant presented to establish the actions he took to resolve his financial issues because of his reduced pay was that he filed a Chapter 13 bankruptcy on May 1, 2008. He has almost completed making the payments required under the Chapter 13 plan. However, the bankruptcy only covered some of his debts listed in the SOR, to include only a portion of one SOR debt. He did not present any information on any other actions taken to resolve his other delinquent debts. Accordingly, his debts are current and have not been resolved. Since he has been gainfully employed for many years, and has not resolved his delinquent debts, it is likely that he will continue to have delinquent debts that reflect negatively on his current reliability, trustworthiness, and good judgment. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is

obvious that his financial problems are not under control. He has not presented information to show he acted responsibly towards his finances.

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 presented no information that he received credit counseling. However it is noted that prior to filing a bankruptcy petition, a person is required to receive credit counseling. It is assumed that Applicant received counseling for his financial problems.

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 of payment for the majority of his delinquent debts. Applicant filed and has almost completed a Chapter 13 bankruptcy that covered only part of two SOR debts and a small portion of a third SOR debt. He did not present any evidence to show any actions taken to resolve his other delinquent debts. Applicant's lack of documented action on most of his delinquent debts is significant and disqualifying. Based on the acknowledged delinquent debts and the failure to establish payment of the debts, Applicant has not acted responsibly. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Criminal Conduct

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations (AG ¶ 30). Applicant was arrested and charged with driving while intoxicated offenses in the summer of 2008, on December 16, 2010, and in July 2011. He was charged with violating his probation and his probation was extended for the July 2011 offense. Applicant's actions raise Criminal Conduct Disqualifying Conditions AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). While some of the charges were dismissed, Applicant was arrested for the offenses. His arrests and conviction for driving while intoxicated raise questions about Applicant's ability or willingness to comply with laws, rules, and regulations.

I have considered Criminal Conduct Mitigating Condition AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and AG ¶ 32(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement). These mitigating conditions do not apply. There were three separate criminal incidents, one a year in three years, in which potential criminal conduct was involved. The first was a driving while intoxicated offense in 2008. That offense was dismissed after an attorney made an appearance on behalf of Applicant. The second was in 2010 and Applicant was found guilty of driving while intoxicated and sentenced. The third was in 2011 and Applicant admits his probation on the 2010 offense was lengthened. These incidents show a repeated course of conduct for not following rules and regulations that is likely to recur. There does not appear to be any evidence of rehabilitation or understanding of his criminal conduct except for completion of a required safety course about driving while intoxicated. This conduct continues to cast doubt on his reliability, trustworthiness, or good judgment. I find against Applicant under the criminal conduct guideline.

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. Applicant has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. He filed a Chapter 13 bankruptcy that resolved only some of his delinquent debts. He has not made a credible attempt to contact creditors and establish plans to resolve and pay the remaining debts.

Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. He also has been involved in three criminal actions of driving while intoxicated in three years. He failed to establish that he has been rehabilitated concerning driving while intoxicated. His last offense was less than two years ago. The lack of responsible management of financial obligations and his continued criminal actions indicates he may not be concerned or act responsibly in regard to classified information. 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 his criminal 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraph 1.e - 1.f:	For Applicant
Subparagraphs 1.g -1.q;	Against Applicant
Subparagraph 1.r:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	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