



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



In the matter of:)	
)	
)	ISCR Case No. 07-03090
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

June 9, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) February 14, 2006. On September 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations, personal conduct, and criminal conduct under Guidelines F, E, and J for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on October 2, 2007.

Applicant answered the SOR in writing on December 10, 2007. He admitted five and denied five of the allegations under Guideline F and denied the allegations under Guidelines E and J. He provided an explanation for his admissions and denials, and requested a hearing before an administrative judge. Department counsel was prepared

to proceed on January 31, 2008, and the case was assigned to another administrative judge on February 1, 2008, and reassigned to me on February 21, 2008. DOHA issued a notice of hearing on March 18, 2008, for a hearing on April 29, 2008. I convened the hearing as scheduled. The government offered five exhibits, marked government exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant submitted three documents, marked Applicant Exhibits (App. Ex.) A-C, which were received without objection. Applicant and one Applicant witness testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted three documents, marked App. Ex. D-F. The documents were admitted into the record without objection (Gov. Ex 6). DOHA received the transcript of the hearing (Tr.) on May 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted

Findings of Fact

Applicant is 51 years old and has worked for over 25 years as a pipefitter in a Navy shipyard. He has held a security clearance for over 22 years. In the past year, he has been working more than 25 hours per week overtime. Applicant and his wife have been married for over 30 years. She is a certified nursing assistant at a local hospital. They have two children, a 27-year-old daughter and a 24-year-old son, who had lived on their own but are now back in the house with Applicant and his wife. Their daughter has two children, ages eight and ten, living with them. Applicant and his wife had no financial issues until their children created problems for the couple when they went on their own (Tr. 56-61; Gov. Ex 1, Electronic Questionnaire for Investigation Processing (e-QIP), dated February 14, 2006).

Applicant's wife handles the family finances and pays their bills. Applicant and his wife have a combined monthly income of \$5,800, and combined monthly expenses of \$3,000. They have approximately \$2,800 in discretionary funds each month (Tr. 58-60). They have discussed their financial issues with friends and co-worker who are knowledgeable about business affairs but they have not received formal financial counseling (Tr. 16-23).

Credit reports and the SOR list ten delinquent debts: a collection for \$7,217 (SOR 1.a); a delinquent phone bill for collection for \$2,749 (SOR 1.b); a medical debt in collection for \$5,657 (SOR 1.c); a judgment for \$40,672 (SOR 1.d); a charged off account for \$3,033 (SOR 1.e); four delinquent medical accounts to the same hospital for \$49.15, \$146.36, \$139.47, and \$78.41 (SOR 1.f, 1.g, 1.i, and 1.j); and a television service collection account for \$264 (SOR 1.h) (Gov. Ex. 2, credit report, dated March 17, 2006; Gov. Ex. 3, credit report, dated March 8, 2007; Gov. Ex. 4, Interrogatory, dated April 18, 2007; and Gov. Ex. 5, credit report, dated April 22, 2008). Applicant admitted the allegations in SOR 1.a-1.e but denied the remaining five allegations.

Applicant's wife co-signed for a car loan for a used car for their daughter. The daughter defaulted on the loan, so Applicant's wife as co-signer is responsible, which makes Applicant also responsible for the debt. Applicant and his wife recognize their

responsibility on the debt and are working to establish a payment plan (Tr. 33-35, 47-49, 62-64).

The delinquent cell phone collection account (SOR 1.b) also belongs to Applicant's daughter. His wife co-signed for the phone plan and both Applicant and his wife are responsible for the debt that their daughter did not pay. There are no payments being made on this debt (Tr. 30-33; 48-49).

The medical collection account listed in SOR allegation 1.c for \$5,657 is for Applicant's son's medical treatment from injuries received in an automobile accident. The son was treated at the hospital where Applicant's wife works. Since the son was unable to sign the discharge documents because of his injuries, Applicant's wife signed the papers making her responsible for the debt. Their son had no health insurance. The debt is being paid by payroll deduction from Applicant's wife (Tr. 30-33; App. Ex. B, payroll records, April 29, 2008).

SOR allegations 1.d, is for a mobile home that Applicant's wife co-signed for their daughter. Their daughter ceased to make payments, so the mobile home was repossessed and sold. Applicant is waiting to receive information from the creditor concerning the amount owed after the repossession so a payment plan can be established (Tr. 25-30).

SOR allegation 1.d is a debt of \$3,033 for a credit card used by Applicant's daughter and co-signed by his wife. Applicant and his wife have settled the account with the creditor for \$2,000, and are making payment according to the settlement plan (Tr. 24-25; App. Ex D, Letters, dated May 13, 2008).

SOR allegations 1.e, 1.f, 1.h, and 1.i are hospital bills for treatment of Applicant's wife. The debts have been paid by payroll deduction since Applicant's wife is an employee of the hospital (Tr. 35-39; App. Ex. B, Payroll records, dated April 29, 2008).

SOR allegation 1.h is for satellite television service for \$264 incurred by their daughter. Applicant's wife paid this debt in full (Tr. 36-38; App. Ex. E, Bank statement, dated October 29, 2007).

Applicant's latest credit report show most of his debts are paid as agreed, except for the credit card in SOR allegation 1.e discussed above, the car loan in SOR allegation 1.a, the mobile home repossession in SOR allegation 1.d, and a collection account for \$2,417 (App. Ex A, credit report, dated March 17, 2008). Applicant presented documentation that there was an agreement to settle the account by paying \$307 monthly. The account settlement was paid in full for \$6,111.73 (App. Ex. C, letters, dated February 15, 2007; App. Ex. F, Paid judgment, dated November 21, 2007).

In response to questions on his security clearance application concerning his finances, Applicant listed the mobile home repossession debt as having been in the last

seven years more than 180 days past due. He also listed a wage garnishment as well as the mobile home repossession in response to questions pertaining to garnishments and repossessions. He did not list any debts as currently more than 90 days past due. Applicant credibly testified that he did not fully read the question or think about all of the debts caused by his children when he completed the security clearance application. He did not intend to deceive when completing the form but made a mistake in not reading the question carefully or remembering all of his debts. He answered the questions as best he could (Tr. 77-82).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 protect or

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 Consideration:

Under 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 their 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 he admitted and that are listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Even though most of the delinquent debts were caused by Applicant's children but attributed to him because his wife had co-signed the documents for their children, Applicant is responsible for the debts.

Financial Considerations Mitigating Conditions (FC MC) ¶ 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) has some application. While six of the debts have been paid, four are still being discussed with the creditors, so these debts are current. While the debts were mainly caused by the actions of Applicant's children, there are a variety of debts from medical bills, a repossession, an automobile loan, and a cell phone bill. Applicant has delinquent debt because his wife co-signed for their children. The children are now living with Applicant and his wife and Applicant knows not to sign again for his children. Co-signing for their children is unlikely to recur. I gave consideration to these unusual circumstances leading to some of the delinquent debts.

FC MC ¶ 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) applies. Applicant and his wife managed their personal finances appropriately. Their financial problems were caused by the irresponsible actions of their children and their desire to help the children by co-signing for certain loans and arrangements. Applicant acknowledges his legal responsibilities as a co-signer and is making payments or arrangements to pay the debts. He acted reasonably under the circumstances.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 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. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good effort to pay them. Applicant paid five of the delinquent debts. His wife is paying a medical debt for their son by payroll deduction. They reached an agreement with the creditor and are paying on that loan. They are working with other creditors to establish payment plans on the remaining debts. Applicant and his wife managed their own finances appropriately. Their troubles were caused by their children, not by them. Applicant acted responsibly towards his debts, and established his good-faith efforts to resolve his debts. He mitigated security concerns for his financial situation

Personal Conduct

A security concern is raised 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant’s incomplete answers to a question on his security clearance application concerning his past due debts raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Appellant denied intentional falsification. Applicant listed a wage garnishment and repossession in the appropriate sections of the form. He listed only one debt that was over 180 days past due, and none that were currently over 90 days past due. Applicant credibly testified that when he completed his security clearance application, he listed the debt that he knew were security concerns. He was not aware of all debts

caused by his children's actions. He acknowledged that he did not read the questions carefully and made a mistake not including all of the debts on the application. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Since Applicant listed the financial concerns he was aware of, and he was not reasonably sure of other delinquent debts, the available information shows his failure to list all delinquent debts was not knowing and willful. Applicant established he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct. Since there is no intention to deceive, there is no violation of federal law and no criminal conduct. I also find for Applicant as to criminal conduct.

“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 the 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant has worked for over 25 years in a Navy shipyard and successfully held a security clearance for 22 years. I considered that Applicant and his wife manage their personal finances appropriately and meet their personal financial obligations. Applicant's financial problems were created by his children and the desire to help them. Applicant acknowledges his legal obligation to pay the outstanding debts created by his children. Applicant lives within his means, satisfied his personal debt, and meets his personal financial obligations. His actions do not indicate poor self control, lack of judgment or unwillingness to abide by rules and regulations. He is not financially overextended. Applicant's finances do not create a security concern. He did not provide incomplete information on his security clearance application with the intent to deceive. He provided the information he knew which should alert security investigators to any financial issues. His action did not amount to a personal or criminal conduct security concern. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude

Applicant has mitigated the security concerns arising from financial considerations, personal conduct, and criminal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline J	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge