



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



In the matter of:)
)
) ISCR Case No. 05-11010
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro Se*

April 25, 2008

Decision

DAM, Shari, Administrative Judge:

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

On June 1, 2004, Applicant submitted a Security Clearance Application (SF-86). On June 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F (Financial Considerations), E (Personal Conduct) and J (Criminal Conduct). 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.

On August 4, 2007, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On December 18, 2007,

Department Counsel prepared a File of Relevant Material (FORM) containing ten Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on January 14, 2008, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On March 27, 2008, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, dated August 4, 2007, Applicant denied all factual allegations contained in the SOR, except ¶¶ 2.c and 3.a, which he did not answer.

Applicant is 53 years old and married. From August 1976 to October 1986, he was on inactive status with the U.S. Navy Reserves. He was a Petty Officer Second Class (E-5). He obtained a Top Secret clearance in March 1977. From October 2002 to January 2003, he was in the Navy's active reserves, stationed in the Middle East. Since November 2003, he has worked for a federal contractor, as a security officer at a military base in the Middle East. Prior to his current position, he worked in various positions in private industry and experienced some periods of unemployment. (Item 5).

In June 2004, Applicant filed an SF 86. In response to two questions inquiring whether he had any financial debts more than 90 or 180 days delinquent, he answered "No," and did not disclose eight delinquent debts, falling within the purview of those questions. In response to a question inquiring whether any tax liens had been filed against him, he answered "No," and did not disclose a state tax lien filed against him in July 2003 for income taxes owed for the years of 1999 and 2000.

On May 14, 2007, Applicant completed a set of Interrogatories addressing 15 delinquent debts, some of which were later included in the June 28, 2007 SOR. At the time he completed the Interrogatories; he was working in the Middle East and claimed he was not receiving correspondence from some of the creditors regarding the debts. He requested more time to investigate some of them. His specific responses in the Interrogatories to the debts, alleged in the SOR, are noted below.¹

Based on credit bureau reports (CBR) dated July 2004, October 2005, March 2007 and March 2007, Paragraph 1 of the SOR alleges ten delinquent debts and one outstanding tax lien, totaling \$20, 911. The status of those debts is as follows:

SOR ¶	Amount	Creditor	Status	Response per Item 6
a.	\$2,067	Credit card	Unpaid	Claims paid; no documentation
b.	\$715	Department store	Unpaid	Claims 14 yrs old
c.	\$1,516	Unknown	Unpaid	To investigate debt
d.	\$1,068	Department store	Unpaid	To investigate debt
e.	\$1,759	Credit card	Unpaid	Claims paid; no documentation

¹ Applicant indicated that he enclosed a current credit bureau report with the completed Interrogatories that provided proof of payment for some of the debts. Department Counsel noted in the FORM that no such report was submitted.

				To investigate
f.	\$3,718	Car repossession	Unpaid	Admits debt; 9 yrs old
g.	\$1,161	Unknown	Unpaid	No response
h.	\$3,764	Mortgage co	Paid	Item 10 at 2
i.	\$4,686	State tax lien	Unpaid	Claims paid; no documentation
j.	\$225	Charge card	Resolved after dispute	Item 10 at 2
k.	\$232	Apartment rent	Unpaid	To dispute

Of the total amount alleged in the SOR, Applicant provided evidence that he paid about \$4,000. Although he stated in his June 2007 Interrogatories that some of the debts were paid or would be investigated, he did not provide documentary evidence to support those claims when he filed his Answer to the SOR in August 2007 or subsequent to receiving the FORM in January 2008. A December 2007 CBR contained information on the above debts. (Item 10).

Applicant denied the Government's allegations under Guideline E, regarding falsification of the SF 86 and offered no explanation for not disclosing the debts or the state tax lien when he completed the form in June 2004.

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 to obtain a favorable security decision. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Based on three CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing 14 years ago. The evidence is sufficient to raise these two potentially disqualifying conditions, requiring a closer examination.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation. The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Some of Applicant’s financial problems arose over 14 years ago and continue to the present. Because the problems are ongoing, this condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “the conditions that resulted in the financial problem 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 did not offer any substantive evidence to support the application of this condition.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant did not present any evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He provided evidence that he paid one of the eleven debts, warranting a very limited application of AG ¶ 20(d). He produced documentation indicating that he successfully disputed one debt, which is sufficient to trigger some mitigation under AG ¶ 20(e), which applies when “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” AG ¶ 20(f) is not applicable to the facts in this case.

Guideline E, Personal Conduct

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, 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.

The Government alleged in ¶¶ 2.a, 2.b and 2.c of the SOR that Applicant falsified his answers to three questions on the SF-86, because he failed to disclose specific delinquent debts and a state tax lien. The Government contended that those omissions may raise a security concern and be disqualifying. The disqualifying condition alleged under AG ¶ 16 in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied those allegations, but failed to provide an explanation for his denial. Based on the record evidence, the Government established said disqualification. As a result of the absence of any explanation or evidence in refutation or mitigation of those the allegations, none of the mitigating conditions are applicable.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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.”

Department Counsel argues that Applicant's intentional falsification of his SF 86, constitutes a violation of Federal law, Title 18, United States Code, Section 1001, a felony, and raises a disqualification under AG ¶ 31. Based on the finding under Guideline E that Applicant intentionally falsified his SF 86, the Government established the disqualifying condition set forth in AG ¶ 31(c): “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” None of the criminal conduct mitigating conditions listed under AG ¶ 31 is applicable because Applicant failed to address the allegation.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 eligibility for 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 is 53 years old, and served his country in the military reserves for more than ten years, during which time he held a security clearance for a period of time. In May 2007, the Government sent him a set of Interrogatories, alerting him to the financial delinquencies that could adversely affect his security clearance. In his response to the Interrogatories, he claimed several debts were paid and requested more time to investigate other debts. He also indicated that some of the debts were very old, implying that he was no longer responsible for them. In June 2007, he received the SOR, detailing the specific debts in question and articulating concerns under the personal and criminal conduct guidelines. In January 2008, he received the FORM, notifying him that he had an additional 30 days to respond and submit documentary evidence. Despite having approximately eight months to resolve the Government's concerns, he took no action. His failure to responsibly respond to those concerns calls into questions his judgment and reliability.

Given his long history with the military and familiarity with security clearances, it is troubling that he did not aggressively take affirmative steps to address the Government's concerns. Without proof that Applicant has resolved all of his outstanding delinquent debts and established a budget and track record of managing his finances, similar problems are likely to occur in the future.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial issues, 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge