



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-11517
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

Decision

BRAEMAN, Kathryn M., Administrative Judge:

History of the Case

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 27, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1, Criminal Conduct (Guideline J) in paragraph 2, and Personal Conduct (Guideline E) in paragraph 3. These security issues were alleged based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with his SOR and provided again by Department Counsel on July 30, 2007. While he received it, he did not bring a copy with him, so he was given time before the hearing proceeded to review it. (TR 5, 13)

Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer of July 7, 2007, where he admitted in part and denied in part various allegations, and requested a hearing. On August 31, 2007, Department Counsel filed a Motion to Amend the SOR to add numerous additional allegations to paragraph 2 (2.f. through 2.m.) At the hearing Applicant stated he had no objection to the Motion to Amend; consequently, I granted the Motion to Amend. (TR 12) While Applicant paid some of the delinquent debts and provided evidence on his criminal and personal conduct, he was unable to document efforts to establish a plan to resolve the remaining debts or to demonstrate a path to rehabilitation. Consequently, clearance is denied.

Department Counsel on August 3, 2007, submitted a Ready to Proceed notice. Subsequently the case was assigned to me on August 3, 2007. A Notice of Hearing issued on August 16, 2007, set the matter for September 25, 2007.

At the hearing Department Counsel offered thirteen documents (Exhibits 1-13) that were admitted into evidence. In response to Applicant's objection on the grounds of inaccuracy, part of Exhibit 2 was redacted before it was admitted. (TR 17-26) Exhibits 3 and 4 were admitted over his objection; however, he was allowed additional time to submit information to clarify the issues he raised. (TR 28-31) Applicant offered no documents, but testified himself. At his request, and as the Department Counsel did not object, we left the record open until October 9, 2007, in order for him to submit supplemental information. (TR 41, 72-73, 110-112) However, he submitted no additional evidence, so the record closed on October 9, 2007. The transcript (TR) was received on October 3, 2007.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is 38 years old and has worked in a technical job for a defense contractor for eight years, from 1999 to the present. He was recently promoted to supervisor in 2005. While he has been in a job where he has previously not needed a security clearance, Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance in April 2004. (Exhibit 1; TR 4-7; 54-55)

Applicant completed the 11th grade. He married in May 1998. (Exhibit 1; TR 4) After he had marital difficulties, they separated in 2002. Initially, he had custody of their five children ages 11 to 19; but later his wife got custody. He also has two other children, one is a step-child. (TR 45-47; 51-52)

Finances, Criminal Conduct, Personal Conduct

Applicant provided no adverse information on his SF 86 concerning his delinquent debts of approximately \$9,000 to fifteen creditors and his criminal record. (Exhibits 2 -13)

Applicant denied allegation 1.a. as he resolved the \$595 debt to Creditor #1 when his pay was garnished for a judgment entered against him for damages to a rental house. (Answer, TR 41; 55-59)

Applicant denied allegation 1.b. to Creditor #2, but stated his pay was being garnished to resolve this \$1,000 judgment to a city for a utility debt. (Answer, TR 59-61)

Applicant admitted debts to creditors in allegations 1.c. to 1.j. (Answer)

Applicant denied allegation 1.k. for \$148. At his hearing he admitted he owed the creditor \$148, but had not paid due to financial problems. He denied 1.l. and 1.n., as he does not know who those creditors are. He denied 1.m. because he was entitled to his unemployment compensation. He admitted 1.o. (Answer, TR 62-67)

His marital difficulties in 2001 and other issues led to his financial problems and his criminal conduct. He was assaulted by a neighbor in 2000 or 2001; however, the neighbor was found not guilty. Then Applicant was liable for hospital bills he could not pay. (TR 42-45; 82) Applicant has not sought any financial counseling, but he intends to pay his bills when he can afford to do so. Currently, he pays a substantial amount of money for child support and supports three households, so has no discretionary money left to pay any delinquent debts. (TR 52-53; 68-72)

Applicant admitted the criminal conduct alleged in 2.a. to 2.e. (Answer; TR 75-77; 89-95; 100) At the hearing Applicant admitted allegations 2.f. (a misdemeanor trespassing offense), 2.g. (open container of alcohol while driving), 2.h. (assault and battery on a family member), 2.i. (failure to obey a court order to complete a domestic violence prevention program), 2.j. (driving with no liability insurance), 2.k. (habitual offender), 2.l. (threatening bodily harm, charge dismissed), and 2.m. (loud music – vehicle). (TR 78-88) Later, Applicant completed the domestic violence prevention program. (TR 84-85)

Applicant did not fully understand the form or the security clearance process and could not remember dates. He denied allegations 3.a. as he did not have a felony conviction, 3.b. as he was trying to “block it out” and forget the past arrests, and 3.c., but he admitted allegation 3.d. that he falsified his SF 86 by not revealing his financial delinquencies over 90 days late. (Answer; TR 96-99; 101-106) He forgot a lot of the details. No one in his security office explained the significance of the form. His word is his bond. He did not intend to falsify his SF 86. (TR 106-110)

Applicant now has a stable job and a good relationship with his fiancé. Since he has been with her for the past five years he has straightened out his life. He and she are working together to study for and pass the GED because he wants to advance himself at work. Although he was labeled a habitual offender in 1996, and lost his driver’s license, he got his license back recently as his company paid his past traffic fines. (TR 48-49; 95-96)

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

Guideline F: Financial Considerations

The security concern caused by financial problems is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 18.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant may present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance,

loyalty, and patriotism of an applicant.³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Analysis

Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflecting debts of approximately \$9,000 to fifteen creditors for two judgments and other debts. Consequently, Financial Considerations Disqualifying Condition, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. His financial problems are sufficiently significant to raise security concerns.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (b) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,
- (e) 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.

³ Executive Order No. 10865 § 7.

AG ¶ 20(a) partially applies⁴ because his financial problems “occurred under such circumstances that it is unlikely to recur,” however his continuing financial problems “cast doubt on [his] current reliability, trustworthiness, or good judgment.” He fell behind on his bills because of domestic turbulence and his requirement to provide support for children in three households. He, however, did not provide any evidence that he is now paying the bills on time. He does not receive full credit under AG ¶ 20(a) because he will continue to be under financial stress until he is able to develop and implement a plan to resolve these debts.

AG ¶ 20(b) provides that security concerns may be mitigated when, “the conditions that resulted in the behavior 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.” As discussed above, Applicant’s financial issues resulted from a series of domestic problems. However, he failed to demonstrate how he “acted responsibly under the circumstances.” He will receive credit in the Formal Findings for paying some of his debts through garnishment of his wages. Again, he failed to provide evidence that he has developed a plan to resolve his remaining delinquent debts. He receives partial credit under AG ¶ 20(b).

AG ¶ 20(c) does not apply as he has not met with a financial advisor and has no intent to do so. Only a few SOR alleged debts are paid, and he provided no budget or plan to demonstrate these financial problems are under control.

AG ¶ 20(d) applies in part because he “initiated a good-faith effort” to repay some of the overdue creditors by wage garnishment. While he did not fully document the debts paid through wage garnishment, I accept his testimony that those judgment debts have been or are being resolved. However, the majority of the other debts remain unresolved. AG ¶ 20(e) applies in part as Applicant did “dispute the legitimacy” of some of the past-due debt where he testified credibly he did not know certain creditors or recognize certain debts. Moreover, the government did not meet its initial burden on the debts he disputed by establishing the legitimacy of those debts.

In sum, Applicant credibly described his sincere hope that he wanted to resolve his remaining delinquent debts. However, he provided no plan as to how he might do so even though he was provided an opportunity to submit post-hearing documents. He receives credit in the Formal Findings for those debts he paid or is paying through garnishment. He also receives credit for those debts the government failed to establish.

Guideline J (Criminal Conduct)

AG ¶ 30 describes security concerns about criminal conduct, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very

⁴ See generally ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under the good faith mitigating condition for debts being resolved through garnishment).

nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 31 lists two conditions that could raise a security concern and may be disqualifying in Appellant's case:

- (a) a single serious crime or multiple lesser offenses; and,
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Appellant has a series of misdemeanor arrests that include both traffic offenses and domestic violence issues in the turbulent relationship with his wife from who is now separated. Many of the cases were dismissed, or in others he paid a fine. For his failure to complete his domestic violence prevention course, he served time in weekend confinement. He had so many arrests and convictions that in April 2003 he was convicted of being a Habitual Offender and fined.⁵

AG ¶ 32 describes conditions that could mitigate security concerns including:

- (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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and,
- (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.

For many of the allegations that occurred in the 1990 to 2000 time frame and for minor offenses Appellant falls within AG ¶ 32(a) as so much time has elapsed since these misdemeanors occurred or in other cases the charges were dismissed. Also, there were special mitigating and unusual circumstances in his domestic dispute with his wife. He eventually completed the Domestic Violence Prevention program. To his credit his driver's license is no longer suspended. However, his conviction in 2003 for being a Habitual Offender, as well as his 2006 traffic offense, and a 2006 arrest for threatening bodily harm (a charge that was dismissed) raise a red flag of concern because of either recency or seriousness.⁶ While Applicant claims that he has

⁵ In Applicant's case, this includes aspects such as, the seriousness of the misconduct, and the number of violations of the law, regardless of whether the misconduct resulted in an arrest or conviction.

⁶ I have determined that most of the criminal conduct is mitigated under AG ¶ 16(c) because it happened so long ago or under unique conditions (Applicant no longer lives in the household where the domestic violence occurred), and as such the conduct is unlikely to recur. However, the SOR conduct in

reformed his conduct that led to these criminal incidents, he provided no evidence outside his own testimony of his rehabilitation. Thus, concerns persist.

Guideline E (Personal Conduct)

AG ¶ 15 explains why personal conduct raises security concerns stating, “[c]onduct 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.”

AG ¶ 16 has two disqualifying conditions that could raise a security concern in this case:

- (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; and,
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

With respect to the four omissions from his SF 86, his failing to reveal his arrests and his financial problems is a security concern. AG ¶¶ 16(a) and 16(b) apply.

On the other hand, AG ¶ 17 details seven conditions that could mitigate personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

2 cannot be considered piecemeal. The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant’s conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When his 2003 habitual offender misconduct is considered in connection with the 2006 offenses, the criminal conduct in SOR ¶¶ 2.j to 2.m cannot be mitigated under AG ¶ 16(c). The misconduct in SOR ¶¶ 2.j to 2.m continues to cast doubt on Applicant’s current reliability, trustworthiness, or good judgment.

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(a), 17(c) and 17(f) are the mitigating conditions that partially or fully apply. Appellant disclosed his arrests when he was interviewed as those arrests were the subject of an Amended SOR. Through this disclosure, he eliminated any possibility that his omissions could be used to coerce or threaten him. Given his limited education, his statement is credible that he did not fully understand the security form and no one in the security office explained the questions to him. The omissions "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." He admits he knew about the financial issues, but did not know that he should provide the details. In the future he will carefully review security documents before he signs them and will not omit important information. His omissions from his SF 86 were careless, but not deliberate. He credibly established that he did not intend to falsify his SF 86 by these omissions. In sum, he did not have any intent to deceive the government or security officials.

Whole Person

I considered the specific factors listed in AG ¶ 2: "(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 was 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" of the conduct at issue.

Applicant has been a full time worker for eight years who has advanced at work and has been promoted to a supervisor. He established that an unstable domestic situation contributed to his financial issues and criminal conduct. Having considered both the record and Applicant in light of the “whole person” concept, I conclude he is a sincere person. However, he made insufficient efforts to reform his financial practices; and he is not yet on the road to financial recovery. While there is little potential for pressure, coercion, exploitation, or duress as he has stable employment, he has substantial debts and very limited resources. In conclusion, financial issues do remain a security concern. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he failed to mitigate the security concerns pertaining to financial considerations.

Similarly, he failed to fully establish a case of mitigation under Criminal Conduct as he was arrested for being a habitual offender in 2003, and his problems with arrests and convictions persisted into 2006. He did not show how he was been rehabilitated. Having reviewed the guidelines and assessed him as a “whole person” in order to evaluate Applicant’s risk and vulnerability in protecting our national interests, I find Appellant has failed to mitigate all security concerns.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c. to 1.k:	Against Applicant
Subparagraphs 1.l. to 1.m:	For Applicant
Subparagraphs 1.n. to 1.o:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a to 2.i:	For Applicant
Subparagraphs 2.j. to 2.m:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a to 3.d:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

KATHRYN MOEN BRAEMAN
Administrative Judge