



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-01148
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel

For Applicant: *Pro se*

June 30, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 27, 2013. (Item 5.) On May 6, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 14, 2014, and requested a decision by an administrative judge without a hearing. (Answer.) Department Counsel submitted the Government’s written case (FORM) to Applicant on February 19, 2015. The FORM contained seven documents. Applicant acknowledged receipt of the FORM on March 17, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information, which has been admitted into the record without objection as Applicant’s Exhibit A. The case was

assigned to me on May 27, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 32 and married to his second wife.¹ He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a, 1.c, and 1.d in the SOR under this Paragraph. Those admissions are findings of fact. Applicant denied allegation 1.b.

The SOR lists four delinquent debts. Three of them are consumer debts, totaling \$9,997. (Allegations 1.a, 1.c, and 1.d.) Allegation 1.b concerns a foreclosed mortgage, with a past-due amount of \$176,472. The existence and amount of these debts is supported by a credit report dated November 9, 2013. (Item 7.) (See also Interrogatories submitted by Applicant on February 5, 2014. (Item 6.)) The current status of the debts is as follows:

1.a. Applicant admits owing this past-due debt to a cable television company in the amount of \$226. He states in his Answer that he had contacted the creditor to resolve the deficiency. He had earlier told an investigator from the Office of Personnel Management that he had paid and closed this account in September 2013, two months before the credit report in the record was run. (Item 6.) He did not discuss this debt in Applicant's Exhibit A. Based on all available evidence, I find that this debt is not resolved.

1.b. Applicant denies owing this past-due mortgage debt in the amount of \$176,472. According to Applicant, this mortgage debt became delinquent in approximately 2010, "when his [Applicant's] wife lost her job and other family members who lost their jobs moved in with them to save money." (Item 6 at 6.) Applicant maintains that any deficiency was resolved by the Department of Veteran's Affairs (VA), because it was a VA mortgage. Attached to Applicant's Answer is an undated letter from the mortgage company indicating that the property was sold at a foreclosure sale on February 26, 2013. The sale resulted in a deficiency balance of \$142,700.86. The letter goes on to state that the mortgage company has "elected to write-off and hold all obligors harmless, for the remaining deficiency balance. [The mortgage company] waives any rights it may have under the terms of the loan agreement, or state law, to pursue said deficiency balance against the obligors." (Item 4 at 3.) This debt is resolved.

¹Item 5 at Section 17.

1.c. Applicant admits owing a past-due credit card debt. The credit report in the record (Item 7) states the delinquent amount is \$6,000. Applicant admitted in his Answer owing \$1,508.69. He also states in his Answer that he has been paying this debt off. Applicant's Exhibit A at 4 is a letter from the creditor dated April 30, 2015, stating that Applicant has successfully paid this account off. This debt is resolved.

1.d. Applicant admits owing a past-due credit card debt. The credit report in the record (Item 7) states the delinquent amount is \$3,771. Applicant admitted in his Answer owing \$326.54. He also states in his Answer that he has been paying this debt off. Applicant's Exhibit A at 5 is a letter from the creditor dated April 30, 2015, stating that Applicant has successfully paid this account off. This debt is resolved.

Applicant submitted no evidence that he has received any financial counseling. He also did not submit a personal financial statement. He states that a period of unemployment from November 2012 to June 2013 had an impact on his finances. The evidence also shows that he has been gainfully employed since November 2013.²

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process. Applicant admitted his failure to disclose the existence of the debts described above, but denied any intentional falsification.

Applicant filled out a Government questionnaire on September 27, 2013. Section 26 of the questionnaire, "Financial Record - Delinquency Involving Routine Accounts," asks:

Other than previously listed, have any of the following happened? **In the past seven (7) years**, you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? . . . defaulted on any type of loan? . . . had bills or debts turned over to a collection agency? . . . had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . been over 120 days delinquent on any debt? . . . [or] currently over 120 days delinquent on any debt?" (Item 5 at Section 26.) (Emphasis in original.)

Applicant stated, "No," to all of these questions. That was not true, as set forth in detail under Paragraph 1, above.

Applicant argues that he did not intend to mislead the Government in regards to his answers on the questionnaire. He states in his Answer that he had just begun working when he filled out the e-QIP. He further states that he had not been looking at his credit report and didn't think about the three commercial debts "due to not being able

²Applicant states in his Answer that there was a second period of unemployment within three years of August 2014. His e-QIP only shows one period.

to pay them.” He also stated that he did not include the mortgage debt “because it is not valid.” (Answer at 6.)

Applicant’s argument is undercut by the fact that there were also at least three additional accounts, which were delinquent within seven years of September 2013. They include a paid automobile repossession in 2010, three GI Bill accounts that were repaid sometime before July 2013, and a commercial credit card account that was repaid in 2011.³ All of these debts should also have been disclosed by Applicant, in addition to the four debts on the SOR. With regard to those SOR debts, it is not credible that Applicant forgot about the consumer debts because of an inability to pay them. Finally, his house was foreclosed upon, which is what the question asks. Applicant’s belief in the mortgage deficiency debt’s invalidity does not obviate his responsibility to tell the Government about the foreclosure action, from which it arose. His arguments are simply not credible for a former Marine, who held a security clearance while in the service.⁴ I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Given the state of the evidence, Applicant’s financial situation was precarious and he knew, or should have known, the extent of his problems. Applicant has simply not presented enough evidence to show that the alleged falsifications were the result of innocent error. Therefore, under the circumstances, I find that they were intentional.

Mitigation

Applicant’s employer submitted a letter of recommendation. (Applicant’s Exhibit A at 2.) As part of this very laudatory letter the founder, president and CEO of this small company states, “[Applicant] is respectable, honorable and trustworthy in every aspect of his life.”

Applicant’s project manager, a civilian employee of one of the armed forces, submitted a letter on Applicant’s behalf. He also supports Applicant without reservation.

As stated, Applicant is a former Marine. He submitted documentation showing that he was a successful Marine during his time on active duty. (Applicant’s Exhibit A at 6-12.)

Policies

Security clearance decisions are not made in a vacuum. 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

³Item 6 at 7, 8; Item 7 at 5, 6, 10, 13, 14.

⁴Item 5 at Section 25.

mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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. Applicant has over \$9,000 in past-due consumer debts, as well as \$147,000 in mortgage debt. All of them had been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions 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." AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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." Finally, AG ¶ 20(d) states it can be mitigating where, "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant had a significant period of unemployment several years ago, which obviously affected his ability to pay his debts. His house was foreclosed upon, but the mortgage company elected to completely resolve the debt and forgave the deficiency balance. Applicant submitted documentary evidence showing he had paid off the two largest consumer debts. The evidence is mixed as to SOR allegation 1.a, but under the particular circumstances of this case I find that this \$226 debt, has no current security significance.

In conclusion, looking at Applicant's entire financial situation at the present time, I find that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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 knowingly and purposely falsified his security clearance application on September 27, 2013. He alleges that his failure to list his financial difficulties was due to oversight, and not an intentional act. However, the fact remains that for years he has had financial difficulties. It simply strains credulity for Applicant to claim to have forgotten the facts of his very bad financial situation when filling out his e-QIP.

I have reviewed the mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, less than two years, since the falsifications. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 is found against Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which he has resolved. However, Applicant failed to show that the false denials and omissions of relevant and material information from his e-QIP were accidental and not intentional.

Under AG ¶ 2(a)(3), his conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 has not mitigated the security concerns arising from his falsifications to the Government. He did mitigate the financial concerns. Accordingly, the evidence supports denying his request for a security clearance.

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
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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 a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge