



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04092

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/28/2015

Decision

HOWE, Philip S., Administrative Judge:

On April 21, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On December 8, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on December 23, 2014. He answered the SOR in writing the same day, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 23, 2015, and I received the case assignment on February 24, 2015. DOHA issued a Notice of Hearing on April 13, 2015, and I convened the hearing as scheduled on May 6, 2015.

The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on May 14, 2015. I granted Applicant's request to keep the record open until May 22, 2015, to submit additional matters. On May 21, 2015, he submitted Exhibits A to D, without objection. The record closed on May 22, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, and 1.e of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b, 1.d and 1.f of the SOR. He neither admitted nor denied the allegations in Paragraph 2, but stated he misread Section 26 of the e-QIP and will work to resolve his debts. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 48 years old and married. He has two children, both of whom have graduated from college and do not live at home. He is the prime wage earner in his family. He works as a security guard for a defense contractor. (Tr. 13-15, 28, 44; Exhibit 1)

Applicant filed Chapter 7 bankruptcy in June 2003 with liabilities of \$214,032.62 (Subparagraph 1.a). The debts listed in the bankruptcy include two car loans, credit card purchases, and utility bills. Some of the same creditors he owed then are owed now as listed in the SOR. His Schedule F shows a deficiency mortgage in 2003 of \$98,000 and is listed along with the residence mortgage of \$91,000 on his home. His debts were discharged by the court on October 1, 2003. (Tr. 15, 16; Exhibits 1-5)

The SOR lists five delinquent debts owed by Applicant. The amount of the debts totals \$14,878. (SOR; Exhibits 2-4)

Applicant owes a creditor for a repossessed automobile \$7,964 (Subparagraph 1.b). He stopped paying on this debt in 2009. It is unresolved. (Tr. 17-19; Exhibits 1-5)

Applicant owes a bank \$5,169 for a van that was repossessed when he stopped paying the debt (Subparagraph 1.c). This debt is unresolved. (Tr. 20, 21; Exhibits 1-5)

Applicant owes a cellular telephone company \$933 (Subparagraph 1.d). He paid \$695 in two payments using his debit card. He was supposed to send in proof from his checking account that he paid the debt, but instead submitted an email from the collection agency showing the debt was paid. This debt is resolved. (Tr. 21; Exhibits 1-5, A)

Applicant owes a credit card company \$612 (Subparagraph 1.e). He was paying on this account but stopped when his wife wanted to return to school for a degree. He

paid her tuition from his income instead of the debt. This debt is unresolved. (Tr. 22; Exhibits 1-5)

Applicant owes a local municipality for a traffic violation in the amount of \$200 (Subparagraph 1.f). Applicant stated he had not received a letter from the municipality seeking payment for the debt so he was unaware of it until the Government investigator spoke to him in May 2014. This debt is not paid and is unresolved. (Tr. 23, 33; Exhibits 1-5)

Applicant had \$2,840 of unpaid parking tickets in the city where he works. This debt was not listed in the SOR. Applicant testified he paid all of them using an installment payment plan with that municipality. These debts are resolved. (Tr. 32)

In 2012 Applicant purchased a new automobile for \$24,000 for use by his wife. He takes public transit to work. She uses the car. He pays \$617 monthly on the car loan, which is current. (Tr. 33-35; Exhibits 2-5)

Applicant filed his federal and state income tax returns. The Internal Revenue Service claims he owes about \$3,000 more taxes on his 2013 tax return. Applicant contests that debt and has his tax preparer working on the issue. This debt is not listed in the SOR and is unresolved because Applicant did not submit any documents to show it was resolved. (Tr. 23; Exhibits 1-5)

Applicant earns \$21.40 an hour. That amount would make his weekly gross income \$856. His monthly income would be \$3,424, and his annual income \$41,088. His wife graduated from college with a Masters' degree in Business Administration and is looking for a job at the present time. He stated it would be easier for him to resolve his debts with his wife out of college and with him moving from a house to an apartment. (Tr. 26, 27, 30; Exhibit 1; Answer)

Applicant did not disclose on his e-QIP in Section 26 ("Financial Record") that he had a vehicle repossessed in the past seven years, as the question was asked. He also did not disclose his delinquent debts in Section 26 that are listed in Subparagraphs 1.b to 1.f. Applicant stated in his Answer that he misread the question, not thinking it pertained to the present time, and that he would speak with a lawyer about resolving his debts. He also testified that he thought his Chapter 7 bankruptcy in 2003 resolved all his debts. He stated he thought he disclosed his 2009 and 2012 vehicle repossessions on the e-QIP. (Tr. 29, 30; Exhibits 1-5; Answer)

Applicant submitted three character statements as exhibits. One letter was from his supervisor who has known him since 2002. He vouches for Applicant's integrity and honesty. The second letter was from his pastor at church, writing of Applicant's charity and character while handling the church collection and other sensitive matters. The third letter is from a co-worker of 13 years who has observed Applicant's professional demeanor and handling of security issues at the business location where they work. (Exhibits B-D)

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 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 (AG ¶ 2(a)). 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. 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, an "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. 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.

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." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant discharged his debts in 2003 in a Chapter 7 bankruptcy. Subsequently, he accumulated \$14,878 in additional delinquent debt from 2004 to the present time. Applicant has five delinquent debts listed in the SOR. Both these disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One condition may be applicable:

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

Applicant paid one debt listed in the SOR, the cellular telephone bill for \$933. He has not paid any of the other four listed delinquent debts. He also owes about \$3,000 on his 2013 federal income tax. Despite his second vehicle repossession in 2012, he went to a dealership and purchased a new car for \$24,000. These actions, coupled with his history of delinquencies beginning with the 2003 Chapter 7 bankruptcy and continuing through the present time show no other mitigating conditions are established. AG ¶ 20(d) has partial application on one small debt.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. One condition applies:

- (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 deliberately did not disclose his vehicle repossessions from 2009 or 2012. He intentionally did not disclose his five delinquent debts on his e-QIP in Section 26. AG ¶ 16(a) is established.

AG ¶ 17 provides conditions that could mitigate security concerns. After considering each one as it might relate to the facts in this case, I find that none are established.

Applicant did not make any prompt or good-faith efforts to correct his failure to disclose his repossession or delinquent debt. No one gave him incorrect advice on completing the e-QIP. He has not taken any actions to reduce any vulnerability to exploitation, manipulation, or duress.

Applicant's explanations for failing to disclose his financial history since 2007 are not credible or persuasive. He thought a 2003 bankruptcy resolved his debts even though he incurred many after that date. He thought he disclosed his debts while answering "no" to Section 26 of the e-QIP. Applicant testified he had nothing to hide, but he did hide his debts. He did not make any additional disclosures on the e-QIP which would have lead the government to investigate his financial history. Therefore, none of the mitigating conditions are established to counter his deliberate failure to list his debts.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. The character statements for Applicant are glowing about his honesty and integrity. They do not address his financial status and why non-disclosure of debt on a government questionnaire for a security clearance is proper conduct. His explanations are not persuasive or credible.

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 did not mitigate the security concerns arising from his financial considerations. He did not mitigate his personal conduct security concerns. I conclude the whole-person concept against Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b and 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e and 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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.

PHILIP S. HOWE
Administrative Judge