



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



In the matter of:)	
)	
)	ISCR Case No. 07-09813
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

June 17, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline 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 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 answered the SOR in writing on February 25, 2008, and elected to have his case decided on the written record. Department Counsel submitted the Government’s file of relevant material (FORM) on April 11, 2008. The FORM was

mailed to Applicant on April 18, 2008, and it was received on April 28, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded by sending the entire FORM package back with no additional information. The case was assigned to me on June 2, 2008.

Findings of Fact

Applicant admitted the allegations in the SOR under Guideline F, Financial Considerations, and denied the allegations under Guideline E, Personal Conduct. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 63 years old and has worked for a federal contractor since 1964. Applicant admitted he owes the debts alleged in the SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, and 1. g. The debt in ¶1.a is for an account that was placed for collections. In his answer to the SOR, Applicant stated he was making payments on the debt and it would be paid soon. He provided a document, dated February 18, 2008, that shows he made one payment of \$200, thereby reducing the delinquent debt from \$729 to \$529. No other documents were provided regarding this debt.

The debt in SOR ¶ 1.b is a collection account for cable service that Applicant stated he is working on and claimed his credit report was not updated. The amount listed in the SOR is \$357. He provided a receipt for payment of \$200, dated February 22, 2008, and another receipt dated February 29, 2008, for \$157. It is unclear if this debt is paid in full because Applicant also provided a document from Equidata showing four delinquent debts, including the same creditor listed in ¶1.b with a balance owed as \$447. Handwritten notations next to the debt state "make payment" and "paid full." No other receipt of payment for the remaining balance was provided.

The debt in SOR ¶1.c is a collection account for sanitation services. Applicant stated he paid the debt and provided a receipt of payment. He provided an Equidata document that shows he owes \$34.55. On this document is a handwritten notation that says "paid full." No receipt of payment was provided.

The debts in SOR ¶¶ 1.d and 1.e are medical bills in the amount of \$14 and \$11. Applicant provided a medical bill receipt, dated February 22, 2008, for \$100. The payment receipt shows a remaining balance on a medical debt of \$31.77. It is unclear if the payment Applicant made was for the same debt as alleged in the SOR.

The debt in SOR ¶ 1.f is a bank debt in the amount of \$720 that was charged off. Applicant stated he made a payment on the account and is still "trying" to pay it. He provided no proof of payment.

The debt in SOR.¶ 1.g Applicant stated was discharged in Bankruptcy on September 27, 2004. This debt is not listed in his bankruptcy documents. Applicant's

2008 credit report shows this account was opened in November 2004, two months after his debts were discharged in bankruptcy.¹

Applicant completed a personal financial statement and provided copies of four months of his pay stubs. Along with his regular pay, Applicant worked overtime hours. His personal financial statement shows that he has a negative cash flow at the end of each month. Despite his overtime pay, he is not meeting his expenses and does not have a budget to pay his delinquent debts.²

Applicant completed his security clearance application (SCA) on April 7, 2006. On it, when asked if he had any debts more than 180 days delinquent or 90 days past due, Applicant answered “no.” He also answered “no” when asked if he had filed a petition under any chapter of the bankruptcy code. Applicant also answered “no” when asked if he had any judgments against him. He failed to divulge he had three judgments against him from Capitol One Bank, Household Finance, and CitiFinancial.

In his answer to the SOR, Applicant stated he did not deliberately fail to disclose the bankruptcy in 2004. He stated he “did not think about it at the time and it happened awhile [ago] and I forgot.”³ He stated the reason he did not list the judgments was because they were included in his bankruptcy and were discharged.⁴ His explanation for failing to list his delinquent debts was because he is paying the debts or ha[s] paid them off.⁵

Appellant claimed he forgot about his 2004 bankruptcy when he completed his 2006 SCA. He also claimed that he failed to list his judgments because they were discharged in bankruptcy. His explanation is inconsistent and not credible. It is clear he was having financial problems and difficulty paying his bills. It is unreasonable to believe that Applicant was unaware he had any debts that were delinquent. Based on his obvious false answers to the bankruptcy and judgment questions, I find the remainder of his explanations lack credibility. I also find Applicant intentionally and deliberately provided false answer on his SCA.

In his answer to the SOR, Applicant alludes to conditions that were beyond his control, such as a hurricane that presumably occurred in 2003 and unexpected medical conditions. He did not provide any amplifying information that related to his failure to pay his debts.

¹ Item 2, 6 and 10.

² Item 9.

³ Item 2.

⁴ *Id.*

⁵ *Id.*

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.

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 notes several conditions that could raise security concerns. I have considered all of them, especially AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and (c) ("a history of not meeting financial obligations"). Applicant had his delinquent debts discharged in bankruptcy in 2004. Since then he has accumulated more debts that have become delinquent. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered AG ¶ 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"); (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"); and (d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").

Applicant made statements and provided some documents that he made payments on some of his debts, but he failed to provide proof that the debts are sufficiently satisfied. He alluded to conditions that he claimed were beyond his control, but failed to articulate what specifically happened, how it affected his ability to pay his debts, and how he acted responsibly under the circumstances. The hurricane he referred to occurred in 2003, approximately five years ago. Applicant did not provide evidence that he received financial counseling or that there is a clear indication that the problem is being resolved. He showed he made a couple of payments on some debts, but it does not rise to the level of a good faith effort to repay the creditors or otherwise resolve his debts. Applicant had his delinquent debts discharged in bankruptcy in 2004, thereby allowing him to have a clean financial slate. He has since accumulated new

delinquent debts. Therefore, considering all of the facts, I find mitigating conditions (a), (b), (c) and (d) do not apply.

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."

I have considered all of the personal conduct disqualifying under AG ¶ 16 and especially considered (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 intentionally and deliberately falsified information on his SCA by failing to divulge his bankruptcy, judgments and delinquent debts. Applicant's debts were discharged in bankruptcy in 2004. He completed his SCA in 2006, a mere two years later. It is incomprehensible that he would forget such an event. In addition, he stated he failed to list judgments entered against him because he believed they were included in his bankruptcy, the same bankruptcy he claimed he forgot to list. These judgments were not included in his bankruptcy, but were incurred after it. It is simply unbelievable that he did not know he had any delinquent debts. I find Applicant's explanations are disingenuous and I find his omissions were intentional and deliberate. Hence, I find the above disqualifying condition applies.

I have considered all of the personal conduct mitigating conditions under AG ¶ 16. Under the factual evidence and circumstances of this case, I find none of the mitigating conditions apply.

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): "(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 has a history of financial irresponsibility. Despite having his debts discharged in bankruptcy in 2004, he again failed to pay or manage his debts. He deliberately and intentionally lied about his financial situation on his SCA. Applicant failed to provide sufficient information to mitigate the security concerns raised. Overall the record evidence leaves me with serious 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 under Guideline F, financial considerations, and Guideline E, Personal 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
Subparagraph 1.a-1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.c:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge