



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



In the matter of:

SSN:

Applicant for Security Clearance

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) ISCR Case No. 06-24129
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Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Pro Se

May 20, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 11, 2006. On October 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for 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 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 November 18, 2007, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on January 25, 2008. The case was assigned to another administrative judge on January 28, 2008. The case was transferred to me on February 26, 2008. On March 13, 2008, a Notice of Hearing was issued scheduling the hearing for April 14, 2008. The hearing was held, as scheduled. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1-5 without objection. The Applicant offered five exhibits

which were admitted as Applicant Exhibits (AE) A - E without objection. Applicant testified. The record was held open until April 28, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a nine-page document that was admitted as AE F without objection. The transcript was received on April 22, 2008. The record closed on April 28, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits to all of the allegations.

Applicant is a 56-year-old employee with a Department of Defense contractor seeking a security clearance. He has worked for his current employer for the past six years. From 1970 to 1990, he served on active duty in the United States Air Force. He retired at the rank of Staff Sergeant (E-5). He held a security clearance for 19 years while on active duty in the Air Force. He has a high school education. He is married and has two adult sons. (Tr at 6-8, 32-34, 55-56; Gov 1; AE F at 2, 8.)

On April 11, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). He answered, "No" in response to questions 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$9,891 debt resulting from an automobile repossession (SOR ¶ 1.a; Gov 2 at 2; Gov 3 at 3; Gov 5 at 5; Gov 6 at 2); a \$1,837 charged off credit card account (SOR ¶ 1.b; Gov 2 at 2; Gov 3 at 4; Gov 5 at 4); a \$1,392 delinquent credit card account (SOR ¶ 1.c; Gov 2 at 2; Gov 3 at 4); a \$648 charged off credit card account (SOR ¶ 1.d; Gov 2 at 2; Gov 3 at 4; Gov 5 at 4); and a \$6,047 charged off military exchange credit card account (SOR ¶ 1.e; Gov 2 at 2-3; Gov 4 at 8; Gov 5 at 6).

Applicant states that he did not intend to falsify his e-QIP application. He did not realize that he had debts that were that old. He did not obtain a credit report before he completed his e-QIP application. He is an honest man and would never betray his country. (Tr at 53-54.)

Applicant claims most of the delinquent accounts were the result of bad financial management. He and his wife do not follow a budget very well. They attended financial counseling a few years after he retired from the military. (Tr at 36, 58-59.) He describes his current financial situation as "It's not great, ma'am. It could be better, but we're working hard on it. We're trying to catch up on stuff." He has not opened any new accounts and occasionally gets behind a payment or two. (Tr at 51; 60.)

At hearing, Applicant pointed out that he had a state tax lien which he paid off in October 2007. (Tr at 56-67.) A recent credit report, dated April 8, 2008, listed a state tax

lien for \$2,041. (Gov 6.) After the hearing, Applicant provided documentation verifying the debt was paid off. (AE F at 3.)

The current status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$9,891 balance owed after automobile repossession in December 2005. Applicant admits he never made payments towards this debt. He was four payments late when the truck was repossessed. After the automobile was resold, the creditor sent him a letter indicating that he still owed the creditor \$9,000 on the loan. Applicant recently contacted the creditor and the creditor said that he does not owe anything. (Tr at 35-38.) He provided a letter from the creditor, dated March 10, 2008, that states Applicant was a member in good standing during the time he had an account with the creditor from July 27, 2004, to April 19, 2007. (AE D.) The debt is still listed on his most recent credit report, dated April 8, 2008. (Gov 6 at 3.)

SOR ¶ 1.b: \$1,837 charged off credit card account. Applicant recently entered into a repayment plan with the creditor. He agreed to pay \$200 a month to resolve this debt. He made his first payment on April 8, 2008. (Tr at 27, 40; AE B; AE F at 4.)

SOR ¶ 1.c: \$1,392 charged off credit card account. Applicant testified that he settled this account. A credit report, dated April 8, 2008, indicated that a credit card account was settled. Upon further review, it appears the account that was settled is the debt alleged in SOR ¶ 1.d based on the account numbers provided in the credit report. Applicant has three different credit card accounts with the same company. (Tr at 41-42; Gov 6 at 2.) He testified that the credit card company said one of the accounts is closed. He is willing to pay it if he owes it. (Tr at 43.) This account is not listed on his most recent credit report, dated April 8, 2008. (Gov 6.)

SOR ¶ 1.d: \$648 charged off credit card account. Applicant settled this account and it is paid in full. There was some confusion over the account number and he thought he settled the debt alleged in SOR ¶ 1.c. The account number indicates that this is the credit card account that was settled. (Tr at 42-43; AE C; Gov 6 at 2.)

SOR ¶ 1.e: \$6,047 charged off military exchange credit card account. Applicant thought payments were being taken out of his military retirement account towards this debt. They were not. An allotment of \$210 per month is currently taken out of his military retirement check towards this debt. The allotment started on November 1, 2007. (Tr at 44-47; AE E; Answer to SOR.)

Applicant's take home pay is approximately \$2,800 per month after taxes. His wife's take home pay is approximately \$2,800 per month. Their mortgage is \$1,300 per month. They have a \$230 car payment. Groceries and expenses are approximately \$500 to \$600 per month. (Tr at 48.) Based on the information Applicant provided at the hearing, their total monthly expenses would be \$2,030. After expenses, approximately \$3,570 in discretionary income is left over. Applicant is current on all federal and state income taxes. (Tr at 56.)

Applicant's project manager states that he is a steady and reliable employee. He performs his daily tasks efficiently and effectively and handles his collateral duties in a professional manner. (AE A.) His assistant project manager has worked with Applicant for the past seven years and says that he is an asset to the organization. He states that Applicant conducts himself in a professional, highly organized manner. He is relied upon to train and coordinate other duties within the organization. (AE F at 7.) A personal friend of Applicant states that he treats everyone with respect. He does not gossip or cheat. He is the first one to offer a helping hand. She describes Applicant as a "hard worker, good husband, an exceptional parent and very good friend." Her grandchildren look up to him and refer to him as "Uncle." (AE F at 9.)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has a history of not meeting financial obligations. He incurred five unresolved delinquent accounts with a total approximate balance of \$19,815.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Although Applicant is taking steps to resolve his accounts, only one account was resolved at the close of the record. He entered into payment plans for two of the accounts. He recently entered into a payment plan for the debt alleged in SOR ¶1.b. It is too soon to apply FC MC ¶ 20(a) based on Applicant’s past history of financial irresponsibility as well as his admission that he and his wife still occasionally get a payment or two behind on some of their bills.

FC MC ¶ 20(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) does not apply. Applicant states most of his financial problems were the result of financial irresponsibility as opposed to conditions that were beyond his control.

FC MC ¶20(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) does not apply. Shortly after he retired in 1990, Applicant and his wife attended financial counseling. They continued to have financial problems. Applicant is making progress toward resolving his financial delinquencies but it is too soon to conclude that his financial problems are under control. Financial counseling would be helpful for Applicant to establish a budget and learn strategies to avoid financial problems in the future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant has contacted each of the creditors alleged in the SOR. He paid off the debt alleged in SOR ¶ 1.d. He is making payments towards the debts alleged in SOR ¶¶ 1.b and 1.e. He provided a letter from the creditor alleged in SOR ¶ 1.a which states that his account is in good standing. (He admits that he never made a payment towards the balance of the automobile loan after his truck was repossessed and the debt remains listed on his most recent credit report, dated April 8, 2008.) The credit card company claims that he no longer owes the debt alleged in SOR ¶ 1.c. This debt no longer appears on his credit report. (Gov 6.) Applicant has made progress towards resolving his accounts. If it is later determined that he owes the debts alleged in SOR ¶¶ 1.a and 1.c, he is willing to resolve the accounts. He submitted documentation indicating he does not owe these accounts at this time.

Personal Conduct

The security concern relating 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.

Personal conduct concerns are raised because Applicant failed to list his delinquent accounts in response to section 28(a) and 28(b) on his e-QIP application. Personal Conduct Disqualifying Condition ¶ 17(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) potentially applies to this allegation. Applicant claims that he did not realize that he had older delinquent debts. He did not have a copy of a recent credit report and was not aware of the delinquent accounts. He did not intend to falsify his e-QIP application. I find Applicant's explanation credible. Some individuals have financial problems because they do not keep track of their accounts. I find for Applicant with respect to the personal conduct concern.

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 common sense 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. I considered Applicant's military career and his favorable references from co-workers and friends. Although Applicant did not resolve all of his delinquent accounts, he provided proof that he took steps to resolve each one of his delinquent accounts. He paid one account and is making payments towards two other accounts. Applicant made no payments on two accounts, however, both creditors informed Applicant that the accounts are closed. I give credit to Applicant for contacting these creditors in an attempt to resolve these accounts. It appears Applicant is capable of resolving his debts based on his current financial situation and his most recent credit report. Applicant is warned that future financial problems will raise future security concerns. He should take preventive steps to avoid future financial problems. Considering his favorable work performance and 20 years of honorable military service, Applicant's current financial situation does not raise a security concern. Applicant mitigated the security concerns arising under financial considerations, and 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:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge