



**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. 07-04127

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel

For Applicant: *Pro se*

January 28, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his security clearance application (SCA) on September 20, 2005. On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security clearance concerns under financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's answer to the SOR was received by DOHA on October 16, 2007. I received the case assignment on November 13, 2007. DOHA issued a notice of hearing on December 3, 2007, and the hearing was convened as scheduled on December 18, 2007. The government presented Exhibits (GE) 1 through 6. Applicant testified on his own behalf. He submitted no exhibits. DOHA received the transcript (Tr.) of the hearing

on January 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for security clearance access is granted.

Findings of Fact

Applicant admitted all allegations under paragraph 1 (financial considerations). He admitted the three allegations under paragraph 2 (personal conduct). He also denied the personal conduct allegations constitute criminal conduct as alleged by paragraph 3 of the SOR. Applicant is 40 years old and employed as an aircraft mechanic with a defense contractor. He has held that position for the last nine years. From 1986 until his Honorable Discharge in October 1998, he was employed by the military. He is married with five children. He seeks a security clearance.

After serving 12 years in the military, Applicant was 28 years old when he discovered he had a medical condition that mandated his discharge in October 1998. He received a \$400.00-medical-disability that was a critical monetary source for bill payment while he searched for a job. In late 1998, he found a job, but had to immediately take medical leave when his condition caused temporary blindness for approximately a month. While on medical leave, he fell behind in his mortgage. When he returned from leave, his mortgage was raised from \$600.00 to \$1,000.00 a month, making it difficult to pay his other bills.

In May 2000, Applicant filed a Chapter 7 bankruptcy petition (subparagraph 1.a.) to save his house. According to GE 6, he purportedly received a Chapter 7 discharge of his debts on October 5, 2000, although the amount of liability discharged is unknown because there are no records. Significantly, Applicant believes all the bankruptcy petitions were dismissed, not discharged.

In late 2000, Applicant received foreclosure papers on his house indicating the trustee was not receiving sufficient funds to satisfy the mortgage. He then filed a Chapter 13 bankruptcy petition (subparagraph 1.b.) on December 13, 2000. The petition was dismissed on June 22, 2001 after Applicant's wife had to be hospitalized, and he was required to babysit his children during her hospitalization. Applicant filed a second Chapter 13 petition (subparagraph 1.c.) on July 10, 2001 that was dismissed September 20, 2002 by the judge because of a filing mistake by the staff of Applicant's lawyer. Also, Applicant's wife had to travel from their home on the eastern side of the state to the local area to care for her mother who was suffering from a terminal illness. She missed a critical court date resulting in dismissal of the second Chapter 13 petition.

On August 9, 2002 (subparagraph 1.d.), Applicant filed another Chapter 13 petition. GE 6 reflects the amount of debt declared in the petition was \$149,720.82. This petition was dismissed on October 15, 2003 when Applicant could not make the monthly payments. His wife and children then moved to the family's current location to live with her parents until she was able to find a house to rent. Meanwhile, Applicant put their house on the market. After a short period of time, he sold the house and moved to the local area with his wife and family.

Applicant found a job just before the hurricane struck the area (circa summer 2004),¹ completely wrecking his house and ruining the family's possessions. Then, he was laid off and had to move into emergency housing (trailer) provided by the federal government. Living with his wife and four or five children until October 2006 in a trailer was a real hardship for Applicant and his family. It was not long before his federal housing settlement was overrun by criminal activity and a rodent problem that became unbearable.

In October 2006, Applicant moved out of the federal trailers with the help of an affordable housing organization. After finding a house, he paid \$3,000.00 down, and began paying \$1090.00 a month mortgage. Unfortunately, Applicant's success in keeping his mortgage current since October 2006 has meant that the listed debts have not been paid.

When Applicant was interviewed on December 21, 2005, his income was \$3,200.00 a month with \$2,330.00 a month in expenses. Though his net remainder was calculated to be about \$870.00 a month, unanticipated bills frequently arose to deplete the remainder. Recently, he has been removed from the flight line to the aircraft parts section, translating to a reduction in his monthly, net pay to \$2,844.00. He has not made any payments on the listed debts. Applicant's other debts, including his utilities and regular expenses are also overdue to some degree. Applicant pays half of his regular expenses in one pay period and the other half in the next pay period. The mortgage continues to be paid on a regular basis every month.

Applicant's wife has not been able to work since approximately October 1998. She suffers from a serious medical condition that prevents her from working. She applied for disability insurance, but was rejected. Now that Applicant is earning less than he did in December 2005, he is going to retain someone to help his wife reapply for disability insurance. Because he is currently suffering from a blood circulation problem in his legs, related to his primary medical condition, Applicant is having his disability case reviewed to find out whether he is entitled to additional disability insurance.

The 13 past due debts in subparagraphs 1.e. through 1.q. belong to credit card issuers, collection agencies, and medical providers. Ten of the creditors are medical accounts. The total amount of debt is \$14,775.00, with the largest delinquency (\$10,992.00, subparagraph 1.e.) a car loan that was charged off in November 2000. The debts became delinquent between 2000 and 2005. Applicant desires to pay the delinquent debts, but is focusing all efforts on the keeping his house.

The personal conduct allegations relate to omitted information that did not appear on Applicant's SCA he submitted to the government on September 20, 2005. In response to the Section 27a. question requiring information about any bankruptcy

¹ Applicant testified the hurricane hit in 2005. I have taken official notice that the hurricane hit the area in the summer of the 2004.

petition that was filed in the last 7 years, Applicant entered a “NO” response.² The negative response was provided even though GE 6 indicates he supposedly received a Chapter 7 discharge in October 2000, and filed three Chapter 13 petitions. The notification of foreclosure proceedings in late 2000 provided by the trustee raises doubt about whether the first Chapter 7 discharge may have been converted to a Chapter 13 action. Applicant denied he falsified his answer to Section 27 because he believed the question called for completed bankruptcies. I find his explanation credible.

In response to the Section 28a. question (any debts over 180 days delinquent in the last 7 years) of the same SCA, Applicant answered “NO.” In response to the section 28b. question (debts currently over 90 days delinquent), Applicant answered “NO.” In his answer, he mentioned misunderstanding, and being preoccupied with the consequences of the hurricane and squalid life in the federal trailer park as reasons why he did not answer the SCA questions correctly. At the hearing, he did not know why he answered “NO” to both questions because he remembered the overdue debts when he filled out the SCA, but intimated he was more concerned about his family’s wretched living conditions. I find he exercised poor judgment by intentionally falsifying the answers to both questions of Section 28.

Policies

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 in demonstrating that it is clearly consistent with the national interest to grant him a security clearance.

Section 7 of Executive Order (EO) 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).

Financial Considerations (FC)

Failure to live within one’s means raises doubt about a person’s trustworthiness.

² Applicant answered “YES” to the Section 27b. question requiring information about repossessions or garnishments. In the explanation section, Applicant disclosed that the property was worth approximately \$10,000.00, and had been repossessed in January 2004 by the creditor identified in subparagraph 1.e. of the SOR.

Personal Conduct (PC)

A lack of candor or poor judgment demonstrated during the security investigation casts doubt on whether an applicant can dutifully comply with security regulations.

Criminal Conduct (CC)

Violating the law, regardless of whether the person was formally charged or prosecuted, raises issues about a person's judgment, reliability and trustworthiness.

Analysis

The concern of the FC guideline is the following: "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 FC disqualifying condition (DC) 19.a. "inability or unwillingness to satisfy debts" is disqualifying. Similarly under FC DC 19.c. , "a history of not meeting financial obligations" may raise security concerns. Considering the circumstances under which Applicant was required to terminate his military service and the short time between his discharge and the filing of his first bankruptcy petition in May 2000, it is fair to conclude he was not prepared to handle the sudden transition to civilian life with a wife and five children. The record reveals that Applicant pursued four bankruptcy petitions between May 2000 and March 2004. Though GE 6 clearly reflects his first bankruptcy petition was filed under Chapter 7, there is some evidence to conclude the Chapter 7 was actually converted to a Chapter 13. The dismissal of at least three Chapter 13 petitions with continuing financial problems justifies application of FC DC 19.a. and 19.c. to these facts.

The FC guideline also includes conditions that mitigate security worthiness concerns generated by financial difficulties. Applicant obtains limited mitigation from FC mitigating condition (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." Though the behavior occurred under bizarre circumstances that are unlikely to recur, there is evidence of at least one account becoming delinquent in 2005, less than three years ago.

Under 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” may apply when unforeseen events occur that are outside a person’s control. Applicant receives substantial mitigation from FC MC 20.b. beginning in October 1998, when he discovered his very serious illness that necessitated his discharge from the service. Fortunately, he was able to rely on his disability insurance to support his wife and five children while he looked for a job in late 1998. Unfortunately, immediately after he found a job, he suffered temporary blindness for about a month, a byproduct of his primary illness.

Applicant’s lack of success with his bankruptcy petitions shows how serious he was about keeping his house, yet trying to pay back something to the delinquent creditors. I conclude that, considering his wife’s medical problems, primarily her medical condition that prevented her from working, and his unsuccessful efforts in seeking bankruptcy protection from 2000 to March 2004, he acted reasonably under the circumstances.

Shortly after selling his original house, Applicant moved to the local area in 2004, and found a job. However, the hurricane destroyed his family’s house, requiring them to quickly move to a federal trailer park on very short notice. It is fair to conclude he was not prepared for the outrageous living conditions he would have to tolerate until October 2006.

Though there is clearly a lack of evidence under 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 under control” and FC MC 20.d. “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” I conclude that the cumulative impact of the medical conditions of Applicant and his wife, as well as meteorological events well beyond their control, contributed substantially to their inability to regain control over their financial responsibilities. The financial guideline is resolved in Applicant’s favor.

The personal conduct omissions occurred in September 2005. Applicant’s negative answer to Section 27a. was clearly incorrect given the four bankruptcy petitions he filed over a four-year period, with the last petition being dismissed less than two years before he submitted his SCA. But, the insufficient mortgage payment that surfaced in late 2000 suggests the Chapter 7 discharge may have actually been converted to a Chapter 13. Further, Applicant disclosed his largest debt in his response to Section 27b. of his SCA, when he identified the delinquent car loan account in subparagraph 1.e. Considering the evidence as a whole, I conclude he misread the Section 27a. question and was not trying to conceal his bankruptcies. Subparagraph 2.a. is found in Applicant’s favor.

Subparagraphs 2.b. and 2.c. require application of PC DC 16.a. “deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility.” However, the totality of the record persuades me to find for Applicant under PC MC 17.d. “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable,

or other inappropriate behavior, and such behavior is unlikely to recur.” The remorse and contrition Applicant demonstrated at the hearing convince me he fully understands the gravity of his dishonest conduct and will not engage in such disqualifying behavior in the future.

Deliberate falsifications of material information under the PC guideline may also constitute criminal conduct under the CC guideline. CC DC 31.c. “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted” applies based on the allegation that Applicant’s deliberate falsification also constitutes felonious criminal behavior under 18 U.S.C. 1001, even though Applicant was not formally charged. As with my finding for Applicant under the PC guideline, I also find for Applicant under the CC guideline. Read together, CC MC 33.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, and good judgment” and CC MC 32.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” justify a favorable outcome for Applicant under the CC guideline. A bizarre set of confluent weather and living conditions played a small part in Applicant’s dishonest conduct in September 2005. He recognizes his poor judgment. Because I believe he will not engage in this kind of behavior in the future, subparagraph 3 is resolved in his favor.

Whole Person Concept

In addition to the disqualifying and mitigating conditions, I have also considered this case under the totality of Applicant’s conduct and all the circumstances, otherwise referred to as the whole person concept. Nine adjudicative process factors make up the whole person concept. Those factors are: “(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.” 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 factors of the whole person concept.

I have discussed the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In October 1998, Applicant was 30 years old when he was involuntarily discharged because of his medical condition. While he may have been nine years beyond the age of adulthood when he departed the military, he was clearly unprepared for transition to civilian life and the responsibilities of raising a family of six or seven. He accumulated debt due to circumstances largely beyond his control. Those circumstances have included continuing medical conditions for

Applicant and his wife, his wife's inability to work because of her medical condition, and the calamitous weather event leading not only to a total loss of their possessions, but also forcing them into intolerable living conditions in the federal trailer park. Though he deliberately falsified the Section 28 questions about his debts, and waffled somewhat in his written answer to the SOR, Applicant's admission of responsibility for his isolated dishonesty, and intention to repay his past due debt is credible and worthy of belief. For all these reasons, I conclude Applicant has mitigated the security concerns triggered by the FC, PC, and CC guidelines.

Formal Findings

Formal findings pursuant to section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 (Financial Considerations, Guideline F): FOR APPLICANT

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
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	For Applicant
Subparagraph 1.p.	For Applicant
Subparagraph 1.q	For Applicant

Paragraph 2 (Personal Conduct, Guideline E): FOR APPLICANT

Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant
Subparagraph 2.c.	For Applicant

Paragraph 3 (Criminal Conduct, Guideline J): FOR APPLICANT

Subparagraph 3.a.	For Applicant
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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. Clearance is granted.

Paul J. Mason
Administrative Judge