



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



In the matter of:)
)
-----) ISCR Case No. 07-07593
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

June 27, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 30, 2006. On February 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on April 10, 2008. Applicant was not available for a hearing in April or May and asked for a continuance. DOHA issued a notice of hearing on May 22, 2008, and I convened the hearing as scheduled on June 12, 2008. The Government offered Exhibits (GE 1-7), to which the parties stipulated. Applicant testified in his own behalf, and submitted Exhibits (AE A-M), without objection. I kept the record open for Applicant

to submit additional information. He did submit a packet of documents consisting of 27 pages. The document was marked as AE N and entered into the record without objection. The record closed on June 26, 2008. DOHA received the transcript on June 19, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated March 13, 2008, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.d, and 1.e, of the SOR. He denied the factual allegations in ¶ 2.a-2.b of the SOR and denied any intentional falsification. Applicant denied the other allegations because the debts were disputed or he had no knowledge of them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 39-year-old employee of a defense contractor who graduated from high school in 1987. Applicant enlisted in the U.S. Navy after his high school graduation and served in the Navy from 1987 to 2001, receiving an honorable discharge. He has worked for his current employer since July 2002 (GE 1). Applicant held a security clearance while in the Navy (Tr. 56).

Applicant married for the first time in 1989 but divorced in 2000. He has three sons from his first marriage. He has child support directly deducted from his pay (Tr. 66). He is now remarried and has an infant daughter. His wife works from home and contributes to the family income (Tr. 68).

Applicant acknowledged that he lived beyond in his means and overextended himself financially for a period of time from the mid 1990s through the early part of 2004. He did not make sound financial decisions and attributed those poor decisions to his drinking (Tr. 21).

In 2004, Applicant admitted that he was in need of treatment for alcoholism. He entered a 12-step program and stopped drinking. He has remained sober since that time (AE M). He also recognized the need to resolve his financial situation and at the same time wished to exercise his legal rights concerning verification of some debts.

The SOR alleges seven delinquent debts, including medical debts. The total amount of debt that Applicant owes is approximately \$27,304 (GE 5). The debt alleged in allegation 1.a of the SOR stems from an automobile loan that Applicant co-signed with a girlfriend in 2001. His former friend took possession of the car and moved to another state. He had no further contact with her. Applicant learned in 2006 that the vehicle had been repossessed. The amount of the debt is \$14,776 (GE 5).

The following debts alleged in the SOR relate to a hospital charge due to Applicant's asthma attack in 2001: allegation 1.b from August 2005 in the amount of

\$51; allegation 1.c \$52 from August 2005; allegation 1.d for \$641 from June 2005; and allegation 1.e for \$369.

Allegation 1.f alleged in the SOR for approximately \$7,647 is an account that was charged off in 2001.

The debt alleged in allegation 1.g of the SOR is for \$3,768 for a collection account from a phone company.

Applicant learned about the repossession of the vehicle (1.a) in the summer of 2006. He immediately sent a certified letter to the collection agency (Cavalry) requesting information about the debt. He did not receive a response from them. As part of his current security clearance process, he sent another certified letter asking for information. He also contacted the three credit bureau reporters and filed a formal dispute. Applicant did receive a response from Cavalry in October stating that Applicant needed to provide proof that he had paid the account in full. Applicant still disputes the amount and has written to them. He believed that his consumer rights were violated in that he never received notification of the default and repossession of the vehicle. He will obtain legal assistance to dissolve or reduce the debt.

Applicant set up a payment plan for the debts in 1.b - 1.e. He contacted the medical account collection agencies in 2007. After they sent details on the medical bills, he started a payment plan of \$50 per month. He just made his final payment this month. He submitted proof that he has no balance (AE F and AE E).

Applicant had no knowledge of the debt alleged in 1.f until he received the SOR in February 2008. He does not have any information about this account. He immediately wrote to the collector. He has not had any response. Applicant has not yet followed up on this account due to his wife's pregnancy and the recent birth of his daughter (Tr.49). His plan of action is to follow up and speak to a supervisor with the agency. If the company does not locate the debt, he will dispute it in writing with the credit bureaus.

Applicant disputed the phone debt (1.g) when he learned about it. He researched the debt and contacted the provider. He also initiated disputes with the three credit bureau reporters. The phone provider had no evidence that Applicant ever did business with them (Tr. 44). Applicant did receive a letter from a debt collection agency that the account has been paid in full as of September 24, 2007. Applicant received information that the credit bureau reporters will delete this entry from his credit reports (AE E).

Applicant's current monthly net income is \$1,400. His wife provides an additional \$600 to \$1,000 a month. After monthly expenses, he has a net remainder of \$85 (AE). Applicant contributes to his 401(k) program. He has savings and an IRA (Tr. 75).

Applicant recently received financial counseling from American Financial Solutions. He has a monthly budget and a plan of action to address the debts that

remain unpaid. He will seek legal assistance to have a court review of his child support payments and a possible reduction due to his current family situation.

Applicant completed his August 30, 2006 security application. In that application he answered “no” to questions 28(a) and 28 (b) Your Financial Delinquencies (GE 2).

Applicant explained that it was his understanding that unless there were legal proceedings being held concerning any delinquency, a question such as 28 regarding financial delinquencies would be answered “no.” He worked as a recruiter for the Navy from 1994 through December of 1997. He explained that he received training instructions concerning the questions in the application for processing the recruits. He based his answers to the SF 86 on this prior training (Tr. 61). He now agrees that he should have answered yes to both sections of the question.

In 2006, Applicant was interviewed as part of the security clearance process. He reported to the investigator that he misunderstood the questions. The investigator briefed Applicant and Applicant changed his answers to “yes.”

Applicant’s current employer recommends Applicant for a security clearance. She reports Applicant has exceptional qualities and can be trusted. Applicant is a conscientious worker who is very dependable and is always ready to commence working (AE N). Applicant’s supervisor is aware of the security concerns facing Applicant, and considers him a stellar employee who has consistently demonstrated a commitment to a high level of professional ethics. He has recently received a promotion. His previous supervisor also considers Applicant to be an exceptional professional. He believes he is resolving his financial problems. Applicant’s recommendations include one from the senior pastor of his church (AE C).

Applicant is active in his church and his community. He leads a study group for the church. He is also on the church Council and is involved in planning conferences and activities for the church (Tr. 25).

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, 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. 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 accumulated delinquent debts on numerous accounts and did not meet his financial obligations from the late 1990's until the present time. His credit reports confirm that he has recent debts as well. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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.[@] Applicant's financial difficulties arose in the late 1990s and continued until the present. He accumulated some delinquent debt and did not act responsibly while he was drinking. However, his conduct over the last six months with his creditors removes security concerns or doubts about his current reliability, trustworthiness, and good judgment. This potentially mitigating condition partially applies.

Under AG & 20(b), it may be mitigating 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.[@] As noted above, Applicant acknowledged that he was not responsible while he was drinking and made poor financial choices. I find this potentially mitigating condition does not apply.

Evidence that 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[@] is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.[@] Applicant received financial counseling recently. He has a monthly budget. He paid the medical accounts. He researched his debts and one has been deleted from his credit reports. He is resolving his debts. I conclude these mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows "the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." In this case, Applicant stated that he disputed the debt in allegation 1.a and 1.f. He has formally disputed these debts and has provided documentation. I conclude this potentially mitigating condition partially applies.

Guideline E, 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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel 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" is potentially disqualifying.

In this case, when Applicant completed his 2006 security application, he did not list any delinquent debts over 90 or 180 days. He answered "no" to question 28(a) and (b). He had delinquent debts at the time. Thus, he omitted relevant information. However, he was credible and forthright in his explanation that he did not believe he had to list a debt for which there was no legal proceeding. Some of the debts were unknown to him at the time. He was open and candid at the hearing. I find he did not intend to provide false information.

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 and conclude they are insufficient to overcome the government's case. Applicant served his country in the military for a number of years. He is recommended highly by his employer. He has worked hard to support his family. He pays child support for his three children from his first marriage. He has not had any documented problems with his employment. His current employer praises his hard work and professionalism.

When Applicant learned about the repossession and the collection account, he immediately contacted the collection agency to get information. He is now formally

disputing the other debt. He has paid the medical accounts. The amount of debt is not significant to cause concern about Applicant.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his 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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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.

NOREEN A. LYNCH
Administrative Judge