



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



In the matter of:

SSN:
Applicant for Security Clearance

ISCR Case No. 07-07988

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

March 7, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations and Personal Conduct. Clearance is denied.

Applicant submitted his Security Clearance Application (SF 86), on October 9, 2006. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 acknowledged receipt of the SOR on September 27, 2007, which was received at DOHA on October 2, 2007. He answered the SOR in writing on November 19, 2007, which he supplemented on November 27, 2007, and requested a hearing before an Administrative Judge. DOHA received the responses/requests on November

21, 2007, and November 28, 2007, respectively. Department Counsel was prepared to proceed on January 10, 2008, and I received the case assignment on January 17, 2008. DOHA issued a notice of hearing on January 23, 2008, scheduling the hearing for February 20, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 4, which were received without objection. Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and he testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 28, 2008.

Findings of Fact

Except for SOR ¶¶ 1.c., 1.g., 2.a., and 2.b., Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated herein as findings of fact. During the hearing, Applicant amended his answer to ¶ 1.c. from “denial” to “admit.” Tr. 38-39. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 48-year-old senior computer scientist, who has worked for his defense contractor employer since August 2006. He is a first-time applicant for a security clearance. He graduated from high school in June 1979, and did not pursue higher education after receiving his high school diploma. Tr. 67-68.

Applicant was previously married to his first wife from July 1988 to January 1998, and to his second wife from April 1998 to April 2001. Both those marriages ended by divorce. He married his current and third wife in December 2002. Applicant has a 14-year-old daughter and a 15-year-old stepson. GE 1, Tr. 25-26.

Applicant’s background investigation addressed his financial situation and included the review of his October 2006 and August 2007 credit bureau reports. GE 2, GE 4. During a background investigation interview in December 2006, an Office of Personnel (OPM) Investigator confronted Applicant about his delinquencies. He stated to the Investigator that he does not intend to pay any of these debts. He explained he was told by his equity loan officer when applying for a loan that if he took any action on the delinquent accounts, the accounts would become current, as opposed to their current status as unpaid and dormant accounts. He further explained if the accounts became current, his credit score would become very low and he would be ineligible for loans and other financial considerations. For this reason, he chose to ignore the accounts unless the creditors actively pursued him. GE 3 (Results of Interview December 2006).

Applicant’s financial problems started around 2001 to 2002. Although his divorce from his second wife became final in 2002, he denied having difficulty paying his bills. Tr. 50-51. When queried by Department Counsel whether he was having difficulty paying his bills, Applicant responded, “No. I was just not diligent in paying my bills.” Tr. 51.

Applicant's SOR identified seven debts ranging from \$109 to \$9,252 for a total of about \$18,911. SOR ¶¶ 1.a. through 1.g. His position at his hearing did not change from the time he was interviewed by OPM. He provided various explanations regarding each debt, but provided no documentation corroborating his position or documentation that suggested he attempted or had attempted to resolve any of the debts. In short, all debts alleged have not been addressed and are still outstanding. Tr. 70-73.

In October 2006, Applicant submitted a security clearance application. GE 1. Applicant answered "No" to questions 28(a) and 28(b) [asking whether in the last seven years he had been 180 days delinquent on any debt, and whether he was currently 90 days delinquent on any debts (respectively)]. He failed to disclose the debts alleged in SOR ¶¶ 1.a through 1.g. Applicant denied that he deliberately provided false responses to these questions. Applicant claims that he "was unaware of any debts that were 180 days past due," and "[n]one of the debts in question showed up on my request for a FHA mortgage, which would not have been possible had any account been even 30 days past due. The [bank] debts were bought by [bank] from the original creditor, and are not current. According to my mortgage consultant, paying those debts would have brought them current, and resulted in my mortgage being denied. By not responding to [bank's] requests, I kept them off of my current report, and out of my current FICO score." Response to SOR.

Applicant's testimony at his hearing provided a similar explanation. He adds in his Response to SOR and in his testimony that he brought up the bank mortgage debt (SOR ¶ 1.f.) during his OPM interview. Response to SOR, Tr. 63-67. In assessing Applicant's credibility on this point, I do not find his explanation credible. He was aware of past due account concerns when discussing his credit history with his mortgage consultant, aware enough to consciously not pay them to prevent their being reactivated. The SOR debts clearly fell within the period covered by questions 28(a) and 28(b).

Applicant submitted four reference letters that provided favourable comments about his character and supported his being granted a clearance. AE A through D.

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

Under Guideline F (Financial Considerations),¹ the Government’s concern is that an Applicant’s “[f]ailure 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.”

¹ Guideline ¶ 18.

Applicant has a history of failing to meet his financial obligations dating back to 2001. Since then, he has accumulated at least seven delinquent/charged off debts totaling approximately \$18,911. In December 2006, Applicant was confronted about his financial problems and indicated he does not intend to pay any of the unpaid accounts. He presented no evidence to show he has taken any action to resolve his debts. As of the hearing date, he still had the same seven outstanding delinquent/charged off debts. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,² I conclude that none of the mitigating conditions apply. Applicant presented no evidence documenting efforts taken to contact creditors, or to resolve any of the debts since he acquired them. Nor is there any evidence that he has participated in any financial counseling. I specifically considered Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 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*, and conclude it does not apply.

Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts. By his own admission, his divorce did not interrupt his income stream to preclude him from remaining current on his debts. His failure to responsibly deal with his debts appears to be a conscious choice. When confronted with the Government's concerns that his financial past was a security concern, he failed to pursue any corrective action that would have included disputing or otherwise resolving past debts.

He presented no evidence to show he dealt responsibly with his financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are likely to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

Under Guideline E (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. Guideline ¶ 15.

² See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

As noted, Applicant's explanation for failing to disclose truthful responses to questions 28(a), and 28(b) is not credible. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, his demeanor and testimony, the number and value of the debts, his long term disregard of the debts, and the lack of credibility of his excuses. He knew the importance of accurate completion of his security clearance application, and nevertheless failed to provide information that was material to making an informed security decision. Disqualifying Conditions (DC) 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*, and DC 16(e): *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . .*, apply.

I specifically considered all Guideline E Mitigating Conditions (MC) and conclude that none apply. Applicant's falsification is recent, and his favorable information is not sufficient to apply any of the MCs. Additionally, for the same reasons outlined under the discussions of Guidelines F, incorporated herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations and personal conduct security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations.

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.g.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge