



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



In the matter of:)
)
) ISCR Case No. 07-10901
)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

May 8, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial history. Eligibility for access to classified information is denied.

On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the 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 9, 2008. He did not specifically state whether he wanted a hearing. On February 23, 2008, Department Counsel requested a hearing before an Administrative Judge pursuant to ¶ E3.1.7 of the Directive. The case was assigned to me on March 11, 2008. DOHA issued a notice of

hearing on March 14, 2008. I convened the hearing as scheduled on April 15, 2008. The Government called one witness and offered Exhibits (GE) 1 through 23, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through M, which were received without objection. I granted Applicant's request to keep the record open until April 29, 2008, to submit additional matters through Department Counsel. No additional evidence was submitted. The record closed on April 29, 2008. DOHA received the transcript of the hearing (Tr.) on April 23, 2008.

Findings of Fact

In his Answer to the SOR, Applicant denied all the factual allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 45-year-old employee of a defense contractor. He is a high school graduate. He was married in 1985 and divorced in 1999. He remarried in 2003. He was a stepfather to his first wife's two children. He and his current wife have an infant child and he is stepfather to her two children.¹

Applicant and his first wife separated in late 1997, prior to their acrimonious divorce. He provided her with about \$5,000 to \$10,000 to pay their debts. She did not pay all the debts that she agreed to pay. He injured his shoulder, requiring surgery in April 1998. He was unemployed from about December 1998 through September 2000. He received Workers' Compensation which ended before he started working again. He had another operation on his shoulder in March 2000. Applicant relocated several times since 2000, and had additional periods of unemployment.²

Applicant denied owing the debts in SOR ¶¶ 1.a, 1.b, and 1.c, which list debts of \$11,128, \$10,377, and \$5,397 to the same credit union. SOR ¶ 1.a is for an auto loan. The two other debts are installment loans. Applicant had an account with a credit union under a different name than the credit union listed in the SOR. In November 2003, Applicant's credit union merged with and into the credit union named in the allegations. He stated he was never informed of the name change. He further stated that his former wife took out loans in his name. Three loan applications with his credit union were introduced as evidence. A loan application dated November 1996, to increase a signature loan by \$974 to \$9,672 already owed, for a balance of \$10,647, does not show a signature. The loan is only in Applicant's name and the application indicates that the signature is on the check. An application dated July 11, 1997, to obtain an additional \$4,000 on a signature loan to bring the balance to more than \$13,000, was signed by both Applicant and his former wife. This is an application for the debt alleged in SOR ¶ 1.b. Applicant subsequently admitted that he owed this debt. The last application is to advance \$12,120 on an existing auto loan, raising the balance of the loan to \$17,080. The loan was secured by three vehicles. Applicant's ex-wife signed the application and

¹ Tr. at 47-48, 62, 113-114; GE 1, 2, 9; AE C.

² Tr. at 33, 48-55, 58-59, 91; Applicant's Answer to the SOR; GE 2-4.

there is a signature purporting to be signed by Applicant. There is no date next to the signature but the date of the advance is July 15, 1997, the same day the \$4,000 was advanced in the previous application. Applicant stated his wife signed his name on this application without his knowledge.³ After viewing the signatures and comparing them, I find the signature on that application was not signed by Applicant.

Applicant sent a letter to his credit union on December 30, 1997, asking them to remove his wife's name from all accounts. Applicant initially testified that the only debt he was aware of was the debt that he signed for. The loan with the disputed signature was an auto loan. The loan application he admitted signing was for a signature loan. He stated he only became aware of the other two loans when he received copies of the documents from Department Counsel. In March 2000, the credit union agreed to permit Applicant to switch one vehicle solely into his name, with the credit union remaining as the secured party on the lien of \$3,625. Applicant stated he was unaware of the lien before he went to title the vehicle in his name. He stated that he closed out all his accounts and made sure that everything was paid off in about 2000, when he asked the company to repossess the car that secured the loan. He stated that he was never told that there was a deficiency balance owed on the loan. Applicant's initial testimony that he was only aware of the debt he signed for was contradicted by his testimony about the car loan and the repossession.⁴

SOR ¶ 1.d lists a judgment of \$3,403 awarded against Applicant on September 1, 1999, to his first wife's credit union. The judgment was for a car loan that Applicant and his first wife co-signed in September 1994. Applicant and his ex-wife had four vehicles, one for each of them and two for her teenaged children. When they separated and divorced she took three cars and he took one. Applicant told a background investigator in November 2006, that he had no knowledge of this debt. He admitted at the hearing that he signed for this loan. He testified that he thought this car loan was paid by his ex-wife through a wage garnishment. Applicant admitted that he received a notice to appear in court for this lawsuit. He stated he received a second notice postponing the trial, but he never received another notice telling him when to appear.⁵

A judgment of \$4,102 was awarded against Applicant to a financial institution on September 9, 1999, as alleged in SOR ¶ 1.e. Applicant stated he borrowed \$1,400 from the financial institution in about September 1995, to purchase a vehicle. He stated his stepson wrecked the car and he thought the insurance paid off the loan. The judgment was for a car loan that Applicant and his first wife co-signed in September 1994. Applicant admitted that he received a notice to appear in court for this lawsuit but he did not attend the trial.⁶

³ Tr. at 33-46, 75-85; GE 12-14, 23.

⁴ Tr. at 33-46, 75-85; GE 13, 14, 16, 17.

⁵ Tr. at 59-70; GE 4, 6, 8, 20-23.

⁶ Tr. at 42, 70-75; GE 6, 7, 18, 19, 23.

SOR ¶¶ 1.f through 1.i list seven medical debts to an “unidentified collection agency.” The debts range from \$60 to \$3,085 for a total of \$6,313. Applicant stated that Workers’ Compensation should have covered these medical debts. He submitted documentation that his medical debts related to his shoulder were to be paid by Workers’ Compensation. The debts are listed on the credit report of January 7, 2006, but are not listed on the credit report of August 30, 2007 or the Experian credit report of October 17, 2007, submitted by Applicant with his response to Interrogatories.⁷

Applicant had two state tax liens filed in 1996 for \$2,150 and in 1998 for \$2,030. The taxes were paid and the liens released. Applicant is not delinquent on any of his current bills. He has never received financial counseling. He wrote in his Answer to the SOR for allegations ¶¶ 1.a through 1.e:

Bankruptcy Lawyer advised me in 2005 that since it was possible my ex-wife may have taken out fraudulent or additional loans and the [statute] of limitation was in effect. That it would not be advisable to settle this debt.

Applicant submitted a letter dated February 6, 2008 from an attorney, which stated:

Please be advised [Applicant] sought my assistance approximately two years ago to clear up discrepancies on his credit report. I contacted the various credit reporting agencies and the companies listed on his credit report. I requested that the credit reporting agencies remove any negative comments pertaining to these debts as [Applicant] had no reason to believe that he incurred these debts or that they should have been included in his credit reports. I requested each company to provide me with proof that these debts belonged to him. None were ever able to do so.⁸

Applicant testified that now that he is aware of his delinquent debts that he plans on paying the debts that are in his name.⁹

Applicant submitted a Questionnaire for National Security Positions (SF 86) signed on May 31, 2005. Question 28a asked, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Question 28b, asked, “Are you currently over 90 days delinquent on any debt(s)?” He did not answer “Yes” or “No.” he hand wrote in for Question 28a, “unknown.” For Question 28b, he wrote “Lawyer Researching.”¹⁰

Applicant submitted a Security Clearance Application (SF 86), certified as true on July 7, 2005. He answered “No” to Questions 37 and 38, which asked “In the last 7

⁷ Tr. at 93-105; GE 3-5; AE E, M.

⁸ AE B.

⁹ Tr. at 46, 65, 84, 109-112, 126; GE 1, 3-5; AE D, F-L.

¹⁰ GE 2.

years, have you had any judgements against you that have not been paid?” and “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Applicant answered “Yes” to Question 39, which asked, “Are you currently over 90 days delinquent on any debt(s)?” He listed a state tax debt of \$3,900 incurred in September 1996.¹¹

Applicant denied the three falsification allegations in the SOR. I considered all the evidence, including the derogatory information that Applicant included in the questionnaires. While Applicant’s testimony and prior statements about his finances are inconsistent and not totally credible, I find there is insufficient evidence for a finding that Applicant intentionally falsified his Security Clearance Application as alleged in the SOR.

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 to be used 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, Administrative Judges apply the guidelines 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

¹¹ GE 1.

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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant's first wife did not take care of her part of the marital debts after a separation and acrimonious divorce. He was unemployed on several occasions and for an extended period after a shoulder injury. He currently owes more than \$15,000 to a credit union for loans incurred in the 1990s, and more than \$7,500 for two judgments awarded against him in 1999. Other than these debts, his financial situation is stable. However, while these debts remain unpaid, I am unable to find that AG ¶ 20(a) is fully applicable.

Applicant's financial problems were exacerbated by his unemployment and his first wife's actions. These are actions that were largely beyond his control. He has not done anything to pay his debts after his employment stabilized. He did not act responsibly under the circumstance. AG ¶ 20(b) is partially applicable.

Applicant has never received formal financial counseling, but he did retain an attorney to help him resolve discrepancies on his credit report. With the exception of the debts in the SOR, his financial situation is on track. It is questionable whether all the debts in the SOR are enforceable because of the statute of limitations. There are indications that his financial problems are being resolved and under control. AG ¶ 20(c) is partially applicable

Applicant paid his delinquent tax debts, but he has done nothing to pay the debts alleged in the SOR. At least some of the debts may be uncollectable because of the statute of limitations. AG ¶ 20(d) does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of his debts.¹²

¹² The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

He does however merit partial credit because of the statute of limitations.¹³ If Applicant's debts are reduced by the statute of limitations, his potential vulnerability to improper financial inducements is also accordingly reduced.

Applicant initially disputed owing the debts to the credit union as alleged in SOR ¶¶ 1.a through 1.c. Applicant's name on the credit application for the auto loan as alleged in SOR ¶ 1.a was not signed by him. While it is difficult to believe that Applicant was totally ignorant of this loan, I find that AG ¶ 20(e) is applicable to that debt. His signature is on the application for the debt alleged in SOR ¶ 1.b. He subsequently admitted owing that debt. A credit application to the credit union for another loan was made in November 1996. Applicant's signature is not on the application, but the loan request is in Applicant's name only and the application states that the signature was on the check. This application was to increase an existing signature loan by \$974 to \$9,672 already owed, for a balance of \$10,647. The loan was made well before Applicant separated from his ex-wife and before he applied for the loan in SOR ¶ 1.b, which Applicant admitted was signed by him. AG ¶ 20(e) is not applicable to the debts listed in ¶¶ 1.b and 1.c.

Applicant states that the medical debts in SOR ¶¶ 1.f through 1.l should have been paid by Workers' Compensation. He submitted documentation that medical debts related to his shoulder injury were to be paid by Workers' Compensation. The debts were not listed on the two most recent credit reports in evidence. AG ¶ 20(e) is applicable to the medical debts listed in ¶¶ 1.f through 1.l.

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 provide truthful

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

¹³ See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available for debts being resolved through garnishment).

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, including AG ¶ 16(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 omitted information from his Security Clearance Application; however, there is insufficient evidence to find that it was a deliberate omission. No Personal Conduct disqualifying condition is raised by the evidence.

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) the 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. Applicant has had financial issues since at least the 1990s. He was unemployed on several occasions and his ex-wife significantly contributed to his financial problems. While his finances appear otherwise in satisfactory shape, he has made no real effort to repay his debts. Applicant omitted information about his finances from his Security Clearance Application. There is insufficient evidence that it was a deliberate omission. However, his inconsistent statements and testimony about his debts are a cause of concern.

Overall, the record evidence leaves me with questions and 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 his financial issues.

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: | For Applicant |
| Subparagraphs 1.b-1.e: | Against Applicant |
| Subparagraphs 1.f-1.l: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 1.a-1.c: | For 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.

Edward W. Loughran
Administrative Judge