



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-11346
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 31, 2006. On November 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations and personal conduct 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 answered the SOR in writing on December 24, 2007 (mistakenly dated December 24, 2006), and again on January 23, 2008. He admitted the 20 allegations under Guideline F, but did not directly respond to the allegation under Guideline E. However in his written response, he denied intentional falsification of his security clearance application. He provided an explanation for his financial issues. He

requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 11, 2008, and the case was assigned to me on February 13, 2008. DOHA issued a notice of hearing on March 19, 2008, for a hearing on May 1, 2008. I convened the hearing as scheduled. The government offered nine exhibits, marked government exhibits (Gov. Ex.) 1 through 9, which were received without objection. Applicant submitted one document, marked Applicant Exhibits (App. Ex.) A, received without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional documents. Applicant twice requested an extension to submitted additional documents which were granted. Applicant timely submitted an additional document, marked App. Ex. B, which was admitted into the record without objection from Department Counsel (Gov. Ex 10). DOHA received the transcript of the hearing (Tr.) on May 9, 2008. The record closed on June 16, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied

Procedural issues

Department Counsel request that the SOR be amended to add another allegation, 1.u, under Guideline F. Applicant had no objection to the amended. The amendment was granted and allegation 1.u was added to the SOR. (Tr. 8-12)

Findings of Fact

Applicant is 48 years old and has been a training specialist for a defense contractor for over four years. He served 24 years on active duty in the Navy as an operation specialist and retired as a chief (E-7). He has been married three times but has no children born from any of the marriages. He does have two stepchildren from his present wife living at home that he supports. (Tr. 29-33; Gov. Ex. 1, security clearance application, dated March 31, 2006) Applicant has monthly income of \$5,582, which includes his retired pay from the Navy. His monthly expenses are approximately \$4,065, leaving him \$1,387 in discretionary funds monthly. His wife had worked in real estate but earned very little. She is now employed full time and is starting to contribute about \$1,000 monthly to the family income. (Tr. 53-58)

Credit reports and the SOR show 21 delinquent debts for Applicant: a collection account for a cell phone for \$545 (SOR 1.a); a collection account to a finance company for \$330 (SOR 1.b); two medical accounts for collection for \$70 and \$164 (SOR 1.c and 1.d); a collection accounts for \$78 (SOR 1.e); a collection account on a returned check for \$332 (SOR 1.f); a charged off account for a university for \$348 (SOR 1.g); a collection account passed due more than 120 days for \$437 (SOR 1.h); a collection account for a sports store for \$78 (SOR 1.i); an account more than 120 days past due for a credit card for \$2,012 (SOR 1.j); a charged off automobile loan for \$14,936 (SOR 1.k); a credit card debt for \$1,142 more than 180 days past due (SOR 1.l); a delinquent automobile loan charged off for \$6,627 (SOR 1.m); a charged off health club debt of \$974 (SOR 1.n); two collection account to the same creditor for \$675, and \$570 (SOR 1.o, and 1.p); a collection account for \$1,650 (SOR 1.q); an account more than 180

days past due for \$381 (SOR 1.r); a judgment for a furniture company of \$3,257 (SOR 1.s); a judgment for \$1,142 (SOR 1.t); and a judgment to a landlord for \$1,250 (SOR 1.u). (Gov. Ex. 2, credit report, dated January 23, 1982; Gov. Ex. 3, credit report, dated September 28, 1996; Gov. Ex. 4, credit report, dated April 22, 2006; Gov. Ex. 5, dated August 27, 2007; Gov. Ex. 6, Interrogatories with attachments, dated October 24, 2007; Gov. Ex. 7, Judgment, dated January 11, 2004; Gov. Ex. 8, Judgment, dated November 13, 2007; Gov. Ex. 9, credit report, dated April 23, 2008).

Applicant admitted all of the debts listed in the SOR. He intends to file a Chapter 13 bankruptcy to address his debts. (Tr. 24-25; See, response to SOR, dated January 25, 2008) Applicant provided an explanation for his debts and his action plan to security investigators. (See, Interrogatories, dated October 24, 2007, at Enclosure A) The proposed action plan was in some instances different than the explanation below provided at the hearing.

Applicant had no information on SOR allegation 1.a. He had phone service with one cell carrier and switched to another. He thought the first carrier's bill had been paid. (Tr. 33) He has no information or explanation for the debts listed as SOR allegation 1.b (Tr. 34), SOR allegation 1.e (Tr. 40); SOR allegation 1.h (Tr. 41); SOR allegation 1.i (Tr. 41); SOR allegation 1.j (Tr. 41-42); SOR allegation 1.l (Tr. 42-43); SOR allegations 1.o, 1.p, 1.q, 1.r (Tr. 43), and SOR allegation 1.t (Tr. 44).

SOR allegations 1.c and 1.d are for medical bills for his step-children or wife. Applicant has health insurance for his family through his employer. He has no information on the medical charges and he has not inquired about them from the creditor. (Tr. 34-38) SOR allegation 1.f is for a delinquent debt for a credit card. Applicant has an active credit card with the creditor so he has no information or idea about the delinquent debt. He has not inquired about the debt. (Tr. 68-69) SOR allegation 1.g is to a university. Applicant took some on-line course from the university but always paid by student loans. He does not know why he has a charge from the university. He has not inquired about the debt. (Tr. 41)

SOR allegation 1.k and 1.m pertain to different automobiles that were returned to the seller because of mechanical problems. One car had mechanical problems and Applicant told the manufacturer to retrieve the car. He believes the car was repossessed and the debt is the remainder of the debt after the car was sold. The other car was purchased to replace the original car. It also had mechanical problems and was returned to the seller. Applicant believes SOR allegation 1.m was the debt remaining after sale of that car. (Tr. 42-43)

SOR allegation 1.n is for a health club debt. Applicant thought his fees were being paid by an automatic bank deduction. However, he was unsure of any payments and had no documentation of payments made. (Tr. 43) SOR allegation 1.s was a debt for furniture. Applicant stated the debt was paid in full but did not provide any documentation of payment at the hearing. (Tr. 43-45)

SOR allegation 1.u is a judgment entered by Applicant's landlord. Applicant's wife's family came to live with Applicant and his wife for three months when they moved to the area. Applicant's landlord told him he had to pay additional rent because there were more people living in the house. Applicant informed the landlord that the people were there only temporarily and not living in the residence. The landlord told Applicant he had to pay the additional rent or move, and Applicant moved. The judgment is for \$1,250, the additional rent while the relatives lived in the residence. Applicant paid a deposit of \$2,500 when he rented the residence. Applicant claims he is owed money by the landlord and the judgment was improperly entered against him. The matter is still in dispute. (Tr. 18-19, 27-29)

Applicant contacted a credit counselor to consolidate his debts for easier payments. However, the credit counselor required up-front payment over a few months before any payments were made to creditors. Applicant did not believe this was in his best interest so he terminated. (Tr. 44-45, 50-52; Gov. Ex. 6, Interrogatories, at enclosure B)

Applicant filed a Chapter 13 bankruptcy after the hearing. The record was kept open for Applicant to provide documentation of the bankruptcy. (Applicant Exhibit B, list of debtors, undated) The payment plan has not been finalized and no payments have been made on the plan.

In response to questions concerning his finances, Applicant listed the two car repossessions noted in SOR allegations 1.k, and 1.m. He did not list any judgments but did comment that he was working with a consumer credit counselor to resolve debt and that any debts were due to his divorce. He further noted that he answered the questions to the best of his ability. In response to finance questions concerning the length of delinquent debts, he answered no to having any delinquent debts in the last seven years over 180 days or delinquent debts currently over 90 days. He further noted that he was not aware of any debts over 45 days delinquent. (Gov. Ex. 1, security clearance application, dated March 31, 2006) Applicant noted he was meeting a deadline when he completed his security clearance application. He was in a hurry and had other tasks to do because he was retiring from the Navy and starting a new job. He told the clerk assisting him with the application that he may have other debts because he was not able to get a current credit report. He knew that security investigators would look at his financial records and raise any issues concerning his debts. (Tr. 25-27)

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.

Analysis

Financial Consideration:

Under financial considerations, 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts admitted by Applicant and listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations).

Financial Considerations Mitigating Conditions (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) does not apply. There are 21 debts ranging from phone bills, to medical debts, to credit card debts, to car repossessions, to judgments, and additional rent. The debts are not infrequent. Most debts have not been paid and are not current. The debts were incurred in the normal course of events, and not under circumstances that may not recur again. The number of debts and the size of the debts cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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 noted an impact on his finances because of his divorce and his wife's efforts to start a real estate career. However, he did not provide specifics as to how these events impacted on his ability to pay his debts. In fact from the number and type of debts, it seems that these events would have limited impact on his ability to pay the type of debts he incurred. He did not present information to show he acted reasonably under the circumstances.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts since he has sufficient discretionary funds each month to use for debt reduction. Applicant knew of the delinquent debt since he received interrogatories concerning the debts in October 2007. He did nothing to develop a systematic concrete method to handle his debts until he filed for bankruptcy after the hearing. While the bankruptcy has been filed, the payment plan has not been finalized and no payments have been made on the plan. It is commendable that he has taken action on his debts, but without a proven track record of debt payment, Applicant has not established a good-faith effort to resolve his debts.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answer to a financial questions on his security clearance application raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification. Applicant listed the debts he was well aware of, the car repossessions, and noted that he was working with a credit counselor. He stated he answered the questions to the best of his ability. While he did not list any debts over 180 or 90 days past due, he did state that he was unaware of any debts over 45 days. He credibly testified that he complete the application in a hurry to meet a deadline and did not check his credit reports. He was aware of security procedures because he held a security clearance for over 20 year. He knew security investigators would question him about his credit since he raised the car repossessions. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement submitted to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant listed the repossession and noted he was working with a credit counselor alerting security investigators that he had some financial issues. While he was not more specific because of lack of knowledge, he did not deliberately try to conceal his debts. The available information shows his failure to list delinquent debt more than 180 or 90 days past due was not knowing and willful. Applicant established he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 potential disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's 24 years of honorable service in the Navy. I considered Applicant recently filed for a Chapter 13 bankruptcy as the plan to pay his debts. However, his actions were so recent that it does not establish that he acted responsibly to address his financial matters. Applicant in the future may be able to establish a consistent track record of debt payment under bankruptcy thus enabling him to be favorably considered for access to classified information. But without such a track record now, he has not established responsible action on his debts. His finances and his handling of his financial obligations create a security concern. Since he did not act responsibly towards his finances, he may not act responsibly towards his obligation to handle classified information. He provided incomplete information on his security clearance application but not with the intent to deceive. Overall, on balance 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 financial considerations. He has mitigated the security concerns for 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Subparagraph 1.m:	Against Applicant
Subparagraph 1.n	Against Applicant
Subparagraph 1.o	Against Applicant
Subparagraph 1.p	Against Applicant
Subparagraph 1.q	Against Applicant
Subparagraph 1.r	Against Applicant
Subparagraph 1.s	Against Applicant
Subparagraph 1.t	Against Applicant
Subparagraph 1.u	For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For 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. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge