



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-11365
)
)
Applicant for Security Clearance)

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

September 23, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On September 13, 2006, Applicant submitted a Security Clearance Application (SF 86). On April 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 on or about June 6, 2008, and requested a hearing. DOHA assigned the case to me on July 16, 2008, and issued a Notice of Hearing on

July 16, 2008. The case was heard on July 31, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through F into evidence without objection. At the conclusion of the hearing, I left the record open until August 15, 2008, to give Applicant an opportunity to submit additional information. On July 31, 2008, post-hearing, Applicant submitted three exhibits that I marked as AE G through I, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on August 20, 2008.

Findings of Fact

During his testimony, Applicant changed some of the answers he previously filed in his written Answer to the SOR. Applicant admitted some of the allegations contained in the SOR and denied others. His admissions are incorporated into the following findings of fact:

Applicant is 56 years old and divorced. He completed high school and a couple semesters of college. He has been married twice and has two children, ages 32 and 30, from his first marriage. He was married to his second wife from June 1999 to August 2003. They did not have children. (GE 1). In December 2007, he moved into his girlfriend's home.

From approximately October 2002 to the present, Applicant has worked as a mailroom assistant for a federal contractor. He earns \$12.50 per hour, for an annual salary of \$26,250. Prior to this job, he worked as a clerk for a private company from October 2001 to February 2002. He was unemployed from June 2001 to October 2001, during which time he received unemployment compensation of approximately \$150 per week. (Tr. 123). He was a dock building maintenance worker for a company from August 1984 to June 2001.

Applicant's financial problems began in 1999 while married to his second wife and subsequent to their August 2003 divorce. Without the advice of counsel, he executed a divorce settlement agreement, in which he assumed his ex-wife's many debts. Afterwards, he began learning of the magnitude of those debts, which totaled at least \$10,000. (Tr. 24). Since his divorce, he has paid off several debts, including a \$1,000 judgment. (GE 1 at 8). He paid a \$6,000 state tax delinquency, which also affected his financial situation. (Answer). By next month, he will have paid a \$1,200 garnishment in full. (AE G).

In September 2007, Applicant received a set of Interrogatories inquiring about the status of 32 delinquent debts. In response, he submitted a copy of his budget and a payroll stub, but did not address any of the debts. (GE 2). He subsequently contacted some credit counseling firms about resolving his delinquencies, but did not hire any of them because he did not have the initial \$200 to \$300 fee. (Tr. 131). The week before this hearing, Applicant met with a debt consolidation company. (Tr. 28). On July 31, 2008, he signed an agreement and paid \$100 to the firm to begin resolving his

delinquent debts and credit problems. (Tr. 131; AE I). He admitted that he was not diligent in pursuing a resolution and waited until the week of this hearing to take additional steps. (Tr. 132).

Based on credit bureau reports (CBR), dated October 2006 and September 2007, the SOR alleges 29 debts, totaling about \$29,000, which became delinquent between 2002 and 2007. Applicant denied many debts because he does not recognize them and thinks some could belong to his father or brother. He telephoned some creditors, but not all of them. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$237 debt owed to a creditor that Applicant does not recognize. He denied the debt. It is unresolved.
2. SOR ¶ 1.b alleges a \$698 debt owed to a gasoline company. He admits the debt. It is unresolved.
3. SOR ¶ 1.c alleges a \$613 debt. He admitted the debt. It is unresolved.
4. SOR ¶ 1.d alleges a \$424 debt owed to a check cashing facility. He admitted the debt. It is unresolved.
5. SOR ¶ 1.e alleges a \$119 debt owed for medical services he received. He admitted the debt. It is unresolved.
6. SOR ¶ 1.f alleges a \$1,329 debt owed to a cable company. He denied the debt. It is unresolved.
7. SOR ¶ 1.g alleges a \$57 debt owed to the same cable company listed above. He admits the debt. It is unresolved.
8. SOR ¶ 1.h alleges a \$145 debt owed to satellite TV company. He denied the debt. It is unresolved.
9. SOR ¶ 1.i alleges a \$720 debt owed to a cellular phone company. He denied the debt and thinks it may be his former wife's debt. It is unresolved.
10. SOR ¶ 1.j alleges a \$195 debt owed for a personal loan. He admitted the debt. It is unresolved.
11. SOR ¶ 1.k alleges a \$658 debt owed to a gasoline company. He admitted the debt. It is unresolved.
12. SOR ¶ 1.l alleges a \$735 debt owed to a credit card company. He denied the debt. It is unresolved.
13. SOR ¶ 1.m alleges a \$968 debt. He denied the debt. It is unresolved.
14. SOR ¶ 1.n alleges a \$1,028 debt owed to a gasoline company. He admitted the debt. It is unresolved.
15. SOR ¶ 1.o alleges a \$103 debt owed to a telephone company. He denied the debt. It is unresolved.
16. SOR ¶ 1.p alleges a \$922 debt owed to a credit card company. He denied the debt. It is unresolved.
17. SOR ¶ 1.q alleges a \$540 debt owed to a cellular phone company. He denied the debt. It is unresolved.
18. SOR ¶ 1.r alleges a \$13,350 debt owed on a car loan. He admitted the debt. He sent the creditor \$50 several months ago and called the company to seek a payment plan. The company wanted \$300 per month. It is unresolved.

19. SOR ¶ 1.s alleges a \$555 debt owed to a cellular phone company. He denied the debt. It is unresolved.
20. SOR ¶ 1.t alleges a \$780 debt owed to a retail store. He denied the debt. It is unresolved.
21. SOR ¶ 1.u alleges a \$1,529 medical debt. He denied the debt. It is unresolved.
22. SOR ¶ 1.v alleges a \$488 debt. He denied the debt. It is unresolved.
23. SOR ¶ 1.w alleges a \$423 debt owed to a short loan company. He admitted the debt. It is unresolved.
24. SOR ¶ 1.x alleges a \$328 debt owed to an insurance company. He admitted the debt. It is unresolved.
25. SOR ¶ 1.y alleges a \$207 debt owed to the same insurance company as above. He denied the debt. It is unresolved.
26. SOR ¶ 1.z alleges an \$851 debt. He denied the debt. It is unresolved.
27. SOR ¶ 1.aa alleges a \$79 debt. He denied the debt. It is unresolved.
28. SOR ¶ 1.ab alleges a \$144 medical. He denied the debt. It is unresolved.
29. SOR ¶ 1.ac alleges a \$562 debt. He denied the debt and believes it is related to a mix-up with his bank. It is unresolved.

In summary, all of the 29 debts remain unresolved or unpaid. There is no substantive evidence that the debts Applicant denied have been disputed or are not his debts.

Applicant's net monthly income is \$1,754, and includes about \$300 he earns from disc jockey work. He does not pay rent to his girlfriend, who covers many of his living expenses, and has loaned him money to pay debts. After paying his monthly expenses and \$200 to his girlfriend, he has about \$454 remaining that could apply to a repayment plan. (Tr. 135). He is convinced that he will be able to obtain financial solvency in the future, humbly citing several difficult obstacles that he has overcome throughout his life.

In September 2006, Applicant submitted a SF 86. In response to "*Section 28: Your Financial Delinquencies. A. In the last 7 years, have you been over 180 days delinquent on any debt(s)?*" he answered yes and listed one debt alleged in the SOR. He did not list any other debts. In response to Section 27, requesting information about bankruptcies, garnishments, tax liens or judgments, he disclosed a current garnishment. When he completed a security clearance application in 2006, he knew he had a few debts, but did not believe they were delinquent three to six months. He did not review a credit bureau report until he met with a government investigator in September 2007. (Tr. 129). He did not intentionally attempt to defraud the government. (Tr. 51).

Section 23(d) on the SF 86 inquired about his police record: "*Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*" In response to that question, he answered "No" and did not disclose that in 1980 he was charged with Driving Under the Influence and ordered to attend an alcohol education class. Applicant did not disclose that incident because someone from his company's human resources

department advised him that he did not need to disclose information more than eight years old. He also checked with his site manager, who gave him the same information. (Tr. 52).

Applicant's site manager wrote a letter on Applicant's behalf. He considers Applicant to be a valued employee with a "can-do attitude." (AE D). In March 2007, the deputy site manager nominated Applicant for a "Thank You Award" for his outstanding service to the company, noting that in a specific situation Applicant "exceeded expectations by performing a requested task competently and promptly." (AE F). Applicant's Performance Evaluation from May 2007 to February 2008 documents his average performance in most categories. His supervisor noted that he "has never had an attendance problem and always adheres to policy." (AE A).

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 commonsense 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 to obtain a favorable security decision." 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."

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

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.

AG ¶ 19 describes two conditions that could raise a security concern and maybe be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt in 1999 while married to his second wife and after their divorce. Those debts continued to accrue through 2007, and are noted on an October 2006 and September 2007 CBR. All of the debts remain unresolved, despite Applicant's denial of numerous debts. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial worries arose around 1999 and continue into 2008. AG ¶ 20(a) does not apply because the problems have been ongoing for almost nine years and do raise questions about his reliability and good judgment. Some of Applicant's financial problems are attributable to his second wife and their divorce agreement, and, a period of unemployment in 2001. Those conditions were "beyond his control." However, there is no evidence that while accumulating the debts he took steps to manage his obligations. Hence, AG ¶ 20(b) has limited application. On July 31, 2008, he entered into credit counseling and a debt consolidation plan to manage his debts. To-date there is no "clear indications that the problem is being resolved or is under control," which is necessary to warrant full application of AG ¶ 20(c). However, executing the agreement is some evidence that he is making a good faith effort to resolve the debts, triggering a limited application of AG ¶ 20(d).

The record evidence does not support the application of AG ¶ 20(e) or AG ¶ 20(f).

Guideline E, Personal Conduct

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

The Government alleged in SOR ¶¶ 2.a and 2.b that Applicant falsified answers to two questions on his SF 86: In response to Section 28. *Your Financial Record*, he failed to disclose all of the debts listed in the SOR; and, in response to Section 23. *Your Police Record*, he failed to disclose a 1980 DUI. The Government contended that those omissions may raise a security concern and be disqualifying under 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 denied that he intentionally omitted information about his delinquent debts and the old DUI.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant knew that he had some debts, but did not realize the scope of those delinquencies or the length of time they had been outstanding. The first time he ever reviewed his credit report was in September 2007, after he completed the SF 86. He did not disclose the DUI on the advice of two people at his office. Given his truthful and detailed disclosure of one delinquent debt and a garnishment, and his discussion with someone from the human resources department, I find these explanations plausible. The omission of the information was negligent and not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in his favor.

“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). They include the following:

- (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 include an overall commonsense 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 is a 56-year-old man, who has a six-year successful work history with his current employer. He began experiencing financial difficulties in 1999 when he married his second wife. In 2001, he was unemployed for four months and in August 2003 he agreed, without legal counsel, to assume many of his wife's debts in their divorce settlement. Prior to that marriage, there is no evidence of delinquent debts. Subsequent to the divorce, he managed to pay an outstanding judgment and became current with unpaid taxes.

In October 2006, Applicant applied for a security clearance and notified the Government of his financial troubles. In September 2007, the Government sought specific information about 32 delinquent debts that accrued from 2002 through 2007. He never responded to that inquiry until the SOR was filed in April 2008, after which he denied many of the debts. Four months later, at the hearing, he had not resolved one of those debts, even those for small amounts. A week before the hearing, he contacted a debt consolidation and counseling company. Immediately after the hearing he executed an agreement with company to begin investigating his debts and credit problems. His lack of timely attention to the Government's security concerns demonstrates poor judgment and leads me to believe that similar financial problems will recur, until he addresses the 29 debts and establishes a track record of managing his obligations. While employing a company to assist him in addressing his debts is an affirmative step of fiscal responsibility, he waited two years to take that step.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under 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
Subparagraphs 1.a through 1.c:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

Conclusion

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

SHARI DAM
Administrative Judge