



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



In the matter of:)
)
) ISCR Case No. 07-12094
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

May 12, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had three judgments and five accounts in collection totaling approximately \$42,000. They have all been paid. When Applicant completed his Electronic Questionnaires for Investigations Processing (E-QIP) he was unaware of any delinquent financial obligation. In 1989, Applicant, the company he worked for, and other company employees were investigated for false, factitious, or fraudulent claims. The investigation concluded five years after Applicant had left the company. No criminal or civil action resulted from the investigation. Applicant has rebutted or mitigated the Government's security concerns under financial considerations and personal conduct. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order

and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on August 5, 2009, detailing security concerns under financial considerations and personal conduct.

On September 14, 2009, Applicant answered the SOR, and requested a hearing. On December 22, 2009, I was assigned the case. On January 4, 2010, DOHA issued a notice of hearing scheduling the hearing which was held on January 27, 2010.

At the hearing, the Government offered Exhibits (Ex.) 1 through 13, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence, without objection. The record was held open to allow additional information from Applicant. In February 2010, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. F and G. On March 27, 2010, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. H. On February 4, 2010, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he admits the allegation in ¶ 2.b, with explanation. He denies the remaining allegations. Applicant's admission to the SOR allegation is incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 57-year-old technical support specialist who has worked for a defense contractor since June 2006, and is seeking to obtain a security clearance. (Ex. 1, Tr. 31-32) Applicant's co-workers state Applicant performs his tasks quickly and efficiently, is motivated by professionalism, pleasant to work with, and has a good attitude.

In 1985, Applicant joined a company and was a manager. (Tr. 35) The company was selling ruggedized computer peripherals. (Tr. 32) The company was an electronics repair facility that did no manufacturing, but did quality control. (Tr. 55, 57) The number of company employees varied between 25 and 50. (Tr. 34) Applicant received straight salary for doing his job. Compensation for some company employees depended upon the income generated by the contracts. Applicant's salary was independent of what the company received in compensation. Applicant's job was to prepare cost estimates and submit those estimates to his boss, who would in turn submit estimates to the Government for payment. (Tr. 63) Applicant testified he did not know how his supervisor used the estimates. He never saw the cost estimates the company submitted to the Government.

¹ 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).

The two owners of the company had a falling out and one alleged the other was misrepresenting the pricing for two repair contracts. (Tr. 33) In 1989, Applicant, the company he worked for, and other employees were investigated by the U.S. Naval Criminal Investigative Service for false, fictitious, or fraudulent claims related to alleged overcharges on a labor contract. The investigation was still in progress when Applicant left the company in 1994. (Tr. 34) In 1994, the company decided its west coast office was no longer necessary and closed the plant where Applicant worked (Tr. 35)

No criminal or civil action resulted from the investigation. (Ex. 2) The civil Assistant United States Attorney found there was sufficient evidence to support civil prosecution for the company making false claims, but the estimated loss was below the civil division's threshold. (Ex. 2, page 67-68, Tr. 62) Applicant was never fired or disciplined as a result of the investigation. (Tr. 35, 64) The final report was made in 1999. (Tr. 59)

In 1996, Applicant's company transferred him to another state. His ex-wife, an insurance underwriter, did not move to the new state. (Tr. 36) Every month Applicant sent his then-wife \$1,500 to \$2,000 to assist in paying for their home in California. Even though separated from his then-wife and living in another state, it was Applicant's goal upon retiring to return to California and reconcile with his then-wife. (Ex. 6) Applicant later learned his ex-wife stopped paying the mortgage in 2005. (Tr. 41) She has never accounted for the monthly money Applicant sent her. (Tr. 41) Applicant acknowledged he should have been more diligent in determining how his ex-wife was spending the money he sent her.

Applicant's ex-wife also owed some property in Arizona, which Applicant did not know about until the investigation into his financial delinquencies began. (Tr. 38) At a date not disclosed in the record, Applicant's ex-wife started business as a warehouse distributor and delivering pet food door-to-door, which eventually went out of business. (Ex. 6, Tr. 41) When interviewed, Applicant was routinely working 16 hours per week overtime and his monthly gross income was approximately \$7,000. At that time, Applicant and his then-wife's monthly net income was \$9,515. (Ex. 6) Applicant's income after expenses and debt payment was \$3,295. (Ex. 6)

In August 2003, Applicant's ex-wife filed for Chapter 13 bankruptcy protection. In June 2004, the bankruptcy was converted to a Chapter 7 and her debts were discharged. Schedule F of the bankruptcy listed \$124,400 in obligations to creditors holding unsecured nonpriority claims. In May 2005, Applicant's ex-wife was required to refinance the property and pay \$65,000 from the equity to satisfy the creditors in her bankruptcy. (Ex. E) Because the property was transferred without the consent of the bankruptcy trustee, the trustee filed suit. In May 2008, Applicant's ex-wife's bankruptcy case was dismissed. (Exs. 11, 12) At a date not disclosed in the record, the title insurer paid the trustee \$115,000 to settle the matter and the \$65,000 obligation was met. (Ex. H)

Applicant believed he and his then-wife had \$325,000 equity in their California home. He wanted to refinance his loan. In January 2007, Applicant stated that he and his then-wife planned on entering into a buy-back program for his home. An investor was to purchase the home at fair market value, pay off the mortgages, rent the home to his then-wife for a year, and then give them the opportunity to buy it back. (Tr. 6) Any equity received from the arrangement was to be used to pay outstanding debts. (Tr. 6) The finance company and the mortgage company attempted to scam the Applicant and his ex-wife. Once the papers were signed the company sold it to another bank. It was that bank which discovered the trustee had not been paid. (Tr. 39)

Applicant asserts his ex-wife forged his name to the title transfer. (Tr. 44) Applicant and his ex-wife have signed quit claim deeds to the home. (Ex, H) They surrendered their interest, the bank paid the mortgage, and they will receive no equity from the sale of the home they owned since 1990. (Tr. 40)

In April 2009, Applicant filed suit against his ex-wife and other defendants. In May 2009, Applicant filed for divorce from his wife of 14 years. In September 2009, Applicant filed a separate action against the notary and surety company for allegedly illegally claiming to have notarized his signature on a grant deed of the property. (Ex. 6) The suits have been settled. (Ex. H) Applicant was paid \$5,000 by the title insurance company and \$15,000 by the surety company. (Ex. H)

In February 2006, a company filed suit to collect money owed. (Ex. 4) The record is silent as to whether this was filed against Applicant, his ex-wife, or against them jointly. In September 2006, a \$12,419 default judgment (SOR ¶ 1.a) was entered. (Ex. 4) This judgment was paid from the proceeds of the sale of the California property. (Ex. B, F, G, Tr. 48)

In January 2007, Applicant was interviewed concerning his financial delinquencies. (Ex. 6) There were 37 bad debts. (Tr. 44) When called for the interview, Applicant was unaware of any bad debts. He contacted his ex-wife and learned there were bad debts and she had filed for bankruptcy protection in 2004. He was previously unaware of the bankruptcy and the delinquent debts. His ex-wife indicated the debts were discharged.

In November 2007, Applicant answered written interrogatories concerning his financial delinquencies. With his answer, he enclosed a letter from his ex-wife's attorney, which stated his ex-wife's chapter 13 bankruptcy had been converted to a Chapter 7 bankruptcy. In June 2004, his ex-wife was discharged in bankruptcy. Applicant did not join in the bankruptcy. However, under California law, Applicant's joint creditors may not collect from the couple's community property. Applicant and his ex-wife had been married since 1985 and had no separate property.

A summary of the SOR debts and their current status follows:

	Creditor	Amount	Current Status
a	Judgement. (Ex. 4, 8, 9)	\$12,419	\$16,111 paid from sale of property. Applicant has no knowledge concerning the nature of this debt. (Ex. F, G, Tr. 48)
b	Credit card judgement. (Ex. 3, 8, 9)	\$7,521	Applicant never had a credit card with this creditor. (Tr. 50) \$10,502 paid from sale of property. (Ex. F, G)
c	Credit card debt judgement. (Ex.3, 8, 9)	\$3,558	Applicant never had a credit card with this creditor. (Tr. 51) \$5,096 paid from sale of property. (Ex. F, G)
d	Collection agency collecting for gasoline credit card.	\$446	Account closed or forgiven. (Ex. 7, C, Tr. 52) Account also included in the bankruptcy. (Ex. 7, C, H)
e	Collection agency collecting for credit card account.	\$5,778	Discharged in bankruptcy. (Ex. 7, C, H)
f	Collection agency.	\$521	Discharged in bankruptcy. (Ex. C, H)
g	Collection agency collecting for credit card account. (Ex. 9)	\$8,903	Discharged in bankruptcy. (Ex. 7, C, H) Same debt as listed in b.
h	LVNVFUNDG placed for collection. (Ex. 9)	\$2,722	Discharged in bankruptcy. (Ex. C, H)
	Total debt listed in SOR	\$41,868	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 overarching 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.

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.

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 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

In January 2007, Applicant was interviewed concerning his financial delinquencies. At that time, there were 37 bad debts, of which Applicant was not unaware. While married, Applicant's ex-wife incurred three judgments and numerous accounts placed for collection. The SOR lists three judgments and five accounts placed for collection totaling approximately \$42,000. The record evidence supports a conclusion Applicant has a history of financial problems. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 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.

Under AG ¶ 20(a), the debts remained unpaid until recently. In 1996, Applicant was transferred to another state. He was sending his then-wife \$1,500 to \$2,000 to assist in paying the mortgage. He was unaware she was failing to pay their mortgage and other expenses. She stopped making mortgage payments in 2005. Additionally, she opened accounts without his knowledge. Applicant was unaware not only the family's

financial obligations were not being met, he was also unaware his ex-wife had filed for bankruptcy protection, and failed to make sure the bankruptcy trustee properly received the funds from the sale of their home. In 2009, Applicant and his wife divorced. It is unlikely Applicant will again incur financial problems due to his ex-wife's improper actions.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. Applicant's ex-wife had a business that failed. AG ¶ 20(b) applies.

Under AG ¶ 20(c) there is a clear indication Applicant's financial problems are no longer a problem. In 2009, he divorced his wife and in 2010, received \$20,000 from the title company and surety company to settle claims he had against them. AG ¶ 20(c) applies.

The three judgments and five collection accounts listed in the SOR have been paid, which represents a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) applies.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

When Applicant completed his June 2006 e-QIP, his answers related to debts being more than 180 days delinquent were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. Applicant denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was unaware he had any delinquent debts. He lived in a separate state from his then-wife. He was sending home \$1500 to \$2,000 per month assuming his ex-wife was using the money to pay their obligations. His assumption was faulty. At the time the e-QIP was completed, his ex-wife had stopped paying the mortgage for a year and was delinquent on numerous accounts. However, Applicant was unaware of her failure to pay the mortgage, her failure to pay their other obligations, and her seeking bankruptcy protection. When he completed his

e-QIP, he believed all his debts were in good standing. Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications. I find for Applicant as to SOR ¶ 2.a.

Between 1985 and 1994, Applicant worked for a company that was investigated by the U.S. Naval Criminal Investigative Service for false, fictitious, or fraudulent claims related to alleged overcharges on a labor contract. The two owners of the company had a disagreement and one alleged the other was misrepresenting the pricing on repair contracts submitted to the Government. Applicant, a manager for the company, submitted cost estimates to his boss. He never saw what his boss submitted to the Government. Applicant received a straight salary for doing his job and had no incentive to submit false or inflated cost estimates.

The investigation was still progressing when the plant closed and Applicant moved to a new job. Applicant was never fired or disciplined as a result of the investigation. In 1999, five years after Applicant had left the job, the investigation closed. No criminal or civil action resulted from the investigation. Applicant has denied any wrongdoing. The record fails to support any inappropriate action by Applicant. I find for Applicant as to SOR ¶ 2.b.

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 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. All of the debts listed in the SOR have been paid. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1))

Applicant and his ex-wife separated 14 years ago when Applicant's job transferred him to another state. Although separated, it was Applicant's hope to one day move back and resume his life with his then-wife. Applicant was routinely working 16 hours per week overtime and his monthly gross income was approximately \$7,000. He and his then-wife's monthly net income was almost \$10,000 per month. Applicant was sending her \$1,500 to \$2,000 each month. She was not paying the bills nor was she paying the mortgage. His ex-wife never told him what she did with the money and he acknowledges he should have paid more attention to what she was doing with their finances.

In 2006, when he completed his e-QIP, he was unaware of any financial problems. Applicant assumed he and his ex-wife had \$325,000 equity in their home when there was no equity. His ex-wife had stopped making mortgage payments in 2005. Applicant sued a number of companies and individuals for inappropriate conduct and settled the matter for \$20,000. It was his ex-wife's conduct and not his which lead to the financial problems. Now that he is divorced, the chances of his ex-wife causing him further financial problems are remote.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial and personal conduct security concerns.

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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a—1.h: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 2.a—2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge