



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



In the matter of:)	
)	
)	ISCR Case No. 07-12181
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Pro Se

April 15, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 15, 2006. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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.

On December 17, 2007, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on January 15, 2008. The case was assigned to another administrative judge on January 15, 2008. The case was transferred to me on January 24, 2008. On February 14, 2008, a Notice of Hearing was issued. It was held, as scheduled on March 12, 2008. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1-4 without objection. The Applicant offered one exhibit which was admitted as Applicant

Exhibit (AE) A without objection. Applicant testified. The record was held open until March 26, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a nine-page document that was admitted as AE B without objection. The transcript was received on March 20, 2008. The record closed on March 26, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, and 1.g, and denied the allegation in ¶¶ 1.c, and 2.a.

Applicant is a 58-year-old employee with a Department of Defense contractor seeking a security clearance. He has worked for defense contractors for over 38 years and has worked for his current employer a total of 19 years. He is transitioning from his position as a safety, security, and quality manager to the quality assurance, and process improvement area. Part of his duties included serving as the Facility Security Officer (FSO) since 1982. He currently does not have an active clearance but held a security clearance for about ten years in the mid 70s to mid 80s. He has two years of college. He divorced in 2000. He remarried in January 2008. He has four adult children and 11 grandchildren. (Tr at 4-5, 21-23, 48-52; Gov 1; Gov 2 at 5.)

On August 15, 2008, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). He answered, "No" in response to questions 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$1,403 credit card account that was charged off in September 2001 (SOR ¶ 1.a; Gov 2 at 6; Gov 3 at 2; Gov 4 at 5); a \$1,769 credit card account that was charged off in August 2004 (SOR ¶ 1.b; Gov 2 at 7; Gov 3 at 2; Gov 4 at 7); a \$5,312 delinquent account related to a repossessed car (SOR ¶ 1.c; Gov 2 at 2; Gov 3 at 2; Gov 4 at 8); a \$247 medical account placed for collection in October 2005 (SOR ¶ 1.d; Gov 2 at 7; Gov 3 at 1; Gov 4 at 9, 11); a \$1,041 credit card account, charged off in April 2001 (SOR ¶ 1.e; Gov 2 at 2; Gov 3 at 2; Gov 4 at 9); a \$5,487 credit card account closed by the credit grantor (SOR ¶ 1.f; Gov 3 at 2; Gov 4 at 6); and a \$2,980 account placed for collection in August 2004 (SOR ¶ 1.g; Gov 4 at 10.)

Applicant states that he did not intend to falsify his e-QIP application. He believed that he did not have to list older debts. He answered the question based on his current debt status. He states all of his recent debts are current. (Tr at 12-18, 36-37; Answer to SOR.)

Applicant claims most of the delinquent accounts were the result of his 2000 divorce. He agreed to be responsible for the marital debt in order to be allowed to keep his home. (Tr at 47.) Around the time of the divorce, a lawyer recommended that he file

for bankruptcy but he decided against it. He states he has done his best to pay off everything that he can. He states he has paid off approximately \$10,000 in debts since the divorce. (Tr at 47-48; Answer to SOR.) In 2000, his son was shot in the course of his duties as a security guard. Applicant supported his family while he was recuperating. He estimates he spent \$5,000 in 2000 to purchase groceries and other needs for his son's family. (Tr at 70-72; Answer to SOR.)

The first time he obtained a copy of his credit report was during his divorce in 2000. He obtained another copy of his credit report in 2003 when he refinanced his home. (Tr at 56-58.) He discussed his financial issues during an interview with the investigator conducting his background investigation in mid 2007. (Tr at 58; Answer to SOR.)

The current status of the debts are:

SOR ¶ 1.a: Charged off credit card account for \$1,403. Applicant refuses to pay this bill because he was overcharged late fees. He charged \$190 on account. His limit was \$200. The credit card company charged him late fees because the total was over \$200 after the interest was added. Aside from the \$190 in charges, the balance of the debt is interest and late fees. He did not pay the \$190 in actual charges. He had no contact with the company for over a year. Account remains outstanding. (Tr at 37-40; Answer to SOR.)

SOR ¶ 1.b: \$1,769 charged off credit card account. Applicant thought he had paid this off. He was approved for another loan with the same company. Account remains outstanding. (Tr at 40.)

SOR ¶ 1.c: \$5,312 delinquent account related to a car repossession. Applicant disputes this account. In approximately 2005, he cosigned on a loan for a used automobile for his fiance's daughter and her boyfriend. Two weeks after purchasing the car, the car started to have mechanical problems. The car was turned back into the dealer. The principal signers on the loan have not paid the balance so the company is attempting to collect from Applicant as the co-signer on the loan. Applicant refuses to pay this account on principal. (Tr at 41-42, 58-60; Answer to SOR.)

SOR ¶ 1.d: \$247 medical collection account. Applicant was not aware of this debt. He has the money to pay the bill but wants to know what the debt is before he pays it. He is attempting to find out what the account is for. In his answer to the SOR, he indicated that it was a medical bill from a specialist and he thought his insurance company paid for it. Account remains outstanding. (Tr at 43.)

SOR ¶ 1.e: \$1,041 charged off credit card account. Applicant testified that he is not sure what this account is for. He has not contacted anyone to find out what the debt is for. Account remains outstanding. (Tr at 44.)

SOR ¶ 1.f: \$5,487 credit card account that was past due and closed by the credit grantor. Applicant testified that he negotiated a repayment plan in 2001 where he agreed to pay \$50 per month over 18 months. After the hearing, upon review of his records, Applicant discovered that he agreed to pay \$20 per month. He paid using an allotment from his paycheck. In 2003, he requested the creditor send him a statement regarding the status of his account. The creditor would not send a statement pertaining to the status of the account until after the last payment was made. Applicant argued with the creditor and refused to make any further payments. Account remains outstanding. (Tr at 44-46; 60-64; AE B; Answer to SOR.)

SOR ¶ 1.g: \$2,980 collection account. Applicant does not recognize this account. The account number for this account is the same as the account alleged in SOR ¶ 1.b. It appears the debt in SOR ¶ 1.b transferred to this new collection agency. (Tr at 47, 66-67; Gov 3 at 2; Gov 4 at 10.)

Applicant provided a personal financial worksheet in conjunction with answers to interrogatories provided on October 4, 2007. After monthly expenses, he had approximately \$995 left over each month. (Gov 2.) His gross annual salary is approximately \$75,000. Currently paperwork is being processed for his promotion. Once he is promoted, he anticipates making \$100,000 per year. (Tr at 73.) He has not attended any formal financial counseling. (Tr at 76.)

Applicant is highly thought of at work by both his peers and superiors. He has received numerous awards and citations throughout his career. (Tr at 18-35; AE A.) His recent evaluation gives him an overall assessment of high contributor. Comments from the evaluation describe Applicant as “willing to go the extra mile.” He “exceeds key objectives and expectations.” He is “a can do self starter, who continually seeks ways to improve.” (AE B at 1-7.) Applicant is also active in the local community. (AE B at 5; Answer to 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an

inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has a history of not meeting financial obligations since 2000. He currently has six unresolved delinquent accounts with a total approximate balance of \$15,259.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (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) is not applicable. None of the debts alleged in the SOR are resolved. Although Applicant claims that these debts are old and that he is current on his recent financial obligations, his lack of action towards resolving his older delinquent accounts raise questions about his reliability and trustworthiness

FC MC ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances) applies, in part. Applicant's financial problems began when his first marriage ended in divorce in 2000. During that same year, Applicant provided support to his son's family. There were conditions that were beyond the Applicant's control which contributed to his financial situation. The next question to consider is whether Applicant acted responsibly under the circumstances. It has been over seven years since the divorce. Several unresolved debts remain. Applicant has over \$900 left over each month which he could have applied towards resolving these accounts. He took no action to resolve these accounts even after being interviewed during his background investigation in mid-2007. Applicant did not act responsibly under the circumstances. FC MC ¶ 20(b) is given less weight because of his lack of action towards resolving the delinquent accounts.

FC MC ¶20(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) does not apply. Applicant did not attend financial counseling. Most of the debts alleged in the SOR remain unresolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant took minimal steps towards resolving the delinquent accounts alleged in the SOR.

FC MC ¶20(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) does not apply. Applicant disputes several debts, among them SOR ¶¶ 1.a, and 1.c. However, little action was taken to resolve the disputes. The issues remained unresolved at the close of the record.

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

Personal conduct concerns are raised because Applicant failed to list his delinquent accounts to section 28(a) and 28(b) on his e-QIP application. Personal Conduct Disqualifying Condition ¶ 17(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) potentially applies to this allegation. Applicant claims he misunderstood the question and thought he had to list current delinquent accounts. His current accounts are up-to-date. He believed that he did not have to list older debts. He had no intent to falsify his e-QIP application. I find Applicant's explanation relatively credible. I find for Applicant with respect to the personal conduct concern.

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) 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. I considered Applicant's outstanding work history and favorable work evaluations. However, an applicant with a good or even exemplary work history may engage in conduct that has negative security implications.

Applicant's financial situation raised security concerns. His 2000 divorce caused some of the financial problems, however, it has been over seven years since the divorce. Applicant's efforts to resolve the remaining delinquent accounts have been minimal even though he appears to have sufficient income each month to apply towards his delinquent accounts. Although Applicant's evidence of rehabilitation is insufficient at this time this decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a DoD security clearance. Should Applicant be afforded an opportunity to reapply for a security clearance in the future and he were to arrange a satisfactory repayment plan with his creditors to repay his delinquent accounts, he may well demonstrate persuasive evidence of security worthiness. It is premature to conclude so at this time. Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to 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
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:	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.

ERIN C. HOGAN
Administrative Judge