



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



In the matter of:)
)
) ISCR Case No. 07-12219
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Pro Se

February 27, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 29, 2006. On October 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations; Guideline J, Criminal Conduct; 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 November 27, 2007, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 27, 2007. The case was assigned to me on January 3, 2008. DOHA issued a notice of hearing on January 22, 2008, and I convened the hearing as scheduled on February 3, 2008. The government offered Exhibits (Gov Ex) 1 through 9, which were admitted without objection. Applicant testified on his own behalf and submitted no

documents. His wife served as a witness/personal representative. DOHA received the transcript of the hearing (Tr) on February 14, 2008. The record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issue

The Notice of Hearing was sent out exactly 15 days prior to the hearing date. Applicant signed for receipt of the Notice of Hearing on January 29, 2008 which is less than 15 days from the hearing date. Enclosure 3, Additional Procedural Guidance, of the Directive, ¶ E3.1.8 states the Applicant will be notified at least 15 days in advance of the time and place of the hearing. Applicant waived the 15 day notice requirement. The Government noted that Applicant agreed to the February 6, 2008, hearing date on January 16, 2008. (Tr at 9-11.)

Findings of Fact

In his Answer to the SOR, dated November 27, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d -1.j, 1.l, 1.n, 2.a-2.g, and 2.j. He denied the allegations in ¶¶ 1.b, 1.c, 1.m, 2.h, 2.i, 2.k, and 3.a – 3.c. During the hearing he admitted to the allegations in ¶¶ 2.h, 2.i, and 2.k. (Tr at 55-57.)

Applicant is a 39-year-old paint foreman employed by a Department of Defense contractor seeking a security clearance. This is his first time applying for a security clearance. He has worked for his current employer since October 2002. He is a high school graduate. He is married and has a 16-year-old daughter and a 12-year-old step daughter. (Tr at 5-7, 22, 26; Gov 1.)

Applicant's background investigation revealed the following delinquent debts: an \$18,106 collection account for a deficiency amount from a truck which was repossessed in November 2002 (SOR ¶ 1.a); a \$960 medical account placed for collection in May 2004 (SOR ¶ 1.b); a \$214 account placed for collection in March 2004 (SOR ¶ 1.c); a \$96 account placed for collection in May 2005 (SOR ¶ 1.d); a \$199 utility bill placed for collection in March 2004 (SOR ¶ 1.e); a \$1,691 credit card account, charged off in (SOR ¶ 1.f); a \$639 department store credit account placed for collection in 2002 (SOR ¶ 1.g); a \$3,017 bank loan that was charged off in 2001 (SOR ¶ 1.h); a \$16,583 mobile home loan account that was charged off in 2002 (SOR ¶ 1.i); a \$25 cell phone account placed for collection in July 2006 (SOR ¶ 1.j); a \$198 collection account (SOR ¶ 1.k); a \$11,420 child support account placed for collection in December 2003 (SOR ¶ 1.l); a \$4,990 collection account (SOR ¶ 1.m); and a \$105 water service account placed for collection (SOR ¶ 1.n). (Gov 2; Gov 3.)

Applicant experienced financial problems as a result of a nine-month period of unemployment in 2002. During this time, he collected \$700 every two weeks in unemployment checks but it was not enough to keep up with his bills. (Tr at 24-25.) Applicant's truck (SOR ¶ 1.a), five wheel trailer (SOR ¶ 1.h), and mobile home (SOR ¶

1.i) were repossessed as a result. He also incurred additional delinquent debts. The medical debt alleged in SOR ¶ 1.b should have been paid by insurance. Applicant was involved in a car accident where the other driver was at fault in 2004. The bill was for Applicant's medical treatment as a result of the accident. (Tr at 31-33.) He either does not recognize or disputes the bills alleged in SOR ¶¶ 1.c, 1.d, 1.f, 1.k, 1.m. He took no official action to dispute these debts. (Tr at 33-35, 40.) He has made no efforts to pay or resolve the remaining consumer debts alleged in SOR ¶¶ 1.a, 1.e, 1.g, 1.h, 1.i, 1.j, 1.m, and 1.n. (Tr at 27-46.)

In 1998, Applicant stopped paying child support because he was unable to pay it. The court garnished his wages in 2002. In December 2003, he owed approximately \$11,420 in delinquent child support (SOR ¶ 1.i; Gov 2 at 5.) Applicant currently pays \$426 in child support and is current on all child support payments. (Tr at 26, 40-42.) A credit report, dated September 8, 2007, verifies this. (Gov 3 at 2.)

Applicant has not attended financial counseling. He makes \$20.87 an hour with time and half for overtime. (Tr at 22.) His wife earns approximately \$800 per month. Their monthly rent is \$1,000 a month. (Tr at 49.) They still owe \$2,000 in income taxes for tax year 2006. They have not entered into a payment agreement with the Internal Revenue Service. (Tr at 49-50.) In 2006, he received a \$30,000 insurance settlement. The settlement was applied to other bills and extensive dental work he and his wife needed done. (Tr at 65-67.)

Between June 11, 1989 and February 8, 2003, Applicant was arrested and charged with numerous offenses on eleven occasions. The offenses include two driving while intoxicated offenses in 1989 and 1999; eight offenses of driving while his license was revoked and/or under restraint.

On June 11, 1989, he was arrested and charged with Drive a Vehicle when BAC 0.10 or more; Driving a Vehicle While Under the Influence; No Liability Insurance; and Defective Vehicle. (Gov 4 at 4; Gov 5 at 26.)

On December 13, 1989, he was charged with Driving a Vehicle While His License was Revoked. (Gov 5 at 2-7.)

On February 17, 1996 he was charged with Harassment via Telephone. The charge was later dismissed. (Gov 5 at 21-25; Gov 9 at 16-17.)

On April 31, 1997, he was charged with Use of a Foreign License During Suspension; Operating a Vehicle Without Insurance; Operation of Unsafe Vehicle; Careless Driving. The first charge was dismissed and Applicant pled guilty to the remaining charges. Part of his sentence included 48 hours of useful public service. Applicant did not complete the 48 hours of public service and a bench warrant was issued. He was ordered to spend 10 additional days in confinement in lieu of public service. (Gov 9 at 18-20.)

On April 17, 1998, Applicant was arrested and charged with Drove Motor Vehicle When License Under Restraint (Revoked). Applicant pled to the charge of Driving Without a Valid License. He paid a fine and court costs totaling \$57. (Gov 4 at 4; Gov 9 at 25-26.) He was also charged with Failure to Comply – Contempt of Court for failure to perform 48 hours of useful public service. (Gov 4 at 4; Gov 5 at 15-20; Gov 7.)

On April 27, 1998, Applicant was charged with Permit Unauthorized Person to Drive; Driving When License Under Restraint; and Safety Belt Violation. He pled to the first two charges and paid \$155 in fines and court costs. (Gov 4 at 4; Gov 5 at 19; Gov 9 at 23-26.)

On May 8, 1998, Applicant was charged with Driving When License Under Restraint. He pled guilty and was ordered to perform 24 hours of useful public service, spend 90 days in jail and paid \$188 in fines and court costs. He failed to complete the 24 hours of useful public service. A bench warrant was issued and he was arrested on April 26, 1999. He was resentenced to five days in jail in lieu of completing public service. (Gov 9 at 1-3.)

On January 24, 1999, Applicant was arrested and charged with Failure to Drive in a Single Lane; Drove a Vehicle While License Under Revocation; Operated Uninsured Motor Vehicle on a Public Roadway; Driving Under the Influence of Alcohol – Second Offense; Driving While Ability Impaired. He pled guilty to Driving While Ability Impaired and all other charges were dismissed. He was sentenced to six days in jail, 24 months supervised probation, 48 hours useful public service, attend alcohol therapy and pay \$474 in fines, fees, and court costs. He failed to comply with court-ordered alcohol treatment. A bench warrant was issued and Applicant was taken into custody pursuant to this warrant. He was sentenced to 24 months probation and six days in jail; and 48 hours of additional useful public service. (Gov 4 at 4; Gov 7; Gov 9 at 4-15.)

On March 21, 2000, Applicant was arrested and charged with Drove Vehicle When Licensed Revoked as a Habitual Offender; Drove Vehicle When License Under Restraint (Revoked) and Improper Lane Use. He pled guilty to Improper Lane change and the other charges were dismissed. He paid \$86 in fines, fees, and court costs and was ordered to refrain from driving until his license was reinstated. (Gov 4 at 4; Gov 5 at 8-14; Gov 9 at 27-28.)

On February 8, 2003, Applicant was arrested for Driving After Revocation – Prohibited. He was found guilty and ordered to pay \$139 in fines, fees, and court costs and ordered to spend 75 days in confinement in a work release facility. (Gov 4 at 4; Gov 6; Gov 8.)

Applicant has not been arrested since 2003. He has completed all of his court-ordered requirements and probation. (Tr at 62-63.) He admits to driving to work and to the grocery store while his license was revoked. He did not seek the court's permission to drive to work or to the grocery store. His driver's license was re-instated in the summer 2006. (Tr at 53-55.)

When Applicant completed his September 29, 2006, e-QIP application, in response to question 23(d) which asks “Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?,” he listed his January 1999 DUI offense but not his June 1989 DUI offense. He also did not list his arrests alleged in SOR ¶¶ 2.j and 2.k in response to question 23(f), “In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)” (Gov 1.) In response to question 28(a), “In the last 7 years, have you been over 180 days delinquent on any debt(s)?,” Applicant listed the debts that are alleged in SOR ¶¶ 1.a, 1.h, and 1.i. He did not list the debts alleged in SOR ¶¶ 1.b -1.g, and 1.j – 1.n. (Gov 1).

Applicant states that he did not intentionally falsify his e-QIP application. He did not recall the details of his 1989 DUI arrest and the two other offenses. He listed the debts that he knew were over 180 days old. (Tr at 21, 52, 59, 61; Response to SOR.)

Applicant’s supervisor testified that Applicant has worked for him since 2002. He trusts him to do a good job. He has no concerns with Applicant having a security clearance. (Tr at 69-73.)

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 due to his history of not meeting financial obligations. At the close of the record, 13 unresolved delinquent debts remain, an approximate total balance of over \$28,000.

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. Aside from his child support obligation, all of the other delinquent debts remain unresolved. In addition, Applicant has a \$2,000 unresolved tax debt for tax year 2006. His financial issues are current.

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, due to Applicant's nine month period of unemployment in 2002. However, Applicant has been employed continuously since November 2002 and has taken no action to resolve or dispute his delinquent accounts. I cannot conclude that he acted responsibly under the circumstances.

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 has not attended financial counseling and his delinquent debts remain unresolved. It is unlikely that the debts will be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, with respect to the Applicant's delinquent child support but not the other unresolved debts.

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) had the potential to apply to several debts which Applicant disputes. However, he took no action to resolve the disputed debts. As such, it does not apply.

Applicant has not mitigated the concerns raised under financial considerations.

Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

There are two Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant's case. CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the

person was formally charged, formally prosecuted or convicted) apply. From 1989 to 2003, Applicant was arrested or charged with offenses on 11 occasions, including two DUI arrests and eight charges of driving while his license was revoked. Repeatedly violating court orders which revoked his license raise a concern about Applicant's ability to follow rules and regulations.

The criminal conduct concern can be mitigated. I find that Criminal Conduct Mitigating Condition (CC MC) ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies. Applicant has not been arrested or charged with an offense since February 2003. He has become more responsible over the five year period since his last offense. CC MC ¶ 32(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement) applies. More than five years have passed since Applicant's last arrest. He completed the terms of his sentences and his license was reinstated in 2006. He has a good employment record.

Applicant has mitigated the criminal conduct concern.

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.

Applicant's omissions on his September 29, 2006, e-QIP application raises the potential applications of Personal Conduct Disqualifying Condition (PC DC) ¶ 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's explanation that he did not list his 1989 DUI arrest in response to question 23(d) and some of his delinquent debts in response to question 28(a) because he could not recall the information is credible. He listed the most recent DUI arrest in response to question 23(d). He listed the debts which have the highest delinquent balances in response to question 28(a).

I also find that Applicant did not deliberately omit his March 21, 2000 arrest for Drove Vehicle While License Revoked as a Habitual Offender; Drove Vehicle When License Under Restraint (Revoked); and Improper Lane Use in response to question 23(f) on his e-QIP application. The end result of the arrest was a guilty plea to Improper Lane Use with a minimal fine that was under \$150. The plain language of question 23(f) tells Applicants to leave off traffic offenses that were under \$150. A reasonable person could understand that they were not required to list the offense considering that it was a traffic offense with a fine under \$150. More problematic is Applicant's omission of his February 8, 2003, arrest for Driving After Revocation Prohibited. Not only was he fined but he was sentenced to 75 days confinement on a work release program. The disposition of this charge was much more serious and it is unlikely that Applicant forgot about this offense. His license was not reinstated until the summer 2006, just a few months prior to the completion of his e-QIP application. I find his explanation that he forgot this arrest less credible. FC DC ¶ 16(a) applies with respect to this allegation.

The personal conduct concern may be mitigated. Personal Conduct Mitigating Condition (PC MC) ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) has the potential to apply. It does not apply because Applicant did not disclose the omission before being confronted with the facts. None of the other PC MCs are relevant to the facts of Applicant's case. He has not mitigated the concerns raised under personal conduct.

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 favorable work history and his clean record of no subsequent criminal conduct over a period of five years. While some of Applicant's delinquent debts occurred due to circumstances beyond his control due to a nine month period of unemployment, he took no steps to resolve his delinquent accounts, even though he has been employed full time since

November 2002. He did not meet his burden to mitigate his omission of his February 8, 2003, arrest in response to question 23(f) on his September 29, 2006 e-QIP application.

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, and 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:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

Against Applicant

Subparagraph 1.c:

For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge