



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



In the matter of:)	
)	
)	ISCR Case No. 07-12551
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Pro Se

May 21, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 2, 2006. On November 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, 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 10, 2007, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was ready to proceed on January 24, 2008. The case was assigned to another Administrative Judge on January 25, 2008. The case was transferred to me on February 26, 2008. On March 13, 2008, a Notice of Hearing was issued scheduling the hearing for April 16, 2008. The hearing was held, as scheduled. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1-4 without objection. The Applicant offered seven exhibits which were

admitted as Applicant Exhibits (AE) A-G without objection. Applicant and his fiancé testified at the hearing. The record was held open until April 30, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a seven page document which was admitted as AE H without objection. The transcript was received on April 24, 2008. The record closed on April 30, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issues

On January 24, 2008, the Government submitted a motion to amend the SOR. The motion to amend consisted of clarifications to SOR ¶¶ 1.e, 1.f, 1.g, 1.k, and 1.l. SOR ¶¶ 1.h and 1.j were withdrawn. A new allegation under Guideline E, Personal Conduct, SOR ¶ 2.a was added. At the start of the hearing the motion to amend was granted with no objections from Applicant. (Tr at 15.) The amendments to the SOR are attached to the original SOR. The SOR was also amended to reflect Applicant's first name. Applicant had his name legally changed on July 25, 2007. (Tr at 5; AE G.)

Findings of Fact

In his Answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.b, 1.g, 1.h, 1.i, 1.j, 1.k. He denies the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.l, 1.m, and 2.a.

Applicant is a 34-year-old employee with a Department of Defense contractor seeking a security clearance. He has worked for his current employer for the past three years as a computer operator. (Tr at 6-7) He served on active duty in the U.S. Air Force from April 21, 1993, to April 25, 2005. He separated with an honorable discharge at the rank of Senior Airman (E-4). (AE C.) He held a security clearance for 12 years while on active duty in the Air Force. He has a high school education. He is engaged to be married. He and his fiancé have an eight-month-old son. He has a 12-year-old son from a prior marriage who currently resides with him. He also has a 12-year-old daughter from a prior relationship. His daughter lives with her mother who is on active duty in the military. (Tr at 6, 46-48; Gov 1.)

On October 2, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). He answered, "No" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He also answered, "No" in response to question 28(b) "Are you currently 90 day(s) delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed Applicant had the following delinquent accounts:

SOR ¶ 1.a: a \$285 account placed for collection in October 2001 (Gov 2 at 16-17; Gov 3 at 1; Gov 4 at 2; AE B at 3);

SOR ¶ 1.b: a \$1,390 account placed for collection in January 2004 (Gov 2 at 11 Gov 3 at 3-4; Gov 4 at 4; AE B at 3-4);

SOR ¶ 1.c: a \$4,326 delinquent Air Force Club account placed for collection in April 2001 (Gov 2 at 12, 15; Gov 3 at 3);

SOR ¶ 1.d: a \$4,449 delinquent collection account placed for collection in February 2004 (Gov 2 at 13; Gov 3 at 3; Gov 4 at 4; AE B at 4.);

SOR ¶ 1.e: a \$1,336 delinquent collection account placed for collection in May 2005 (Gov 2 at 4, 16; Gov 3 at 3; Gov 4 at 4; AE B at 2);

SOR ¶ 1.f: a \$921 credit card account charged off in September 2002 (Gov 3 at 2; Gov 4 at 3.)

SOR ¶ 1.g: a \$1,163 department store account, charged off in January 2004 (Gov 2 at 6, 13; Gov 3 at 2; Gov 4 at 3; AE B at 2.);

SOR ¶ 1.h: a \$798 delinquent account charged off in October 2002 (Gov 3 at 2; Gov 4 at 3; AE B at 3.);

SOR ¶ 1.i: an \$823 credit card account placed for collection in May 2001 (Gov 2 at 4.)

SOR ¶ 1.j: an \$823 account placed for collection in May 2001. This is a duplicate entry of SOR ¶ 1.i.

SOR ¶ 1.k: a \$1,067 delinquent account placed for collection in January 2002 (Gov 2 at 7; AE B at 3.);

SOR ¶ 1.l: a \$223 delinquent dental bill placed for collection in November 2002 (Gov 2 at 8, 16; Gov 4 at 2; AE B at 3.);

SOR ¶ 1.m: a \$158 delinquent cell phone account placed for collection in December 2002 (Gov 2 at 16; AE B at 2.).

Applicant claims that he began to encounter financial problems between 1995 and 1997 as a result of poor financial decisions when he was younger. He charged too much on his credit cards and was unable to pay the bills. He was not earning much money and had two young children to support. He also went through a divorce in May 2001. He states that for the past two years he has paid his current bills on time. (Tr at 34, 40-41, 47, 59, 74; Gov 1, section 13/15.)

Applicant paid off the debt alleged in SOR ¶ 1.k in November 2005. (Tr at 36; AE A.) He disputes the account alleged in SOR ¶ 1.l because he claims it is a dental bill for his 12-year-old daughter which should be covered by her active duty mother's military

health benefits. (Tr at 36.) He admits all of the debts are his. He disputes the balance owed on the debts. (Tr at 49.) He is willing to resolve his remaining delinquent debts. He has not made any attempts to resolve the remaining delinquent accounts because he did not have the money to offer settlements. (Tr at 44-45, 49-50.)

The debts alleged in SOR ¶¶ 1.b and 1.g are the same account. Note the same account number. The debt alleged in SOR ¶ 1.g was sold to the collection agency listed in SOR ¶ 1.b. (AE B at 2-4). SOR ¶¶ 1.g is found in favor of Applicant.

Applicant separated from the Air Force due to a reduction in force. In 2000, he was reduced from Staff Sergeant (E-5) to Senior Airman (E-4) as a result of an Article 15 nonjudicial punishment for Driving While Under the Influence. (Tr at 65,70; Gov 1, section 23.) He received \$28,192 in separation pay when he separated on April 25, 2005. When asked whether he applied any of the money towards his delinquent accounts, Applicant stated taxes took a portion of the money. He used the money to live on during the three months he was unemployed after separating from the Air Force. (Tr at 70-72; AE C.)

Applicant states that he did not intend to falsify his e-QIP application. He initially testified that he was not aware of any delinquent accounts until he looked at his credit report. (Tr at 14, 37.) Under cross examination, he admits that he was aware that he had some debts at the time he completed his e-QIP application and should have indicated he had some delinquent debts on his e-QIP application. He was not aware of the full extent of his delinquent accounts. In the future, he will be more proactive in providing this information. (Tr at 51-53.)

In 2004, Applicant's fiancé bought a house. She refinanced her mortgage eight months ago and put Applicant's name on the house. (Tr at 87-88.) She just recently returned to work after giving birth to their son. (Tr at 56.) Their combined monthly income is \$2,088. Their monthly expenses consist of a \$626 mortgage payment; a \$412 truck payment; \$110 car insurance; \$140 gas; \$100 utilities; \$300 groceries. They pay a total of \$125 towards four credit card accounts. Their total monthly expenses are \$1,813.69. After expenses, they have \$274.31 left over in discretionary income. (AE H at 1-2.) Applicant also pays \$275 per month in child support. It is unclear whether this is taken out of his paycheck through an allotment or if this is an additional expense. (Tr at 55.)

When he was on active duty, Applicant received numerous awards and decorations, including the Air Force Commendation Medal, National Defense Service Medal with Bronze Star, the Air Force Longevity Service Medal with two oak leaf clusters. (AE C; AE F; AE H at 5.) He was nominated for Airman of the Quarter for July-September 1999 (AE E.) From March 2004 to June 2004, he deployed to the Middle East in support of Operation ENDURING FREEDOM, Operation IRAQI FREEDOM, and Combined Joint Task Force Horn of Africa. He won a Desert Warrior Award for his dedicated efforts while deployed and received an outstanding evaluation. (AE D; AE H at 6.)

In his current job, Applicant was Employee of the Quarter for July – September 2007. (AE H at 3.) Applicant’s fiancé testified that she has known him for six years. She is helping him resolve his past debts. He is very good worker, a great person, an awesome dad, and a good boyfriend. He has matured. (Tr at 76-85.)

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. He incurred ten delinquent accounts with a total approximate balance of \$14,978.

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. Although Applicant maintains he is current on his recent debts, aside from one account he took no steps to resolve any of the delinquent accounts. Most of these accounts became delinquent between 2001 to 2004. When he separated from active duty in April 2005, he received over \$28,000 in separation pay. He had the opportunity to resolve a lot of the accounts at that time but did nothing. Questions remain about his reliability, trustworthiness, and good judgment based on his lack of action towards resolving his delinquent accounts.

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) does not apply. Applicant states most of his financial problems were the result of financial irresponsibility as opposed to conditions that were beyond his control. He experienced some expenses in 2001 when he

divorced his first wife. However, most of the accounts became delinquent after 2001. Applicant's separation from the Air Force cannot be considered a factor. Although he was unemployed for three months, his expenses were covered by his separation pay. In fact, it is likely Applicant had money left over from his separation pay which could have been applied towards his 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 received financial counseling in 1999 while on active duty. He has no recent financial counseling. His financial situation is not under control. Nine delinquent accounts remain unresolved. It is unlikely that his financial situation will be under control in the near future based on the budget Applicant submitted after the hearing. After expenses, Applicant has a little over \$200 left over each month. This is not enough to resolve his delinquent accounts and account for unanticipated expenses.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.k because he submitted proof that he paid the debt. It does not apply with regard to his remaining delinquent accounts due to his lack of effort in resolving these accounts.

Applicant did not mitigate the concerns raised under financial considerations.

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 in response to questions 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) applies. Applicant initially stated that he was not aware that he had delinquent debts. He later testified that he was aware that he had some delinquent accounts prior to filling out his e-QIP application. He admitted that he should have answered "yes" to questions 28(a) and 28(b). He did not have a recent credit report and was not aware of the full extent of the delinquent accounts. I find Applicant deliberately falsified his e-QIP application. He was aware that he had

some delinquent accounts and should have indicated that he had delinquent accounts on his e-QIP application. None of the mitigating conditions apply under personal conduct. I find against 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 military career, including his deployments and awards and decorations. I considered the testimony of his fiancé. However, Applicant's financial situation and his lack of candor related to his delinquent debts on his e-QIP application remain security concerns. He resolved one out of the ten delinquent accounts. Although he testified that he intends to pay off the delinquent accounts in the future, his budget reveals that he has very little income left over each month to apply towards these delinquent accounts. Security concerns remain under financial considerations. Security concerns remain under the personal conduct concern related to his deliberate lack of candor regarding his delinquent debts on his e-QIP application. Applicant did not meet his burden to mitigate the concerns raised under the 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:	For Applicant
Subparagraph 1.h:	Withdrawn
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Withdrawn
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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