



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



In the matter of:)	
)	
)	ISCR Case No. 07-12672
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

April 10, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has twelve past due accounts totaling more than \$19,000. He has paid less than \$50 on the debts. Additionally, he did not give honest answers when completing his security clearance applications. Applicant has not successfully mitigated financial considerations and personal conduct security concerns. Clearance is denied.

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 to Applicant a Statement of Reasons (SOR) on July 14, 2008, detailing security concerns under Guideline F, financial considerations, based on a history of financial problems as

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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

evicenced by delinquent debts and Guideline E, personal conduct, for falsified material on security clearance questionnaires. The SOR was amended on November 12, 2008 alleging additional falsification.

On August 18, 2008, and September 11, 2008, Applicant answered the SOR and requested a hearing. On December 15, 2008, I was assigned the case. On January 5, 2009, DOHA issued a notice of hearing scheduling the hearing held on January 22, 2009. The government offered Exhibits (Ex.) 1 through 15, which were admitted into evidence. Applicant testified on his own behalf and did not submit documents. The record was kept open to allow Applicant to submit additional matters. On January 29, 2009, documents were received. There being no objection, the material was admitted into evidence as Ex. A. On February 3, 2009, the transcript (Tr.) was received.

Findings of Fact

After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact: Applicant is 48 years old and is employed by a cleaning service, a defense contractor since August 2004, and is seeking to maintain a security clearance. Applicant lives with his mother and provides child support for his two sons, ages 13 and 17. (Ex. 6) He has not taken a day off from work in five years. (Tr. 32)

In 1990, Applicant and his wife married. While married, both Applicant and his wife worked. In the divorce, Applicant's wife got the home and Applicant got his clothes and the debts. (Tr. 79) There were two step-children of the marriage, a step-daughter now age 23 and a step-son age 22. There were two sons born of the marriage, one age 18 and the other age 14. In 1994, twins, a son and a daughter, were born to Applicant and his wife. The daughter died. (Tr. 82) Applicant's wife never got over the loss. The marriage suffered. In October 2004, she moved out and in October 2006, they were divorced. (Ex. 7) He rarely has contact with his ex-wife. (Tr. 69)

In January 1999, a charge of making communications in an annoying/alarming manner was dismissed. (Ex. 4) Between 2000 and 2004, Applicant was arrested five times. (Tr. 72) In March 2002, Applicant was charged with aggravated assault, criminal restraint injury risk, criminal sexual contact, false imprisonment, and criminal mischief with damage. (Ex. 4, 5) Applicant and his wife were having an argument. His wife claimed he made unwanted sexual advances toward her, which he denied. In May 2002, he pleaded guilty to making communications in annoying/alarming manner, the remaining charges were dismissed. (Tr. 63) He was fined \$375. (Ex. 4, 7)

In March 2003, he was charged with theft of services. (Ex. 3, 4) The charge was later dismissed. Applicant does not know what this is about. In April 2003, he was charged with attempt to cause/knowingly bodily injury to another. (Ex. 4) He was arrested, taken to the police station, and fingerprinted. (Tr. 67) This charge was dismissed. In May 2003, he was charged with simple assault. (Ex. 3, 5) This charge was dismissed. Applicant was involved in a verbal domestic dispute with his wife. Applicant was attempting to leave the area when his wife blocked his movement. He pushed his

wife and she hit her head. (Ex. 5) Applicant has never struck his ex-wife. (Tr. 62) After the dispute, Applicant moved out of the home and into his own apartment. (Ex.7)

In August 2004, Applicant moved out of his home and rented an apartment at \$600 per month. His 20 year old step-daughter moved into the apartment when he attempted to reconcile with his wife. (Tr. 70) He attempted to return to the apartment when the reconciliation failed. His step-daughter refused to vacate the apartment and an argument ensued. (Ex. 7) He was arrested and charged with endangering the welfare of a child even though his step-daughter was not a minor. (Ex. 5) In November 2004, he pleaded guilty to making communications in an annoying/alarming manner and was fined \$395. (Ex. 3, 4, Tr.71)

Two to three months later, his step-daughter left the apartment, the rent went unpaid, and a \$4,471 debt was incurred. (Ex. 10, p 48, 50, Ex. 11) The debt remains unpaid. Applicant has not spoken to anyone at the apartment complex in years. (Tr. 41)

In May 2005, he was charged with theft of services. (Ex. 4) The charge was dismissed and he was ordered to pay \$33 in costs. Again, Applicant has no knowledge about this incident.

Applicant has a number of delinquent accounts on which no payment has been made. The SOR lists 12 delinquent accounts on which more than \$19,000 is owed. SOR ¶ 1.a is a credit card debt of \$329, which appears on his November 2007 credit bureau report (CBR) and January 2009 CBR. (Ex. 9, 15) In January 2009, Applicant contacted the creditor and agreed to pay \$10 per month on the debt. (Tr. 35) There is no documentation of money having been sent to this creditor. (Tr. 36) SOR ¶ 1.b is a collection company attempting to collect a \$250 medical bill. Applicant states he has had no contact with the collection firm and does not know the nature of the debt. (Tr. 37, 89) Applicant's October 2006 (CBR) lists the account as being in dispute. (Ex. 10, p. 43)

Applicant claims the \$734 debt listed in SOR ¶ 1.d is his ex-wife's credit card account. The debt appears on his October 2006 CBR (Ex. 10, p. 46) and his January 2009 CBR. (Ex. 15) Three years ago, before he left the family home, he was making \$25 to \$30 monthly payments on this debt. (Ex. 7) He remembers receiving letters stating the account was delinquent. (Tr. 49) A credit collection firm is attempting to collect two accounts (SOR ¶ 1.e, \$846 and SOR ¶ 1.g, \$448). (Ex. 10, p. 44, 46, 50) Applicant claims, but offers no documentation, that both accounts are the same account and are for this ex-wife's credit card (SOR ¶ 1.d) just referenced. He was asked about these accounts during his December 2006 interview, at which time he speculated the debts may have been the same debt. (Ex. 7) Two debts (\$426 and \$846) appear on his November 2007 CBR. (Ex. 9) A \$476 debt appears on his January 2009 CBR. (Ex. 15)

The debt listed in SOR ¶ 1.f is a credit card account (\$498), which was listed on Applicant's CBR as being in "good standing." (Ex. 10, p. 47) The same creditor of the \$417 debt listed in SOR ¶ 1.h, appears three times on his CBR. (Ex. 10) One entry lists a \$426 charge-off, another entry lists a \$460 charge-off, and one account is listed as

being in good standing. (Ex. 10, p 46-47) The debt appears as a \$417 charge-off on his January 2009 CBR (Ex. 15) Applicant has no knowledge about this debt. (Tr. 90)

In March 1999, Applicant and his wife purchased a Ford van for \$12,593 with \$329 monthly payments. In October 2003, the van broke down and was repossessed. The creditor charged-off \$8,424. (Ex. 7, 10, p. 47, Ex. 12) Applicant asserts his then-wife failed to forward him any mail addressed to him after he moved from the home. However, the van was repossessed in October 2003 and he moved out in August 2004. Applicant asserts, but provided no documentation, that in November 2006 the creditor offered to settle this debt for \$3,000. (Ex. 7) In February 2004, the creditor obtained a judgment against him. (Tr. 50)

Applicant can not explain the \$42 returned check debt (Ex. 10) listed in SOR ¶ 1.j. (Tr. 55, 92) He disputes the \$199 debt (SOR ¶ 1.k) from a collection agency collecting for the county library. (Ex. 10, p. 49, 50) Applicant has no knowledge about this debt. (Tr. 56) Applicant has another credit card not listed as of concern in the SOR that is also delinquent. (Tr. 57)

In December 2005, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to question 27, he responded “no” when asked if during the previous seven years he was more than 90 days delinquent on any debt. Applicant can not explain his answer and says it was an error. (Tr. 47) On the same form, he failed to list that property had been repossessed and a judgment entered against him. The judgment was entered approximately one year before he completed his e-QIP. (Tr. 53) Applicant thought of the repossession as his ex-wife’s repossession and not his. (Tr. 53)

In October 2006, Applicant completed his Questionnaire for National Security Positions, Standard Form (SF) 86. (Ex. 1) In response to question 28, he responded “no” when asked if during the last seven years he had ever been more than 180 days delinquent on any debt. Applicant believes he read the question, but failed to read it properly. (Tr. 46)

In his October 2006 SF 86, Applicant also failed to list his criminal charges. At the hearing, Applicant stated he did not know why he completed his questionnaires as he did. Applicant admitted the material was not on his SF 86, but denied he intentionally omitted the material. (Tr. 17) In a December 2006 interview, Applicant stated he did not list his criminal history on his July 2004 SF 86 because he was found not guilty of all charges. (Ex. 7) At the hearing, he stated he thought there was no charge if the action was dismissed. He also stated he thought he had to list only felonies. (Tr. 63)

In January 2008, Applicant stated he had contacted some of his creditors and was attempting to settle his debts. (Ex. 8) In August 2008, Applicant stated he had been in contact with a few of his creditors and was waiting to start paying them. (Ex. 6) He stated he was unaware of all his debts when he completed his questionnaires. Applicant’s states some of his creditors are still sending him debt notices. (Tr. 96)

Applicant's yearly gross income is \$39,000. (Tr. 29) As of December 2006, Applicant's monthly gross income is \$2,772 and his disposable income (gross income less \$1,144 expenses) was \$1,628. (Ex. 7) He pays \$802 per month for child support, which is automatically deducted from his pay. (Tr. 60) He is current on his child support. (Tr. 61) Expenses include: \$400 in rent, \$100 for the cable bill, \$300 for groceries, and \$150 for a cell phone. (Tr. 28, 31) He has no car expense. (Tr. 28) In January 2008, Applicant provided a monthly budget showing gross monthly income of \$2,938, net monthly income of \$1,491 (which includes the child support deduction), and \$850 in monthly expenses. The net remainder was \$641, which includes no payment to his creditors on the debts listed in the SOR. (Ex. 6, 8) As of January 2009, Applicant was receiving \$1,538 gross pay every two weeks. (Ex. A)

The week before the hearing, Applicant contacted a consumer credit service about establishing a repayment plan with his creditors. Following the hearing, Applicant stated the credit service had contacted his creditors and had requested statement from them. He provided no documentation as to his arrangement with the credit service, the details of the repayment plan, or the debts included in a repayment plan. Applicant provided documents showing he had made two payments to creditors of \$21 and \$22. (Ex. A)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

Revised Adjudicative (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 under agreed upon terms. Absent evidence of strong 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.

Applicant's history of delinquent debt is documented in his credit reports, his SOR response, his response to interrogatories, and his testimony. Applicant has 12 delinquent debts, totaling more than \$19,000. Following the hearing, he made two payments which total less than \$50. Applicant has provided insufficient documentation to show significant progress resolving his debts. 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(a) – (e) 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;

(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), Applicant's financial problems were contributed to by his divorce and by his step-daughter refusing to leave an apartment he had rented. Applicant now lives with his mother. It is unlikely such an apartment debt would recur. However, the debts remain unpaid and cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. AG ¶ 20(b) has limited applicability. The divorce occurred more than two years ago—in October 2006. Applicant was questioned about his debts in December 2006 and received the SOR in July 2007. Even knowing of the government's concern over his unpaid debts, Applicant has shown evidence he has paid less than \$50 on his past due obligations. Under the circumstances, Applicant has not acted responsibly.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has entered into an agreement to pay \$10 on one of the debts, but has yet to show proof he has made the first payment. There is no showing he has attended financial classes or maintains a budget. His monthly disposable income is \$641 and his delinquent debts total more than \$19,000. AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant stated he disputed some of his obligations. In 2006, he stated he believed some of the debts were duplicates. However, he provided no documentation supporting his assertion. Nor did he provide any documentation supporting his dispute. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

Under Guideline E, personal conduct, the concern is 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. AG ¶ 15.

When completing his December 2005 e-QIP and his October 2006 SF 86 he failed to indicate he was delinquent on his debts. He knew his van had been repossessed. He also knew he had delinquent debts. He stated he did not intentionally provide false information, but could not explain his answers on the forms. Additionally, between 2000 and 2004, he had been arrested five times, some of which involved going to the police station and being fingerprinted. Yet he failed to provide his criminal history on his SF 86 when it asked if he had ever been "arrested."

Due to the nature of his debts and criminal history Applicant should have disclosed both. AG ¶ 16 (a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" applies.

None of the mitigating conditions apply to his false answers. He did not make a prompt, good-faith effort to correct the falsification before being confronted by the facts, the concealment was not caused or significantly contributed to by improper or inadequate advice, or so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. Additionally, it occurred on more than one questionnaire and in response to more than one question.

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

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge