



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-13722
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

July 31, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on October 6, 2006. On January 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 19, 2008. DOHA issued a notice of hearing on April 8, 2008, and the hearing was held on May 28, 2008. At the hearing, three exhibits (GE 1 through 3) were admitted in evidence without objection to support the government's case. Applicant testified and submitted nine exhibits. (AE A-AE I) In the time allowed for Applicant to furnish additional documentation, he submitted AE J, AE K, and AE L. AE J is additional documentation relating to student loans

addressed in SOR 1.a., 1.b., and 1.c. AE K contains additional documentation relating to the student loans, and a restructuring/refinancing of a new loan to accommodate four new classes. AE L includes payoff documentation relating to a delinquent student loan account identified in SOR 1.e. DOHA received a copy of the transcript of the proceedings on June 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the eight delinquent financial accounts under the paragraph 1. He denied falsifying his security clearance application (SCA) he submitted on October 6, 2006. Applicant is 43 years old, and married with two children. Applicant retired from the United States (U.S.) Army in 2004 after 22 years of service. He has been working for his current employer as a contract administrator since November 2007. He seeks a security clearance.

Financial Considerations

The SOR lists eight delinquent debts. The eighth account (SOR 1.h.) has not been included in the total past due amount as the debt was released in December 2002, more than five years ago. Minus SOR 1.h., Applicant is responsible for \$26,461.00 in delinquent debt to seven creditors. Applicant was unable to point to any financial hardship that prevented him from paying his debts. (Tr. 54-56)

◇ 1.a., 1.b., and 1.c., student loans (approximately \$22,000.00). The first three delinquent accounts in the SOR are related to the same student loan funding source. The three accounts were charged off in November 2005. Applicant believed the accounts were in deferment when he retired from the military in 2004. No documentation was provided to establish official postponement of repayment of the loans. Applicant has been paying \$200.00 a month since May 2007 on the delinquent accounts. (AE A, AE J)

◇ 1.d., student loan (\$709.00). Applicant enrolled in a class in 2003 that was supposed to be paid through his military education benefits. He paid the bill off in May 2007. (AE E)

◇ 1.e., military loan (\$3,318.00). Applicant testified he was on active duty, and was paying this bill through allotment. It is not clear how the allotment expired when Applicant retired in 2004. Applicant has been making documented payments of \$200.00 a month on the account since August 2007; the balance on May 2, 2008, was \$1633.00. (AE E, AE L)

◇ 1.f. health bill (\$145.00). The account was not paid through Applicant's military health insurance as required. He paid the bill on May 1, 2007. (AE F)

◇ 1.g., telephone bill (\$123.00). Applicant paid the phone bill on May 20, 2008 (Tr. 43). At the hearing, he produced a carbon copy of check #480 that he had written on May 20, 2008, in full satisfaction of the debt.

◇ 1.h., state tax lien (\$1,183.00) Applicant testified he purchased a car in 1995. The record is not clear how Applicant's purchase of the car resulted in him owing the state taxes. Applicant provided documentation verifying the lien was removed on December 31, 2002. Hence, this account is not included with the other delinquent debts as it was resolved more than five years ago. Applicant's repayment of SOR creditors 1.d., 1.f., and 1.g. and periodic partial payments of the other four creditors leave Applicant with an outstanding delinquent balance of approximately \$22,729.00.00.

Personal Conduct

On October 6, 2006, Applicant intentionally falsified his SCA when he answered question 28.a. (debts over 180 days delinquent in last 7 years) and question 28.b. (over 90 days delinquent on any debt) in the negative. As noted earlier, in his answer to the SOR in February 2008, Applicant denied he falsified his SCA. At the hearing, Applicant explained, "Sir, as I alluded to you earlier, during that time I was going through what was a divorce. And I really cannot answer why. I was embarrassed. I didn't want to admit to that. I think I really - - I don't know why." (Tr. 55)

Applicant was asked about any additional omissions in the SCA. He indicated that the negative answer to question 23.a. (charge or conviction of a felony offense) was incorrect. At the time he was filling out the SCA he had forgotten about the battery charge (he was charged in about 1998) lodged by his former wife. The charges were dropped. Also, his negative response to question 24.a. (since age 16 or in the last 7 years, have you ever used a controlled substance?) was also incorrect. Applicant entered the "No" answer because he was embarrassed to acknowledge he had used drugs before. (Tr. 61) To be like his friends, he used marijuana about 18 months before filing out the SCA. Applicant still associates with these friends.

Applicant did not provide any evidence regarding his job performance and/or his character on or away from the job. He entered the U.S. Army in 1983, and was discharged in 2004. His highest rank in the Army was Captain. He has a Bachelors degree in Business.

Applicant never received financial counseling, but did receive assistance on how to manage his finances better. He has no set budget. His current monthly net income is about \$5,000.00; his monthly remainder after payment of all expenses, is approximately \$3,321.00. He has about \$4,000.00 in his savings account.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Financial Considerations (FC)

A person who does not live within their means is at risk of engaging in illegal acts to generate funds.

Personal Conduct (PC)

Deliberately concealing information during the course of a security investigation demonstrates dishonesty while representing a serious security concern.

Analysis

Financial Considerations (FC)

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

Applicant still owes approximately \$22,729.00 on four delinquent debts, after repayment of creditors 1d., 1f., and 1g. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history not meeting financial obligations*)

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*) I am unable to apply this guideline because the debts became delinquent within the last three years. Though only four debts are still delinquent currently, the amount of the delinquency is more than \$22,500.00. More importantly, Applicant tried to conceal his indebtedness in October 2006, giving the impression he had no debt at all.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual acted responsibly under the circumstances*) does not apply because Applicant indicated there were no problems preventing him from paying his debts. While 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*) provides limited mitigation because some of the debt has been paid. However, it is not enough to overcome the adverse evidence under FC DC 19.a. and 19.c.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) receives some consideration because Applicant paid off three of the smaller accounts, and has made a year’s worth of payments on the three student loans. Also, he has been paying on the military loan since August 2007. However, he has only paid about \$3,700.00 on the four past due accounts. He still owes more than \$22,500.00. Having weighed all the evidence, Applicant’s repayment efforts fall short of meeting his ultimate burden of persuasion under the FC guideline.

Personal Conduct (PC)

15. *The Concern.* “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 “No” answers to both debt questions (28.a., 28.b.) of his SCA in October 2006 were deliberate falsifications of relevant facts as defined by PC DC 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*) Applicant knew that he was concealing information when he entered his “No” answers on the form. Applicant continued to deny the debts in his answer to the SOR in February 2008. Even during the initial portion of the hearing, Applicant waffled about why he falsified the SCA regarding his past due debt. His credibility is undermined even further with his revelation of omitting his criminal charge of battery (question 23.a. of the SCA) and his marijuana use about 18 months before he filled out the SCA. See, response to question 24.a., SCA dated October 6, 2006.

I have carefully considered the following mitigating conditions to determine whether Applicant’s intentional omissions are mitigated: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission or falsification before being confronted with the facts*); PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is 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*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*)

PC MC 17. a. does not apply because Applicant did not disclose the falsification until after he was confronted at the hearing about his “No” answers to both questions on the security form. PC MC 17.b. (*the offense was so minor, or such time passed, or the behavior is 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*) does not apply as Applicant attempted to conceal seven debts less than two years ago. Finally, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*) applies in part as Applicant admitted he deliberately omitted his debts from the form. However, he has not presented any independent, mitigating character evidence to confidently conclude his

dishonesty is unlikely to recur. In sum, Applicant's evidence in mitigation does not satisfy his ultimate burden of persuasion under the PC guideline.

Whole Person Concept (WPC)

I have weighed the circumstances of this case under the general factors of the whole person concept. Applicant was 41 when he certified to the government in October 2006 that he had no delinquent accounts. In May 2007, Applicant began paying \$200.00 a month on the student loans in SOR 1.a., 1.b., and 1.c., and paid off the student loan account identified in SOR 1.e. Yet, in his February 2008 answer to the SOR, he denied that he deliberately omitted the financial information from his SCA. At the hearing, he did not immediately come forward with his omissions until after initially trying to perpetuate the dishonesty. Applicant does not successfully establish his case under the FC guideline because there is no evidence of counseling and/or the financial tools necessary to maintain control over his finances. Given Applicant's failure to come forward with his intentional falsifications before being confronted with his falsehoods, and the absence of independent character evidence, the FC and PC guidelines are found against him.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant.
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant

Paragraph 2 (Personal Conduct, Guideline E): AGAINST APPLICANT

Subparagraph 2.a.	Against Applicant
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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.

Paul J. Mason
Administrative Judge