



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-14388 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Applicant’s Wife, Personal Representative

July 10, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 12, 2006. On February 28, 2008, 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 March 19, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on April 16, 2008. The case was assigned to me on April 21, 2008. On May 5, 2008, a Notice of Hearing was issued, scheduling the hearing for May 28, 2008. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant offered 23 exhibits which were admitted as Applicant Exhibits (AE) A – W. Applicant and his wife, who also served as his personal

representative testified. The record was held open until June 18, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a fifteen-page document which was admitted as AE X and a three-page document which is admitted as AE Y. The transcript was received on June 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Applicant did not receive the Notice of Hearing within 15 days as required by ¶ E3.1.8 of the Directive. He waived the 15 day advance notice. (Tr at 16.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.e, 2.a, and 2.b but denies the allegation in ¶ 1.d. He claims it is a duplicate of 1.b.

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a training professional with the defense contractor since February 2001. Prior to that, he served on active duty in the United States Army. He retired as an E-8. He is married and has two children, a daughter, age 26, and a son, age 24. (Tr at 7-9, 72; Gov 1; AE U.)

On September 12, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" he answered "No." He also answered "No" in response to question 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 \$16,300 line of credit that was 180 days delinquent in March 2006 and subsequently charged off (SOR ¶ 1.a; Gov 2 at 3,10, 16; Gov 4 at 1; Gov 5 at 6); a \$1,041 medical account placed for collection in July 2005 (SOR ¶ 1.b; Gov 2 at 4-5, 18-19; Gov 4 at 1; Gov 5 at 11); a \$7,347 credit card account charged off in January 2006 (SOR ¶ 1.c; Gov 2 at 4, 10; Gov 3 at 2; Gov 4 at 1; Gov 5 at 6); a \$2,828 medical account placed for collection in October 2005 (SOR ¶ 1.d; Gov 2 at 4-5, 18-19; Gov 4 at 1; Gov 5 at 12); and a \$4,625 credit card account placed for collection in September 2006 (SOR ¶ 1.e; Gov 2 at 5, 6, 10, 13, 15, 17; Gov 3 at 2; Gov 4 at 2).

Applicant and his wife first encountered significant financial problems in June 2005 when his wife was fired from her job after 12 years of employment. She was unemployed for approximately two months. Their income was reduced by \$2,000 a month. In addition, approximately \$3,000 was spent on attorney fees related to issues dealing with his wife's termination. They decided to stop fighting the issue when they could no longer afford attorney fees. (Tr at 46-54.)

Applicant's wife had knee surgery in the summer of 2005. In August 2005, she accepted a one year temporary job. Her job ended in August 2006. She was unemployed from August until December 2006. She has been employed full-time with the same company since December 2006. (Tr at 51-54.)

Applicant and his wife first attempted to resolve their debts in April 2006, when they entered into a contract with a debt settlement company. Under the terms of the agreement, they paid the company \$357.07 per month for the first three months and then were required to pay 14 additional monthly payments of \$173.90 per month. After several months, they discovered that even though they were making payments to the company, the company was not resolving their accounts and was not responsive. They stopped working with the company around December 2006. They paid the company \$1,940.71 and none of the accounts were resolved. In June 2007, Applicant and his wife started contacting creditors individually. (Tr at 56-60; AE W; AE X at 5-6.)

Approximately two years ago, Applicant's family suffered a tragedy when his son-in-law's 21-year-old brother drowned after his canoe tipped over on a fishing trip. One month later, his son-in-law's father died unexpectedly. (Tr at 74.)

The current status of the delinquent debts are:

SOR ¶ 1.a: \$16,300 line of credit. The money was used for his daughter's wedding (\$13,000) and for his wife's attorney's fees (\$3,000). On May 8, 2008, Applicant entered into an agreement with the collection agency to pay \$130 per month for six months with the first payment due in June 2008. In November 2008, the payments will increase to \$600 per month. Applicant paid the first payment in June. (Tr at 26-27, 45-46; AE I; AE X at 2; AE Y at 3.)

SOR ¶ 1.b: \$1,041 medical account turned over for collection. This debt involved expenses related to Applicant's wife's knee surgery. The account was paid through a garnishment of Applicant's wife's wages. Tri-Care settled this claim but Applicant and his wife paid it anyway. Applicant claims the debt alleged in SOR ¶ 1.d is the same debt. The two accounts were merged into one account. However, there is no documentary evidence supporting this assertion. (Tr at 34-35, 55,6; AE C; AE E; AE H at 2; AE K; AE M; AE S; Gov 2 at 19.)

SOR ¶ 1.c: \$7,347 credit card account charged off. The balance of this credit card account related to charges incurred in January 2001 when Applicant's father passed away. Before his death, he flew home and took care of his mother who is disabled from a stroke. When his father passed away, he charged plane tickets to fly his family to attend the funeral. In April 2008, Applicant agreed to a settlement of \$4,666. He pays \$691.07 monthly. He anticipates the account will be paid in six months. Proof of payments in April and June were provided. (Tr at 41, 63-65; AE C; AE H at 2; AE K; AE X at 3; AE Y at 2.)

SOR ¶ 1.d: \$2,828 medical account. This relates to expenses from Applicant's wife's knee surgery. Applicant claims this debt was combined with the debt alleged in SOR ¶ 1.b. It was paid in full through a garnishment of Applicant's wife's wages. Tri-Care settled the claim. The account number on the Tri-Care letter matches the account number for the medical debt alleged in SOR ¶ 1.d. As such, Applicant did not owe for this medical debt. Since there is documentary evidence supporting the two medical accounts were combined, it is likely that the other medical debt (SOR ¶ 1.b) was paid through garnishment. (Tr at 34-35, 62; AE E; AE H at 2; AE M; AE S.)

SOR ¶ 1.e: \$4,625 delinquent credit card account placed for collection. On March 27, 2008, Applicant agreed to settle this debt in the amount of \$2,565. He agreed to pay \$50 per month. Once the debt in SOR ¶ 1.c is paid, he will increase his monthly payments. He submitted proof of a payment made in May which indicates the balance has been reduced. A reasonable assumption can be made that multiple payments were made towards this account. (Tr at 41-42; AE B; AE H at 2; AE J; Gov 2 at 13.)

Applicant had to delay resolving some of these accounts due to unexpected car repairs in March 2008 and May 2008. The car repair bill in March 2008 was for \$423. The car repair bill in May 2008 was for \$1,172. (Tr at 36; AE T; AE X at 4.) Applicant resolved and or brought current several accounts not alleged in the SOR. He paid a \$249 account. (Gov 2 at 2.) A credit card with a \$1,061 balance now has a \$700 balance. A \$47 automatic deduction is applied to this account. (Tr at 41; Gov 2 at 7, 20; AE D; AE L.) An account with an original balance of \$1,033.96 was paid off. (Gov 2 at 8, 14; AE F) A \$268.95 medical account was paid off. (Tr at 41; AE G.) Applicant and his wife extended the terms of their mortgage to bring the account current. They fell behind a month during his wife's unemployment. (Tr at 33-34, 44; AE R.)

After Applicant retired, he encountered some tax issues, he began his current job for several months while on terminal leave from the military. The extra income created a tax debt. His wages were garnished in 2005 and 2006 by the federal government. He owed a total of \$5,000 over two to three tax years and about \$500 to the state. He is finally current on his taxes. He has not received his tax stimulus check yet. He intends to apply \$500 of the tax stimulus check to the debt alleged in SOR ¶ 1.a and use any remaining money to pay off his lower credit card accounts. (Tr at 79-82.)

In May 2008, Applicant was promoted and received a raise. (Tr at 18; AE P.) Aside from the accounts previously discussed, Applicant and his wife have two open credit card accounts. Both have a \$300 limit. Both balances are between \$200 to \$300. Applicant pays \$75 towards each account. (Tr at 77.) Applicant has not attended financial counseling but found a budget program on the internet which helps him keep track of his expenses. He and his wife earn a total net monthly income of \$4,919. This includes his military retirement check. Their total monthly expenses, including debt payments, are \$4,109. They have approximately \$810 left over each month after expenses. Applicant's income will increase further with his recent raise. (Tr at 76; AE V.)

Applicant admits that he made a bad decision by not disclosing his debts on the financial section of his e-QIP application. He did not have current information on his debts and he did not list that he had delinquent debts because he did not want to be embarrassed. He regrets his omission and has learned that he should always be truthful and honest. He intends to be truthful and honest in the future. (Tr at 40, 90-94.)

During his Army service, Applicant held a security clearance. He deployed to Desert Storm in 1991 and to Cuba. (Tr at 83-84.) His awards include the Meritorious Service Medal (3rd Award); Army Commendation Medal (7th Award); Army Achievement Medal (2nd Award); Army Good Conduct Medal (6th Award); National Defense Service Medal; Southwest Asia Service Medal with One Bronze Service Star; Noncommissioned Officer's Professional Development Ribbon with Numeral 3; and the Army Service Ribbon. (AE U.)

Applicant's supervisor states that Applicant has worked for him for seven years. He works with him daily and describes Applicant as a solid employee exceeding the requirements and expectation of his job. He finds him trustworthy. (AE N.) The Site Lead states that he hired Applicant based on his knowledge and experience as a First Sergeant in combat infantry unit. He notes that Applicant is a vital team member. His knowledge supersedes his co-workers. He finds him trustworthy. He is aware that Applicant made a serious mistake when re-applying for his security clearance and acknowledges that it was not the right thing to do but believes Applicant deserves a second chance. (AE O.)

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 2005. The SOR reveals five delinquent accounts with a total approximate balance of \$32,141.

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. Applicant's history of financial irresponsibility is too recent to apply this mitigating condition. Although Applicant resolved several debts and has entered into payment agreements pertaining to his remaining debts, his financial issues remain 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. Applicant's wife encountered two periods of unemployment which placed a burden on the family finances. One of the credit card balances was increased due to the purchase of plane tickets for Applicant and his family to attend his father's funeral. Applicant first attempted to resolve his delinquent debts by signing a contract with a debt settlement company. The company took \$1,940 of Applicant's money but did not resolve any of his accounts. Unforeseen car repairs also delayed the resolution of some of the accounts. Applicant should not be penalized for these events which prevented him from resolving his debts sooner. 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 with respect to counseling because Applicant has not attended financial counseling. However, the medical accounts are resolved and he entered into repayment plans with his three remaining creditors. If Applicant follows the terms of his repayment agreements, his delinquent accounts will be resolved. His budget indicates that he has sufficient income to meet the terms of the repayment agreements and pay his other bills. In fact, he has approximately \$800 left over each month. With his recent raise and his wife being employed full-time, his financial situation has stabilized.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. The medical accounts alleged in SOR ¶¶ 1.b. and 1.d are resolved. Applicant entered into repayment agreements with the creditors in SOR ¶¶ 1.a, 1.c, and 1.e. Although these repayment agreements are recent, Applicant attempted to resolve these debts in April 2006. Unfortunately, he retained the services of a debt settlement company that took his money but did little to assist in resolving his delinquent accounts. He should not be penalized for the delay in entering into repayment agreements. It is noted that he faithfully made payments to the debt resolution company under the terms of the contract.

Applicant mitigated the concerns raised under Guideline F.

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 debts in response to sections 28(a) and 28(b) on his e-QIP application. The following Personal Conduct Disqualifying Conditions (PC DC) apply to Applicant's case.

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) applies to this allegation. Applicant admits that he deliberately did not disclose his delinquent accounts on his e-QIP application.

PC DC ¶ 16(e) (personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or is that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group) applies because Applicant admits that he did not list his debts on the e-QIP application out of embarrassment. The concealment of his debts made him vulnerable to exploitation, manipulation, or duress.

Personal conduct concerns can be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) apply to Applicant's case:

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) applies. While a deliberate falsification of an e-QIP application is serious, there is no record of other instances of similar conduct in Applicant's past. He was straightforward in disclosing his financial problems during his subsequent background investigation and at hearing. The fact that he admitted that he deliberately omitted his delinquent debts rather than making up excuses indicates a strength of character. For these reasons, as well as the whole person factors, this one-time

deliberate omission does not cast doubt on Applicant's reliability, trustworthiness, and good judgment.

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 for the same reasons. Applicant's admission that he did not list his delinquent debts on his e-QIP application and his subsequent full disclosure of his financial situation during his background investigation alleviate the concerns raised by his deliberate omission.

PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies because the Applicant has fully disclosed his financial problems. No issue remains that makes him vulnerable to exploitation, manipulation, or duress.

For these reasons, Applicant mitigated the security 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 efforts to resolve his accounts, the favorable references of his superiors, and his twenty years of active duty service in the United States Army. I considered Applicant's financial situation was adversely affected by his wife's two periods of unemployment. While a deliberate omission on a security clearance application is serious, Applicant's acceptance of full responsibility for omitting his debts on his e-QIP application without excuses reflects favorably on his character. Aside from the omission, he has fully cooperated in providing the details of his financial situation. For all these reasons, I conclude Applicant mitigated 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:

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| Paragraph 1, Guideline F: | 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 |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge