



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-15076
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

July 31, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP), on February 28, 2007. On February 29, 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 April 11, 2008, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 21, 2008. The FORM was forwarded to Applicant on April 23, 2008. Applicant received the FORM on May 4, 2008. He had 30 days from receipt of the FORM to submit any additional material. He did not respond. The FORM was forwarded to the hearing office on July 7, 2008 and assigned to me that same date.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 28, 2007, Applicant admitted SOR ¶¶ 1.b – 1.f, 1.h, 1.k, 1.l, and 1.n – 1.r. He denied SOR ¶¶ 1.a, 1.g, 1.i, 1.j, 1.m, 2.a, and 2.b. (Item 3.)

Applicant is a 35-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since September 2006. (Item 4; Item 5.)

On September 19, 2006, Applicant completed a Questionnaire for Public Trust Position, SF 85P. He answered “No” in response to question 22.b, “Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.” On February 28, 2007, Applicant completed an electronic questionnaire for investigation processing (E-QIP) in order to apply for a security clearance. He answered “No” in response to Section 28.a “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and in response to Section 28.b “Are you currently 90 days delinquent on any debt(s)?”

Applicant’s background investigation revealed the following delinquent accounts: a \$4 debt placed for collection in August 2002 (SOR ¶ 1.a; Item 7 at 1); a \$313 medical account placed for collection in August 2005 (SOR ¶ 1.b; Item 7 at 1); a \$239 medical account placed for collection in May 2007 (SOR ¶ 1.c; Item 7 at 1); a \$75 medical account placed for collection in May 2007 (SOR ¶ 1.d; Item 7 at 1); a \$392 medical account placed for collection in November 2002 (SOR ¶ 1.e; Item 7 at 2, Item 8 at 4, 7); a \$265 medical account placed for collection in July 2003 (SOR ¶ 1.f; Item 7 at 2; Item 8 at 4, 6, 8); a \$414 credit card account charged off in March 2002 (SOR ¶ 1.g; Item 7 at 2); a \$845 medical account placed for collection in July 2006 (SOR ¶ 1.h; Item 7 at 2); a \$346 account placed for collection in January 2002 (SOR ¶ 1.i; Item 7 at 2); a \$206 account placed for collection in August 2001 (SOR ¶ 1.j; Item 7 at 2); a \$157 delinquent telephone account placed for collection in July 2003 (SOR ¶ 1.k; Item 7 at 2; Item 8 at 6); a \$130 account placed for collection in November 2001 (SOR ¶ 1.l; Item 7 at 2; Item 8 at 4); a \$6,755 deficiency owed after an automobile repossession in November 2006 (SOR ¶ 1.m; Item 8 at 3); a \$69 account placed for collection in November 2002 (SOR ¶ 1.n; Item 8 at 3); a \$129 medical account placed for collection in December 2006 (SOR ¶ 1.o; Item 8 at 6); a \$37 returned check debt (SOR ¶ 1.p; Item 3); a \$55 returned check debt placed for collection (SOR ¶ 1.q; Item 3); and a \$96 medical debt placed for collection in May 2003 (SOR ¶ 1.r; Item 8 at 6, 7).

In a response to interrogatories, Applicant indicated that he planned to resolve all of the debts by May 2008. (Item 6 at 3.) In his answer to the SOR, he states the debt in SOR ¶ 1.a is resolved but provided nothing to verify the debt is paid. He is looking into the other accounts. He states that in six months 98% of the debts listed will be resolved.

He states he is not a deadbeat. He has been making car payments for two years and he has paid several old debts not alleged in the SOR. (Item 3.)

Applicant did not indicate that he had delinquent debts on his application for a position of public trust or on his e-QIP application because he was not aware of the delinquent debt because his ex-wife handled all of the bills. Applicant married in August 2003 and divorced in April 2006. (Item 3; Item 4, Section 13/15.) Applicant encountered two periods of unemployment, from March 2001 to November 2001, and from March 2006 to June 2006. (Item 4, Section 11.) He provided no information about his work performance.

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); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant's case. Since 2001, Applicant has a history of not meeting financial obligations. He incurred numerous delinquent accounts that remain unresolved. The SOR alleged 18 delinquent accounts that were either charged off or placed for collection with a total approximate balance of \$10,527.

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 goes back to at least 2001. His history of financial irresponsibility casts doubt on his reliability, trustworthiness, and good judgment. Applicant's financial issues remain. He has not provided proof that any of the debts are resolved.

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) is considered because Applicant endured two periods of unemployment. He was unemployed for seven months in 2001 and for three months in 2006. He underwent a divorce a few years ago and several of the delinquent accounts appear to be medical debts. However, Applicant provided no explanation as to how he encountered his financial problems. He did not explain whether the medical bills were incurred as a result of an unexpected medical emergency or were for routine medical appointments. He took no steps to resolve any of the delinquent accounts so it cannot be concluded that he acted responsibly under the circumstances. FC MC ¶20(b) does not apply.

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. It is unlikely that his financial problems 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) does not apply. Applicant indicates that he intends to resolve these accounts but has provided no verification that any of the delinquent accounts were resolved. I cannot conclude that Applicant initiated a good-faith effort to resolve his overdue accounts.

Applicant's failure to honor his financial obligation to his creditors remains a security concern. He has not mitigated the security 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 debts that were over 180 days old in response to section 28(a) and his delinquent debts that were currently 90 days old in response to section 28(b) on his e-QIP application, dated February 28, 2007. He also did not list his delinquent debts that were over 180 days old in response to question 22.b on his application for a position of public trust, dated September 19, 2006. 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) potentially applies to this allegation. Applicant claims he was unaware of his delinquent debts because his ex-wife handled all the bills during his marriage. The deliberate falsification allegation is based on circumstantial evidence. I find Applicant did not deliberately withhold this information when filling out his e-QIP application and on his application for a position of public trust. I find for 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. Applicant provided no information about his work performance. At the close of the record, Applicant provided little evidence that he has taken steps to resolve his delinquent accounts. There was insufficient evidence to conclude any of the accounts were resolved. Applicant failed to mitigate the security concerns arising under financial considerations.

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:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

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