



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



In the matter of:)	
)	
)	ISCR Case No. 07-15282
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

December 11, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a security clearance application (SF 86) on June 22, 2006. On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. 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. Applicant acknowledged receipt of the SOR on August 12, 2008.

Applicant answered the SOR in writing on September 17, 2008. He admitted the factual allegations with explanation under Guideline F and denied the falsification allegations under Guideline E. He provided an explanation for his admissions and denials, and requested a hearing before an administrative judge. Department counsel was prepared to proceed on October 22, 2008, and the case was assigned to me on

October 23, 2008. DOHA issued a notice of hearing on October 27, 2008, for a hearing on November 18, 2008. I convened the hearing as scheduled. The government offered nine exhibits, marked government exhibits (Gov. Ex.) 1 through 9, which were received without objection. Applicant submitted two documents, marked Applicant Exhibits (App. Ex.) A-B, which were received without objection. Applicant testified on his behalf. The record was left open until December 5, 2008, for Applicant to submit additional documents. Applicant timely submitted four additional documents marked App. Ex. C-F. The government did not object to the admission of the documents (See Gov. Ex. 10, Department Counsel Letter, dated December 4, 2008). The documents are admitted into the record. DOHA received the transcript of the hearing (Tr.) on November 26, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a thorough review of the pleadings, exhibits, and transcript, I make the following essential findings of fact.

Applicant is 43 years old and has been an information assurance officer for a defense contractor for about 18 months. He served as an active and reserve enlisted member of the Army for over six years. He received a technology certificate from a computer learning center. He has been married for over 13 years and has two middle school age children. He has held a security clearance since 1994 while employed by various defense contractors (Tr. 30-31; Gov. Ex. 1. Public Trust Position Application (SF 85P), dated June 22, 2006; Gov. Ex. 2, Questionnaire for National Security Position (SF 86), dated August 24, 2007).

The SOR alleges (See Gov. Ex. 7, credit report, dated July 11, 2006; Gov. Ex. 8, credit report, dated September 27, 2007; Gov. Ex.9, credit report, dated March 7, 2008) list the following delinquent debts for Applicant: \$1,147.60 charged off for a finance company (SOR 1.a); an IRS tax lien for \$8,627 for tax year 2002 (SOR 1.b, Gov. Ex. 6 Judgment and tax lien); a charged off debt to a catalog company for \$801 (SOR 1.c); a student loan in collection for \$23,960 (SOR 1.d); a judgment by a home owners association for \$545 (SOR 1.e; Gov. Ex. 4, Judgment, dated November 19, 2004); another judgment for the same home owner's association for \$880 (SOR 1.f; Gov. Ex. 5 Judgment dated June 6, 2006); and another IRS tax lien for tax year 2006 for \$21,889 (SOR 1.g). While Applicant admitted the debts in his answer to the SOR, his explanation indicates that he has either disputed, paid, or is paying the debts.

The \$1,147.60 debt to the finance company is for books and learning material for his daughter that Applicant and his wife purchased from a door-to-door salesperson in about 1998 (SOR 1.a). Applicant received some of the material and was dissatisfied with the material he received. He paid for about 75% of the material and returned what he had received. In 2007, he received an IRS form 1099-C noting a cancellation of debt from the finance company (See Answer to SOR, Form 1099-C, dated August 20, 2007).

Applicant did not realize the debt had been charged off until he received security clearance interrogatories to answer (Tr. 31-34).

Applicant and his wife were notified by the IRS that they owed approximately \$8,600 for tax year 2002 (SOR 1.b). Applicant's wife talked to IRS agents and reached an agreement to have funds deducted from her pay account to pay the debt. Applicant is unaware of when his wife made the agreement or the terms of the agreement. Applicant and his wife filed an amended tax return for 2002 on March 1, 2008, and listed \$5,286 as the amount owed (Gov. Ex. 3, Answer to interrogatories, dated March 5, 2008, at 20-24). Funds have been deducted from his wife's pay. At the hearing, Applicant believed that this IRS debt has been paid. However, the IRS information provided by Applicant after the hearing shows the principle of the tax was paid and interest payments of \$1,561.32 remain to be paid. Funds are still taken from Applicant's wife's pay to pay tax liens (Tr. 35-40, 82-85; App. Ex. F, IRS Account Transcript, dated December 3, 2008).

There is a second IRS tax lien for tax year 2006 listed in the SOR for \$21,889 (SOR 1.g). In his answer to the SOR, Applicant admitted the debt but stated that the debt was not accurate. He stated an accurate tax return for 2006 has been filed, the lien should not have been on his record, and is reflected as satisfied on his latest credit report. Department Counsel noted that there is no independent information in the case files to verify this debt (Tr. 59-66). The 2006 amended tax return for 2006 shows Applicant and his wife owed taxes of \$8,354 to the IRS. Applicant also noted that funds are still being taken from his wife's pay to pay this tax lien. Applicant and his wife prepared their own tax returns and did not have a professional tax preparer provide assistance on either the 2002 or 2006 tax return (Tr. 82-84). I find from the totality of the information that there is a tax debt for tax year 2006 which is being paid by deductions from Applicant's wife's pay.

Applicant stated the catalog company debt of \$801 was his wife's (SOR 1.c). Applicant stated he first learned of the debt when he received the request for Interrogatories. In response to the Interrogatories, Applicant stated that the debt was disputed with the catalog company and was charged off (Gov. Ex. 3, Answer to Interrogatories, dated March 5, 2008 at 4). In his testimony at the hearing, Applicant stated that his wife contacted the company and she paid the debt in full. (Tr. 40-44). Applicant did not provide documented information on the status of this debt even though provided the opportunity to do so.

Applicant received student loans in the 1990s totaling \$24,043.69 to attend a computer school working towards a certificate as an electronic technician (SOR 1.d). After graduation, he was not immediately able to secure a good paying job in his field. He received contract work when he could and made payments on the loan. He was unable to continue the payments on a recurring basis since he was not regularly employed. After being reminded of the debt when he was served interrogatories, he made arrangements to rehabilitate the student loans. He entered an agreement with the creditor to make payments of \$250 per month to rehabilitate the loan (See Letter

from ECMC and Agreement, Answer to SOR, dated September 10, 2008). Applicant was advised that his student loan account had been successfully rehabilitated and he was assigned to an education credit service company for continued payment of the loan. The amount of the loan remaining is now \$21,779.20. His new agreement is for \$145 per month which is taken by direct deposit from his bank account (Tr. 24-26, 44-52, 86-88; App. Ex. A, Letter, dated November 5, 2008; App. Ex. D, Repayment Agreement and Account Debit request, dated November 10, 2008).

There were two judgments placed against Applicant by the Homeowner's association where his house is located (SOR 1.e and 1.f). In answers to interrogatories, Applicant forwarded a garnishment summons for Applicant's wife's employer for the payment of the judgment. The garnishment amount is for \$1,482.73 and dated December 19, 2007. There is a notation that \$776.06 was paid on February 11, 2008 (Gov. Ex. 3, Answer to Interrogatories, dated March 5, 2008, at 26 Garnishment Summons). The judgments have been satisfied (Tr. 52-57, 88-94; App. Ex. E, Letter, dated October 8, 2008).

Applicant presented his latest credit report. It shows only the catalog company debt and student loan accounts as delinquent. There is an account for a dental bill that Applicant stated he has paid. Applicant has not received or sought credit counseling for his debts (Tr. 77-78; App. Ex. B, credit report, dated November 17, 2008).

Applicant initially submitted an application for a public trust position (SF 85P) in June 2006 while working for a defense contractor. Applicant left the employment of the contractor before a final decision was made on this application. He started work with his present defense contractor employer and the contractor had Applicant file a Questionnaire for National Security Position (SF 86) in August 2007. The responses to questions on these two security clearance applications submitted by Applicant raise security concerns.

The 2006 public trust position application (Gov. Ex. 1) has a negative response to question 19 which asked in the last seven years did he have any judgments not paid. There was also a negative response to question 20 asking if Applicant was over 180 days delinquent on any loan or federal obligation. On the 2007 Questionnaire for National Security Position (Gov. Ex. 2), there was a negative response to questions 27 c and d asking in the last seven years if he had any liens placed against property for failing to pay taxes or other debts, and if there were judgments he had not paid. There was also a negative response to questions 28 a and b asking if he had any debts in the last seven years over 180 days delinquent or presently had any debts more than 90 days delinquent. At the time Applicant completed these applications, there were delinquent debts from the catalog company and student loans that had been past due over 180 days in the last seven years and presently debts past due over 90 days. Also, two judgments and two tax liens had been filed against Applicant and his wife.

In completing the public trust position application in 2006, Applicant knew of the tax lien for tax year 2002 but did not list this lien on either application because he

believed it had been paid off and did not have to be noted on the applications. His wife made all of the contact with the IRS on the tax liens. After 2002, he had not seen or received any correspondence from the IRS informing him that he owed a debt. He knew his wife had discussed the debts with the IRS and had entered a payment plan with them. He knew his wife was still having funds taken from her pay for the 2002 tax lien. He does not remember receiving notification from the IRS that the 2002 tax lien had been satisfied. Applicant also knew he had delinquent student loans. In completing the 2006 Public Trust Position application, he knew he had been making sporadic payments on the loans so he did not believe he was over 180 days past due on the loans. When he completed the 2006 application, he also knew about the homeowner's association judgments. He believed the judgments were entered in error so he did not note them on the application.

As for the 2007 Questionnaire for National Security Position, Applicant did not note the IRS tax liens or the homeowner's association judgments because he believed they had been paid. He misinterpreted the questions on the application and did not believe he needed to list the liens or judgments. He did not intend to provide false information because he knew his finances would be checked. He tried to be as accurate as possible (Tr. 67-76).

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 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.

Analysis

Financial Consideration:

Under financial considerations, 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The tax liens, judgments, and delinquent debts that Applicant admits and are listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) "inability or unwillingness to satisfy debts", and FC DC ¶ 19(c) "a history of not meeting financial obligations. These debts show a history of inability or unwillingness to satisfy debts.

The government produced substantial evidence to establish the disqualifying conditions in AG ¶¶ 19(a) and (c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the concerns raised under financial considerations and personal conduct (Directive ¶ E3.1.15). An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden of

disproving it never shifts to the government (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

I considered Financial Considerations Mitigating Conditions (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" and determine it does not apply. Applicant claims that most of his delinquent debts are either in dispute, paid or being paid. He disputed the debt from the books he ordered for his daughter and paid the debt that was owed. He started paying on the 2002 tax lien in December 2007 and the lien has almost been satisfied. Most of the remaining debts were not addressed until February 2008. The 2006 tax lien and the student loans are still being paid. The catalog company debt appears to be paid. The homeowner's association judgments were paid in October 2008. Since some debts are still being paid, there are current debts. Applicant frequently incurred delinquent debts consisting of tax liens, judgments, student loans, and store loans.

I considered FC MC ¶ 20(b) "the conditions that resulted in the financial problems 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" and determine it applies to some of the debts. The tax liens in 2002 and 2006 were incurred either because Applicant incorrectly filed or calculated his taxes. He and his wife completed their tax return themselves so any errors were within their control. He has acted responsibly since he filed amended returns and his wife is making payments on the debts owed. As to the student loans, Applicant's sporadic employment was a condition beyond his control and directly led to his falling behind on payment of the loans. He rehabilitated the loans and has a payment agreement with the creditor. He is making payments according to the agreement. This shows that he acted responsible as to the student loans. While he may have had a dispute concerning the homeowner's fees, the dispute and the resolution were not beyond his control. However, he has paid the judgments and they are satisfied.

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 under control" does not apply. Applicant has not sought credit counseling but has managed his finances on his own.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. He stated that his wife paid the catalog company debt. However, he was unable to present proof of payment. Considering that all other debts were paid as Applicant stated, I conclude his testimony that the catalog

company debt is paid is sufficient to establish that fact. Applicant provided proof that his wife paid the homeowner's association judgments. Applicant has an agreement to pay his student loans and he is current on paying the loans according to the agreement. His tax liens are being paid according to an agreement with the IRS. The government established Applicant's delinquent debts were a security concern. The Applicant had the burden to refute, extenuate, or mitigate the security concern. The information presented by Applicant is sufficient information to verify his claims. Applicant has acted responsibly towards his debts. He has mitigated security concerns raised by his financial situation.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answers on his security clearance application concerning financial issues involving judgments and tax liens raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness".

Applicant denied intentional falsification. Applicant states that while he knew of the tax liens and judgments, he thought they had been taken care of and did not need to be listed on either the application for public trust position or the questionnaire for national security position. He was aware of the student loans but since he made sporadic payments, he did not know they were past due either 180 days or 90 days. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. The questions concerning tax liens and judgments are very clear. The questions ask if in the last seven years, the applicant had judgments or tax liens placed against them. Applicant stated he misinterpreted or misread the question. It is plausible that Applicant did not understand the question. Because of his lack of understanding, he established that he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Applicant as to Personal Conduct.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 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 that while Applicant encountered delinquent debts, two tax liens, and two judgments, he has taken responsible and reasonable actions to resolve the debts. He paid the debt on the books and to the catalog company. He is paying the tax liens and has paid the two judgments. He rehabilitated his student loans and is now current with the payments. Applicant lives within his means and meets his personal financial obligations. His actions do not indicate poor self control, lack of judgment, or unwillingness to abide by rules and regulations. He did not provide incomplete information on his security clearance application with the intent to deceive. He misunderstood the questions regarding the state of his finances. Overall, on balance, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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:	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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	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.

THOMAS M. CREAN
Administrative Judge