



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



In the matter of:)	
)	
)	ISCR Case No. 07-15468
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 18, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for National Security Position (SF 86) on June 13, 2006. On April 25, 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, for personal conduct under Guideline E, and for criminal conduct under Guideline J. 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 answered the SOR in writing on October 2, 2008. He admitted the 22 allegations under Guideline F, denied the three allegations under Guideline E, and the one allegation under Guideline J. He explained that he denied the allegations for personal and criminal conduct because his false answers on his security clearance application were unintended. He requested a decision on the record without a hearing.

Department Counsel requested a hearing pursuant to paragraph E3.1.7 of the Additional Procedural Guidance of the Directive. Department Counsel was prepared to proceed on October 27, 2008, and the case was assigned to me on October 28, 2008. DOHA issued a notice of hearing on November 3, 2008, scheduling a hearing on November 20, 2008. I convened the hearing as scheduled. The government offered six exhibits, marked government exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted three documents marked App. Ex. A-C. The government did not object to the admission of the documents (See Gov. Ex. 7, Department Counsel Letter, dated December 8, 2008), and the documents are admitted into the record. DOHA received the transcript of the hearing (Tr.) on December 2, 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 is 48 years old and has worked for a defense contractor for about four years as a systems analyst technical writer/developer. He has four years of college but did not receive a degree. He held a security clearance for about two years starting in 1996. He is married with two children (Tr. 26-29, Gov. Ex. 1, Questionnaire for National Security Position, dated June 19, 2006). Applicant's monthly net pay is approximately \$4,200. He has about \$3,900 in recurring monthly expenses leaving him with between \$200 and \$250 in monthly discretionary or disposable funds. Applicant recently turned over the family finances to his wife since she is much better at managing their finances than he has been (Tr. 51-57).

Applicant submitted a Questionnaire for National Security Position in June 2006 as part of his employment with the defense contractor. In response to question 27 concerning his finances, he responded "NO" to question 27b asking if in the last seven years he had property repossessed. There were two cars repossessed as alleged in SOR allegations 1.c and 1.q. Applicant stated that he did not remember the car repossession in allegation 1.c, and did not think the car repossessed in allegation 1.q was covered by the question since he voluntarily returned the car to the dealer because of mechanical problems (Tr. 24-25, 33-34, 42-44, 55-56). Applicant responded "NO" to question 27d asking if in the last seven years he had any unpaid judgments against him. There was a judgment alleged in allegation 1.r for past rent. The judgment was sought against Applicant by a relative for rent due on a family house Applicant and his wife lived in while caring of his mother-in-law. Applicant did not know of the judgment and his relative had not informed him about the judgment (Tr. 24, 45-47, 55-56). Applicant listed one debt past due more than 180 days in response to question 28a. However, he answered "NO" to question 28b asking if he had any current debt more than 90 days past due. Applicant meant to check "YES" in response to this question but incorrectly check the "NO" box (Tr. 23-25, 56-57).

Credit reports show and Applicant admits to the following delinquent debts; a state tax lien for \$254 for tax year 1994 (SOR 1.a); a delinquent debt to a bank charged

off for \$107 (SOR 1.b); a car repossession debt for \$5,145.46 (SOR 1.c); a medical debt in collection for \$635 (SOR 1.d); a medical debt in collection for \$36 (SOR 1.e); a delinquent account in collection for \$1,248 (SOR 1.f); a credit card account in collection for \$624 (SOR 1.g); a medical debt in collection for \$8,131 (SOR 1.h); a medical account in collection for \$95 (SOR 1.i); a television service account in collection for \$585 (SOR 1.j); a bank account in collection for \$1,546 (SOR 1.k); a medical account in collection for \$100 (SOR 1.l); a bank account in collection for \$578 (SOR 1.m); a medical debt in collection for \$650 (SOR 1.n); a collection account on a credit card for \$662 (SOR 1.o); a delinquent bank account in collection for \$756 (SOR 1.p); a car repossession in collection for \$6,497 (SOR 1.q); a judgment for past rent for \$2,580 (SOR 1.r); a delinquent cell phone account in collection for \$578 (SOR 1.s); a returned check in collection for \$98 (SOR 1.t); a telephone account in collection for \$403 (SOR 1.u); and a delinquent credit card account in collection for \$796 (SOR 1.v) (See Gov. Ex. 3, Credit Report, dated February 27, 2007; Gov. Ex. 4, Credit Report, dated October 18, 2007; Gov. Ex. 5, Credit Report, dated February 5, 2008; Gov. Ex. 6, Credit Report, dated October 21, 2008). Applicant admitted all of the delinquent debts alleged in the SOR (See Response to SOR, dated October 2, 2008).

Delinquent debt SOR 1.a is for state taxes owed from tax year 1994. Applicant stated that the taxes were paid and the debt satisfied. He contacted the state and was informed no tax debt was owed. However, he provided no proof of payment or a statement of satisfaction of the debt from the state (Tr. 31-32).

Delinquent debt SOR 1.b is a collection account to a bank. Applicant stated he sent a check in partial payment to the bank but it was returned. He tried to contact the bank but was unsuccessful (Tr. 32-33, See, Check 189 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.c is for a repossessed car. Applicant made a recent \$200 payment on this debt but has not made any other payments (Tr. 33-34; See, Check 187 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debts SOR 1.d and 1.e are to the same medical provider for medical debts in collection of \$635 and \$36. Applicant has made no payments on these debts but does intend to pay them (Tr. 34-36).

Delinquent debt SOR 1.f is for a credit card in collection. Applicant sent \$100 in partial payment which was rejected by the creditor who wanted full payment. (Tr. 36; See, Check 184 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.g is for a credit card in collection. Applicant sent a check for \$100 in partial payment. He does not remember if the check cleared his bank (Tr. 36-37; See, Check 185 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debts SOR 1. h for \$8,131, 1.l for \$100, and 1.n for \$650 are medical debt for Applicant's medical treatment. He has not made any payments on these accounts. He was unable to pay them when they were incurred because he was unemployed (Tr. 37-39).

Delinquent debt SOR 1.i is a medical debt in collection for \$95. Applicant does not know what doctor treated him and he disputes the debt. He has not made any inquiries to determine the origin of the debt (Tr. 39-40).

Delinquent debt 1.j for \$585 is for television satellite service. Applicant sent a recent \$100 payment for this debt but it was returned because the creditor wanted full payment (Tr. 40-41; See, Check 180 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.k is a collection account for a \$1,546 credit card. Applicant recently sent a \$100 partial payment that was accepted (Tr. 41; See, Check 183 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debts SOR 1.m for \$576 and 1.p for \$756 are for delinquent accounts to the same bank. Applicant recently sent a partial payment of \$200 that did not clear his bank account. He has not been able to get details on the accounts (Tr. 41-42; See, Check 179 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.o is for a credit card in collection for \$662. Applicant recently sent a partial payment of \$30 which was accepted. He made a \$50 payment on the account recently. He has not made any other payments (Tr. 42, See, Check 182 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007; App. Ex. A, Money Gram, dated December 5, 2008).

Delinquent debt SOR 1.q is for a voluntary car repossession which he returned to the dealer for mechanical problems. He recently made a \$150 payment on the account that was accepted. He has made no other payments on this account (Tr. 42-44; See, Check 186 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.r is for a judgment of \$2,580 for rent on a family home he and his wife lived in while taking care of his wife's parents. Applicant did not think he had to pay rent but a relative filed the judgment because he did not pay rent. He did not know of the judgment until he received the SOR. He recently made a \$300 partial payment to the relative which was returned. The relative told Applicant that the payment had to be sent to the court to satisfy the judgment. Applicant has not yet made a payment to the court. He believes in the past he has made payments to the relative totaling about \$600. However, he has no proof of payment or receipts (Tr. 45-47; See, Check 177 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.s is for a telephone bill in collection for \$578. Applicant sent a \$200 payment on the account. He recently made a payment of \$174 that paid

the account in full (Tr. 47-48; See, Check 178 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007; App. Ex. C, Money gram, dated December 5, 2008).

Delinquent debt SOR 1.t is for a returned check of \$98. Applicant does not believe he owes this debt. He has not made any inquiry about the account or any payments (Tr. 48-49).

Delinquent debt SOR 1.u is for a home telephone debt of \$403 that Applicant believes he paid in full when he made a recent payment of \$100. He was unable to provide any other information from the creditor (Tr. 49-50; See, Check 188 at Gov. Ex. 2, Answers to Interrogatory, dated December 10, 2007).

Delinquent debt SOR 1.v is for a credit card in collection for \$796. He believes he made a partial payment to the creditor. He recently made a payment of \$50 on this account (Tr. 50; App. Ex. B, Money gram, dated December 5, 2008).

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 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". Applicant had difficulty meeting his financial obligations because of lack of consistent work as a defense contractor.

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 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." Applicant has not presented information to show that his delinquent debts have been paid or satisfied. He has recently made some token partial

payments, some of which were accepted by the creditor and some that were not accepted. Only one debt seems to have been paid in full. He still has significant current delinquent debts from loans, repossessions, credit cards, telephone and cable bills, and medical debts. Applicant stated he was not able to pay his debts because he has not been steadily employed. However, he presented no information to show how his lack of steady work affected his finances or caused financial problems. He has not presented any information to show his financial problems will not recur. These two mitigating conditions do 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 under control" does not apply. Applicant did not present any information on any financial counseling he has received. He has not presented any information to establish that his finances are under control.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" does not apply. 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 no concrete plan for how he will pay his delinquent debts. He recently sent checks to some of his creditors, but this is not a plan. Some payments were accepted, some were rejected because full payment was needed, and some Applicant is not even sure cleared his bank account. Only one debt has been paid. He has not contacted creditors to arrange acceptable conditions for paying the debts. In short, he has no plan of attack to stabilize his debts and be current with his payments. He has not made any consistent payments on the debts. He has not indicated a strong desire to pay the debts, and thus has not shown a good-faith effort to pay them. Applicant's actions do not establish that he is financially responsible. He has not 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 of judgments and past due debts raises 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. He responded to the financial questions on the application as best he could. He knew of one debt more than 180 days past due and listed it. He meant to check the "YES" box for debts currently due over 90 days but inadvertently checked the wrong box. He did not know of the judgment filed by a relative for past due rent. He did not remember one of the car repossessions. The other car repossession he did not believe had to be listed because the car was voluntarily returned to the dealer for mechanical problems. Applicant is not clear on the state of his financial matters and completed the security clearance application as best he could. 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. Since Applicant listed the financial concerns as he knew them when completing the application, his failure to list the delinquent debts, judgment, and repossessions was not knowing and willful. Applicant established he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct. Since Applicant did not deliberately provide false information on his security clearance application, there is no violation of federal criminal law and no criminal conduct security concern. Guideline J is also found in favor of Applicant.

“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. Applicant does not have a concrete plan for paying his delinquent debts. He made some payments by check. Some were not even accepted. He has significant outstanding debts that he has no means or plans to resolve. Applicant has not established that he is current on his debts or paying past due obligations. Applicant's lack of concrete management of his finances indicates poor self control, lack of judgment, and responsible action. He is financially overextended, and his finances create a security concern. He did not provide incomplete information on his security clearance application with the intent to deceive. Overall, on balance the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from financial considerations, but has mitigated security concerns for personal conduct and criminal 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:	AGAINST APPLICANT
Subparagraphs 1.a -1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t - 1.v	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	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.

THOMAS M. CREAN
Administrative Judge