



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----, -----) ISCR Case No. 07-15630
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

May 30, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant's has substantial delinquent debt that he cannot afford to repay, and has to borrow \$1,000 per month from family to avoid further delinquencies. He falsified information about his recent drug use on his security clearance application. Based upon thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on November 29, 2006. On January 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 4, 2008. He answered the SOR in writing on February 12, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on February 19, 2008. Department Counsel was prepared to proceed on February 26, 2008, and DOHA assigned the case to me on February 28, 2008.

DOHA issued a notice of hearing on March 11, 2008, and I convened the hearing as scheduled on March 26, 2008. An electronic copy of the notice was delivered to Applicant on March 11, 2008 via email, and he acknowledged receiving it 15 days previously during the hearing. (Tr. at 9.) The government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibit (AE) A (a bound volume with 27 separate tabs and exhibits), and AE B (a single page inserted in the inside front-cover pocket of AE A), which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 14, 2008.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He is married with two sons, ages 17 and 14. He also has a 22-year-old daughter about whom he only learned recently, who lives independently without financial effect on his family. Applicant's wife has been unable to work since December 2006, when she suffered a work-related injury. She was injured again in an automobile accident in September 2007. They are still awaiting financial compensation from both incidents, although she does receive workers' compensation. (GE 4 at 14; AE A at tab 23; Tr. at 45-46.) Her loss of income caused their monthly expenses to exceed their income by approximately \$1,000 per month, an amount that Applicant's mother-in-law has been giving to them for more than six months. They also borrowed \$14,000 from his parents to pay some older bills, and are repaying that debt at a rate of \$410 per month.

In his Answer to the SOR, dated February 12, 2008, Applicant admitted to the truth of each SOR allegation. During his testimony, he stated that he has been working to repay his delinquent debts and thought that some of them may have been repaid, although he could not find documentation to substantiate those payments. His most recent credit bureau report (CBR) does not contain some of the SOR-listed debts that were reflected in earlier reports. The 18 delinquent debts listed in the SOR, to which Applicant formally admitted, total \$36,680, and range from 1989 to 2006. (GE 3.)

Applicant does not dispute owing the three state tax debts listed in SOR ¶¶ 1.a through 1.c, and testified that he believes the total owed is now approximately \$1,700. (Tr. at 37, 51-52.) During the hearing, Applicant disputed owing both the \$947 tax debt alleged in SOR ¶ 1.e, and the separate \$1,600 tax debt to the same state alleged in SOR ¶ 1.d. Although both debts are listed on pages 3 and 4 of GE 3, it is apparent that the \$1,600 tax lien filed in 1995 was simply an updated claim from the same originally disputed smaller claim filed in 1989. This claim arose when Applicant earned some outside income in that state while serving in the Navy, and the state taxed his entire

reported federal income including his military pay on which he paid taxes in his home state. Applicant neither lived nor worked in the state after leaving the Navy in 1990, and would not have incurred a separate tax liability in 1995. Although he originally disputed the amount owed, he never followed through and believes it is now too late to dispute the issue. He has made no effort to resolve this debt to date, because he cannot afford to pay it now. (Tr. at 37-38, 52-54.)

Applicant entered into an Offer in Compromise agreement with the Federal Internal Revenue Service (IRS) to resolve what was originally more than \$17,000 in delinquent tax debt. As of March 13, 2008, he had paid \$5,317 toward the negotiated \$10,332 settlement, and still owed \$5,015 toward which he pays between \$440 and \$530 per month. The IRS considers him to be in good standing on the agreement. This is the debt alleged in the amount of \$11,235 in SOR ¶ 1.f, which was based on the amount filed with the federal tax lien in October 2006. Applicant also anticipates that his tax refund of approximately \$1,700 and the \$1,800 federal tax rebate will be kept by the IRS and applied to this debt, allowing him to finish paying it with only three or four additional monthly payments. (GE 3 at 4; GE 4 at 11; AE A at tab 15; Tr. at 38, 54-57.)

Applicant was originally unsure whether the two debts listed in SOR ¶¶ 1.g (\$315) and 1.h (\$171) had been paid. These outstanding balances were reported in GE 3 (CBR dated Feb. 15, 2007) at pages 5 and 7. However, they do not appear in GE 5 (CBR dated Feb. 26, 2008), and are listed as closed collection accounts with no balance shown in AE A at tab 22, page 10 (CBR dated Mar. 17, 2008). He had no proof of having made payment and has not contacted the creditors, and later testified that he thought the ¶ 1.h debt had not been paid, and confirmed that it is listed with a \$171 balance due on page 3 of AE A at tab 22. (Tr. at 38-39, 57-59.)

Applicant also testified that he believed the two debts, to the same creditor, listed in SOR ¶¶ 1.i (\$135) and 1.j (\$159) have been paid. These debts were listed on page 6 of GE 3, but do not appear on any of Applicant's subsequent CBRs (GE 5 and AE A at tab 22). However, he did not keep any record of the payments. (Tr. at 39, 59.) He admitted still owing the \$14,746 debt listed in SOR ¶ 1.k. This was a credit card balance on a company credit card issued to him by a former employer. When he was unexpectedly laid off, he used the card for personal expenses and has not made any payments toward this debt. Although it has been dropped from his 2008 CBRs due to the age of the debt, Applicant agreed that he still owes it and intends to pay it when he can. (GE 3 at 6; Tr. at 39-40, 59-60.)

Applicant also admits owing the \$740 delinquent utility bill alleged in SOR ¶ 1.l. He has not contacted this creditor because he has not had sufficient funds to repay the debt. (GE 3 at 7; AE A tab 22 at 2; Tr. at 40; 60.) He believed that the debts alleged in SOR ¶¶ 1.m (\$118), and 1.n. (\$116) have been paid. He did not have documentation to support that, except that neither debt appears on either of the 2008 CBRs in the record. (Tr. at 40, 60-61.) He formerly tried, and plans to again dispute the amount claimed by the creditor (\$3,920) for the delinquent debt alleged in SOR ¶ 1.o. He believes a significant portion of that amount should have been paid by a former health insurance

program, however it became due in June 2002 and was reported delinquent in August 2002. Applicant reported on his SF 86 that he was unemployed from September 2001 until September 2002, and did not explain what insurance coverage he would have been eligible for. (GE 3 at 8; GE 5 at 2; GE 2 at 17; Tr. at 40, 61-64.)

Applicant admitted owing the \$269 medical debt listed in SOR ¶ 1.p. He thought that the two debts listed in SOR ¶¶ 1.q (\$453) and 1.r (\$276) may have been included in an \$1,800 payment he made to a debt collector in September 2007. He had no documentation to substantiate this, however, and both debts were still reported to be outstanding on his February and March 2008 CBRs. (AE A at tabs 21, and 22 at 11-12; GE 5 at 2; Tr. at 64-66.)

In sum, Applicant still owes at least 12 of the SOR-listed delinquent debts with an outstanding balance in excess of \$28,600. He has been making \$290 monthly payments toward a delinquent tax debt in his present state that is not listed in the SOR. The outstanding balance on this debt is down to \$610. (AE A at tab 21.) He also makes about \$500 in monthly payments toward his federal tax Offer in Compromise. In order to make those payments and pay some of his other bills, he has borrowed \$14,000 from his father and still borrows \$1,000 per month from his mother-in-law. He has decided not to file for bankruptcy since many of these debts arose in part due to his drug and alcohol addiction and making his creditors whole is important to him as part of his recovery program. (Tr. at 35-36, 74-76.)

Applicant stopped drinking alcohol in November 2002 as part of a court-ordered treatment program following a DUI arrest. From 1990 until 2002, he used marijuana on a daily basis. Following the treatment program, he continued to use marijuana, but on a less frequent “recreational” basis. He stopped using marijuana in late November 2006. In response to question 24 on his SF 86, he reported occasional use of marijuana from 1990 until October 2002. He further added the comment: “Was a recreational user prior to 2002 when I entered an intensive outpatient treatment program for a DUI conviction. Have been clean and sober since Thanksgiving 2002.” (GE 2 at 38.)

In his December 2007 response to DOHA Interrogatories, Applicant reported “daily” marijuana use ending in October 2006. (GE 4 at 7.) He reported this information because he decided to correct his previous false statement that he had stopped using marijuana in 2002. The Government had no other source of information about Applicant’s actual marijuana use between 2002 and 2006. (Tr. at 67-70, 79.) Applicant was awarded non-judicial punishment while in the Navy in 1985 after a urinalysis test that showed he had used cocaine. (GE 1.)

Applicant provided letters attesting to his positive post-alcohol-treatment lifestyle changes and good character from two supervisors, a long-time friend, his father, sister, and both his wife’s parents. (AE A at tabs 4-10.) His testimony during the hearing was forthright and credible.

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 used to evaluate 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 82.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant has paid about half of his delinquent federal tax debt, and most of his delinquent taxes in his current state which were not alleged in the SOR. However, he still has at least 12 outstanding, acknowledged, SOR-listed delinquent debts totaling in excess of \$28,600. His monthly income falls about \$1,000 short of being sufficient to pay his present bills and make payments toward those two tax debts and a \$14,000 loan from his father. He and his wife borrow \$1,000 a month from his mother-in-law to make up that difference. Substantial security concerns are raised under both AG ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The five potentially pertinent conditions are:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts arose over 20 years, and a substantial number and amount remain delinquent at present. His family budget is such that they have to borrow \$1,000 per month from family to make payments toward two tax liens, and avoid incurring additional delinquent debts. They may receive some compensation for his wife's injuries, but the amount and timing of any such recovery are completely unknown. Part of their present inability to repay these debts resulted from her inability to resume working after her 2006 automobile accident, but most of their delinquent debts predate that incident. Applicant offered no evidence of financial counseling or any comprehensive plan to address his debt. He is repaying two delinquent tax debts, but has not contacted any of the remaining creditors to arrange repayments because he has no funds available to do so. He originally disputed the amount of one state tax claim, but did not follow through and the time for disputing that liability has passed. He also stated that he wanted to dispute some of the claimed \$3,920 medical bill, but has not taken any steps to do so.

This evidence establishes minimal mitigation under AG ¶¶ 20(a) through (e). Applicant and his family remain financially over-extended to a significant extent. He has significantly improved his lifestyle and begun to address his financial obligations in a responsible manner, but insufficient time has passed to establish a clear record of trustworthiness, reliability and good judgment.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The disqualifying condition alleged in the SOR and raised by the evidence in this case is:

(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.

Applicant provided a false denial, concerning his marijuana use between October 2002 and November 2006, in response to question 24 on his 2006 SF 86. He certified the completeness and accuracy of his answers, acknowledging the obligation to be truthful. He knew this was false when he completed the questionnaire. The weight of evidence in this record leads to the conclusion that his false response to this question was deliberate.

Applicant was asked to describe his history of drug use in DOHA Interrogatories, and voluntarily corrected the false information described above in his December 2007 answer. The Government had no other source of information about this drug use. This establishes the personal conduct mitigating condition set forth in AG ¶ 17(a): “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Although the correction occurred just over a year after the original falsification, it took place during Applicant’s next communication with the Government on the subject of his drug use. He was not confronted with the facts, because no one in the Government knew what the facts were. The revelation was in response to a general question, and was made with the intent to be forthright and set the record straight. The original falsification was made very near the same time that Applicant decided to stop using marijuana, and was intended to be deceptive in that regard. He has not used marijuana since November 2006, and admitted to the recent use after a year of abstinence. Given his 21-year history of significant drug use, his willingness to falsify his SF 86 about that use establishes significant concerns about his candor, judgment and willingness to follow rules and regulations. On balance, the mitigating effect of his December 2007 voluntary disclosure is insufficient to overcome those concerns.

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's conduct of potential concern involves substantial delinquent debts that he cannot afford to repay, and falsification about recent drug use on his security clearance application. Applicant is a mature, experienced adult who is accountable for his decisions and conduct. His debts arose over a lengthy period, and persist to date. There is ongoing potential for pressure, coercion, exploitation or duress since he remains financially overextended. His substantial and responsible steps to stop drinking and abusing drugs, and to resolve the debts as he can afford to do so are commendable, but it will be some time before he can become solvent. His falsification concerning recent drug use took place on his present application for a clearance, and was done to conceal relevant negative information. His indebtedness is quite likely to continue in the foreseeable future. In light of his lengthy substance abuse history, recurrence of concealment of such activity was not shown to be unlikely.

On balance, Applicant presented insufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his failure to satisfy debts, history of not meeting financial obligations, and falsification on his clearance application. Overall, the record evidence leaves substantial doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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:	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:	For Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For 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:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge