



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



In the matter of:)	
)	
)	ISCR Case No. 07-16028
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant has failed to rebut or mitigate the government’s security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

On May 15, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. DOHA’s action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On March 11, 2008, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The government compiled its File of Relevant Material (FORM) on May 7, 2008. The FORM contained documents identified as Items 1 through 15. By letter dated May 14, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant filed an undated response consisting of a four page rebuttal and nine attachments. I marked these documents as Applicant's Exhibits (Ex.) A through K. Department Counsel did not object to Applicant's exhibits or to his response to the FORM, and I have admitted them to the record of this case. On June 27, 2008, the case was assigned to me for a decision.

Evidentiary Ruling

The government offered, as Item 15 of the FORM, the Office of Personnel Management (OPM) Record of Investigation, which included a summary by an OPM investigator of an unsworn interview with Applicant on July 11, 2007 and interviews and communications with Applicant's creditors. The government conceded that Item 15 might be inadmissible under ¶ E3.1.20 of the Directive if Applicant objected to its inclusion and cited specific grounds for its exclusion. (See FORM at 2, Fn 1.) Applicant, who appeared *pro se* and is not trained in the law, did not object to the admission of Item 15.

Paragraph E.3.1.20 of the Directive reads as follows:

Official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Department or Agency head concerned, to safeguard classified information within industry under E. O. 10865 An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence (28 U.S.C. 101 et seq . . .).

Additionally, ¶ 4.3.3 of the Directive states that it is DoD policy that an applicant receive "[n]otice of the right to a hearing and the opportunity to cross-examine persons providing information adverse to the applicant." I have reviewed relevant DoD policy as expressed in ¶¶ E.3.1.20 and 4.3.3, the government's argument for admission of Item 15, the proffered evidence, and Applicant's silence on the matter. I conclude that Item 15 is inadmissible in this case.

Findings of Fact

The SOR contains six allegations of disqualifying conduct under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.f.) (Item 1.) Additionally, the SOR alleges

under AG E, Personal Conduct, that Applicant falsified answers about his financial obligations on a Questionnaire for National Security Positions (SF-86) he executed in May 2007 (SOR ¶ 2.a.) Applicant admitted the factual allegations in ¶¶ 1.a, 1.b., 1.c., 1.d., and 1.f. He denied the debt alleged at ¶ 1.e and asserted it had been satisfied. He denied the Guideline E allegation.

Applicant is 58 years old and never married. He holds a bachelor of science degree in business and management. From 1969 to 1977 he served in the U.S. military. He received an honorable discharge in 1977. He has held a security clearance since 1969. (Item 7; Item 6.)

From December 1979 to July 2001, he was employed as a logistics analyst by government contractor A. He was laid off by his employer in July 2001. His yearly salary when he was laid off was \$57,500. Applicant was unemployed until August 2002, when he took a job with an automotive dealer. He worked for the automotive dealer until February or March 2003, when he was again unemployed. From June or July 2003 until January 2004, he worked for two other automotive dealers. He earned about \$250 a week when he was employed by the automotive dealers. During this time of under-employment, Applicant charged miscellaneous living expenses to three credit cards. He was living with a girlfriend who also provided him with financial support. (Item 7; Item 8; Ex. A.)

In January 2004, Applicant accepted a position as an analyst with government contractor B. He worked for employer B until April 2005, when he took a job with employer C. Employer C laid him off in February 2006. He was unemployed until October 2006, when he was again hired by government contractor B. (Item 7; Item 9.)

In 1991, when he was working for employer A, Applicant filed for Chapter 13 bankruptcy protection. He listed total secured debts of \$109,133.35 and total unsecured debts of \$12,745.70. Under the plan approved by the bankruptcy court, Applicant committed to a payment plan of \$530 a month for 60 months in order to satisfy his creditors. Applicant's Chapter 13 case was dismissed on January 2, 1996, when he failed to meet the terms of his payment plan. In moving for dismissal, Applicant committed to establishing "a repayment schedule with the unsecured creditors similar to that which existed prior to the filing of his case." Eighteen months later, in June 1997, Applicant's credit bureau report showed he was responsible for debts in collection and charge-off status totaling \$22,359. (Item 10; Item 11.)

On January 17, 2005, Applicant was interviewed by an authorized investigator from OPM and provided an affidavit. In the affidavit, Appellant stated that he used three credit cards to pay his living expenses between 2001 and the first half of 2004. The debts he accrued by using these three credit cards were alleged at SOR ¶¶ 1.a., 1.b., and 1.e. In his answer to the SOR, Applicant admitted that his debts to the creditors identified in SOR ¶¶ 1(a) and 1(b) remained unpaid. He asserted he had satisfied his debt to the creditor alleged at SOR ¶1.e. In his affidavit, Applicant also stated:

In January of 2004, I began employment with my current employer. I am earning a decent salary and it is my intention to pay my outstanding debts over a period of time. I have not done so previously because I did not have any contact information for my creditors. After talking to the special investigator helping me to prepare this affidavit, I now have contact information for these creditors and I intend to contact them in order to make arrangements to pay off my debt. I am not going to ignore my financial responsibilities.

(Item 8.)

In his answer to the SOR, Applicant admitted he owed a creditor approximately \$9,438 on an account placed for collection and, as of January 25, 2008, the debt had not been paid. (SOR, ¶ 1.a.) He also admitted a debt of \$13,594 to another creditor, which, as of January 25, 2008, had not been satisfied. (SOR ¶ 1.b.) Additionally, Applicant admitted two medical debts, one for \$250 and one for \$579, which had not been satisfied as of May 24, 2007. (SOR ¶¶ 1.c. and 1.d.) He denied a debt of \$1,675 to a creditor and claimed the debt had been satisfied in 2007. (SOR ¶ 1.e.) However, in his answer to the SOR, he failed to provide documentary evidence to corroborate his claim. (Item 3.)

By letter dated April 14, 2008, Applicant supplemented his answer to the SOR. He stated he had contacted the successor creditor for the debt identified at SOR ¶ 1.a. He further stated the creditor had reduced the amount of the debt owed to \$6,179.13. Applicant stated he had made one payment in an unspecified amount "around April 7, 2008." Applicant provided no documentation to corroborate his statements that he had paid the creditor and that the creditor had reduced the amount of the debt. In his response to the FORM, Applicant provided a communication from the creditor stating it would debit his bank account for \$125 on June 2, 2008. The communication showed a balance of \$5,804.13. (Item 4.)

In his April 14, 2008 letter, Applicant also stated he had contacted the creditor identified in SOR ¶ 1.b. He reported that the creditor had reduced the amount of the debt from \$13,594 to \$6,933.19. He failed to provide documentation to corroborate his statement that the debt had been reduced by the creditor. He also stated he intended to make a payment to the creditor "around April 21, 2008." He did not provide receipts from the creditor to acknowledge payments made.

In his response to the FORM, Applicant provided documentation to corroborate his statement that he had paid the debt alleged at SOR 1.d. The documentation showed the creditor had placed the debt for collection in November 2003. The creditor acknowledged payment from Applicant on May 19, 2008. A credit bureau report dated June 7, 2008 showed the debt had been paid in full. (Ex. C; Ex. G.)

In his response to the FORM, Applicant also provided a computer print showing payment in full of a medical debt of \$250 on May 8, 2008. The debt was alleged at SOR ¶ 1.c. The computer print showed the debt had been incurred in February 2003. (Ex. D.)

In addition, in his response to the FORM, Applicant provided documentation to corroborate his statement that he had satisfied the debt alleged at SOR ¶ 1.e. (Ex. E.)

Applicant provided no evidence that he had received financial counseling. In a personal financial statement prepared at DOHA's request, Applicant reported assets of \$104,000. (Item 9.)

Applicant completed and certified an SF-86 on May 15, 2007. Section 28a on the SF-86 reads as follows: "In the last 7 years, have you been over 130 days delinquent on any debt?" Section 28b on the SF-86 reads: "Are you currently over 90 days delinquent on any debt?" Applicant answered "no" to Sections 28a and 28b. In his answer to the SOR, he stated: "I did not know there were outstanding debts on my credit report until recently. I had not done a Credit Report search in over 7 years." In his response to the FORM, Applicant stated he was not aware of his delinquent debts until his discussion with the authorized investigator from OPM in January 2005. (Item 3; Item 7; Item 8; Response to FORM at 2.)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. 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, the guidelines take cognizance of the complexities of human behavior and are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial and common sense decision. The adjudicative 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. See A G ¶ 2.(c).

The protection of the national security is the paramount consideration. A G ¶ 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 in 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 that 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 Adjudicative Guideline F, ¶ 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 conditions that could raise security concerns. Under ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated multiple debts and was unable to pay his financial obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several conditions could mitigate the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency

might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (Guideline F, ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (Guideline F, ¶ 20(d).)

Applicant provided documentation to corroborate his assertion he had satisfied the debts alleged at SOR ¶¶ 1.c., 1.d., and 1.e. Accordingly, those allegations are concluded for Applicant.

Applicant's acknowledged financial delinquencies were long-standing and date to at least 1991, when he sought protection from his creditors by declaring Chapter 13 bankruptcy. In 1996, Applicant's Chapter 13 bankruptcy was dismissed, when he failed to meet the terms of his payment plan. At that time, Applicant promised to pay his unsecured creditors. A year after his bankruptcy case was dismissed, Applicant's credit report showed an increase in indebtedness.

To his credit, Applicant provided documentation that corroborated his statements that he had recently paid two medical bills, alleged at SOR ¶¶ 1.c. and 1.d. However, Applicant's two largest financial delinquencies, alleged at SOR ¶¶ 1.a. and 1.b., remain. Although Applicant stated he had payment plans to resolve the debts, he failed to provide documentation to corroborate settlements that he said reduced the amounts of the debts. He also failed to produce receipts from the creditors acknowledging receipt of payments. Accordingly, Applicant's delinquent financial behavior remains as a security concern and casts doubt on his reliability, trustworthiness, and good judgment. I conclude that Guideline F, ¶ 20(a) does not apply as a mitigating condition.

Applicant was laid off from three jobs. The first lay-off occurred in 2001, and Applicant was unemployed for 13 months, until August 2002. He was unemployed again from March 2003 to June or July 2003. He was unemployed as the result of a lay-off by employer C between February and October 2006. Applicant asserted his unemployment contributed to his inability to timely pay his creditors. During his unemployment between 2001 and early 2004, he used three credit cards to pay his living expenses, thus incurring considerable additional debt. Choosing to pay his living expenses in this way caused Applicant to become financially overextended. Applicant was not persuasive when he argued that his financial delinquencies were largely beyond his control or that he acted reasonably under the circumstances. Accordingly, I conclude ¶ 20(b) applies only in part to the facts of Applicant's case.

Nothing in the record suggests Applicant has sought or participated in financial counseling and has a plan in place to avoid financial delinquencies in the future. Accordingly, I conclude that ¶ 20(c) is inapplicable.

Applicant provided documentation to corroborate that he had satisfied three of his five delinquencies. One debt was satisfied in 2007; the other two were satisfied after he received the SOR. With the exception of the debt alleged at SOR ¶ 1.e, Applicant's recent actions to pay his creditors reflected neither a good faith effort to timely pay his debts nor a track record of consistently meeting his financial obligations. Accordingly, I conclude that ¶ 20(d) is applicable only in part.

Guideline E - Personal Conduct

Personal 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." Guideline E, ¶ 15.

Under Guideline E, a security concern is raised by an individual's "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." Guideline E, ¶ 16(a).

Applicant completed a SF-86 on May 15, 2007. His signed and dated SF-86 is entered in the record as Item 7. In his responses to Questions 28a and 28b on the SF-86, Applicant denied any financial delinquencies of 180 days in the last seven years, and he denied being over 90 days delinquent on any debt. In his answer to the SOR, Applicant acknowledged debts that he accrued between 2001 and 2004 and which remained unpaid. In his response to the FORM, Applicant stated he was unaware of his delinquent debts until he met with an authorized investigator in January 2005. Yet, when he completed his SF-86 in May 2007, he denied any debts of over 180 days in the past seven years and he denied any debts of over 90 days. In his answer to the SOR, Applicant denied he falsified his answers to questions 28a and 28b. Given his previous acknowledgment of those debts in his January 2005 affidavit and his expressed intent at that time to contact his creditors and pay his debts, Applicant's denials on his May 15, 2007 SF-86 were not credible.

Two Guideline E mitigating conditions (MC) might be applicable to Applicant's conduct. Pursuant to MC 17(a), personal conduct security concerns might be mitigated if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Pursuant to MC 17(e), personal

conduct security concerns might be mitigated “if the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Applicant provided no credible evidence to mitigate his failure to list his financial delinquencies on his 2007 SF-86. At the time he completed his SF-86 in 2007, Applicant was approximately 57 years old and had held a security clearance since 1969. Although he knew, or should have known, the importance of telling the truth to the Government, he had reason to attempt to minimize his knowledge of his financial delinquencies. His assertions that his falsifications were made because he was ignorant of his financial delinquencies were not credible. He did not make good-faith efforts to correct his omissions, concealment, or falsifications before being confronted with the facts, and he did not take positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress caused by his long-standing financial delinquencies. I conclude that MC 17(a) and MC 17(e) do not apply to the facts of Applicant’s case.

Whole Person Concept

The revised adjudicative guidelines and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. His history of not meeting his financial obligations and his inability to pay his debts over a period of several years raises a security concern because it suggests a lack of effort or resolve. To his credit, he has satisfied three debts alleged on the SOR. However, he satisfied two of those three debts recently. Two of the three satisfied debts, which were incurred or placed for collection over five years ago, were satisfied after he received the SOR.

Applicant listed over \$100,000 in assets on his Personal Financial Statement, leading to a conclusion that he could have used his own resources to make his creditors whole. He has not sought consumer credit counseling or assistance in learning how to manage his finances. Despite paying three of the debts alleged on the SOR, Applicant has failed to demonstrate that his financial problems will not continue to be security concerns in the future.

Applicant deliberately falsified his SF-86 to hide his financial delinquencies from the government, suggesting that he put his own interests before those of the government and was untrustworthy and unreliable.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (Financial Considerations) and Guideline E (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
Subparagraphs 1.a. and 1.b.:	Against Applicant
Subparagraphs 1.c. through 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against 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.

JOAN CATON ANTHONY
Administrative Judge