



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



In the matter of:)
)
) ISCR Case No. 07-16179
)
)
Applicant for Security Clearance)

Appearances

For Government: Thomas Coale, Esq., Department Counsel
John B. Glendon, Esq., Department Counsel
For Applicant: Joseph E. McGuire, Esq.

June 24, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

On February 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 12, 2008, and requested a hearing before an administrative judge. The case was originally assigned to another administrative judge on April 29, 2008, and reassigned to me on May 21, 2008. DOHA

issued a notice of hearing on May 13, 2008, and I convened the hearing as scheduled on June 4, 2008. The government offered Exhibits (GE) 1 through 8. Applicant did not object and they were admitted. The government also offered a chart as demonstrative evidence, which was marked as Hearing Exhibit (HE) I. Applicant testified and submitted Exhibits (AE) A-D. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on June 16, 2008.

Procedural Matter

Department Counsel moved to amend the Statement of Reasons by adding allegations that were raised at the hearing. Department Counsel provided a written motion with the detailed allegations that was marked as HE II. Applicant through counsel had no objections and the motion was granted. The additional allegations are:

Guideline F:

1.i. You owe child support arrearage in [State A].

Guideline E:

2.c. You falsified material facts on an Electronic Questionnaire for Investigations Processing, signed on November 30, 2006, in response to Section 14/15 **Your Relatives and Associates** "Give the full name, correct code, and other requested information for each of your relatives and associates, living or dead, specified below...6. Child (Adopted and Foster Child also)." You deliberately omitted two children.

2.d. You falsified material facts on an Electronic Questionnaire for Investigations Processing, signed on November 30, 2006, in response to Section 27 **Your Financial Record**. "c In the last 7 years have you had a lien placed against your property for failing to pay taxes or other debts?" You answered "NO." You deliberately omitted a 2004 [State B] tax lien.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old security officer who has worked for a federal contractor since December 2006. Applicant retired from the military as an E-7 and receives retirement pay.¹ He was married in 1982 and divorced in 1984. He remarried in 1984 and is currently separated from his second wife and is going through a divorce.² He

¹ Tr. 40. Applicant accepted an early retirement in 1997 and then entered the reserves and was recalled to active duty in September 2001.

² GE 1.

published notice of the divorce in the newspaper because he does not know the whereabouts of his wife and child.³ Applicant testified he had one child with his second wife and a stepchild for whom he provided support. He acknowledged he was not required to provide support for the stepchild, but has cared for her since she was an infant.⁴ Applicant was asked if the child support allegation listed in SOR 1.c pertained to the child with his second wife and he answered “no.” That allegation pertains to a child from a different relationship.⁵ Applicant was then asked the following question: “Walk me through how many kids and who they’re from?”⁶ He acknowledged the child from his relationship is 11 years old. He does not know where this child and mother are located. He has been paying child support through the state for this child since she was born.⁷

Applicant has three biological children. On his security clearance application (SCA) he listed one biological child. The government had been unaware of the existence of the other two children. One child is 22, one is 20 and the third is 11. He pays child support for the 22 year old and 11 year old. When questioned why he was paying child support on a 22-year-old, he stated: “That’s what they’re doing to me.”⁸ When questioned further it was learned he is paying arrearages on child support he owed. He thought he was in arrears for two or three years. He could not answer why he failed to pay his child support for this child or why he did not list all of his children on his SCA.

Applicant stated that he did not apply for the credit card listed in SOR ¶ 1.a and 1.b, but rather his wife did. He became aware of the credit card in 2001, when he reviewed his credit report. He believes these two debts are duplicates. He did not provide documentation to support his belief. He contacted the credit card company about the debt, claiming he was deployed when the card was issued. They requested further information. No other information was provided about this debt. The debt has not been paid.⁹

Applicant completed his SCA in 2006 and in response to Question 27 which asked if he was delinquent on any debts over 180 days or if he had any debts 90 days past due, he responded “no.” He explained the reason he did not list the debts was because his employer was rushing him to complete the SCA.¹⁰ He stated he knew he

³ Tr. 42.

⁴ Tr. 42-43.

⁵ Tr. 43.

⁶ *Id.*

⁷ Tr. 44-53; AE A and B.

⁸ Tr. 130-131.

⁹ Tr. 26-27.

¹⁰ Tr. 53-54.

was delinquent 180 days on the debt listed in SOR ¶¶ 1.a and 1. b, at the time he completed the SCA. He stated: “Now I may have at that time meant to, you know, put a[n] X, but unfortunately, like I said, they was rushing us at that time.”¹¹ I find Applicant’s testimony was not credible.

Applicant was asked if he ever had a state lien against him for failing to pay child support. His response was: “Right. Understood. No.”¹² Applicant was presented with GE 2, a credit report, which reflects a state tax lien for \$888. The lien was released. Applicant acknowledged being aware of the lien and confirmed that it was for back taxes that had been owed because he failed to pay his taxes in either 1997 or 1998; he could not remember. His explanation for why he did not pay his taxes on time was because “At that particular time, I wasn’t making as much money.”¹³ He went on to say “Ma’am, at that time I never said I neglected it, but it was an oversight at the time.” He then explained “They eventually got paid. But the bottom line was at that time I was a lot younger, and there were other things.”¹⁴ Applicant paid this tax bill sometime in approximately 2000. He did not list this tax lien on his SCA as was required.

Applicant believes the debts listed in SOR ¶¶ 1.d. (a charged off account for \$8,331) and 1.e (a judgment for \$9,791 from January 2007) are the same debt. He did not provide documentation to support his belief. He has been aware of the debt since 2003 and stated he challenged the debt by phone, but no documentation was provided. He stated this debt is for a car repossession. He claimed his wife was responsible for paying the loan on this car and failed to do so. He acknowledges he owes the debt, but not the amount claimed.¹⁵ It remains unpaid.

Applicant admitted in his answer to the SOR that he owed the debt listed in SOR ¶ 1. f (a judgment for \$3,369 from May 2001). He became aware of it when he saw it on his credit report. He was unaware of the judgment, but acknowledged he owed the debt for a loan. The debt has not been paid.

The debt in SOR ¶ 1.g is a judgment for a dentist bill entered in March 1998 (amount owed \$415). Applicant acknowledged that his daughter had dental work completed by the creditor and he was responsible for paying the bill. He disputes he owes the remaining balance. When asked if he ever contested the debt with the dentist he responded “Not as of yet, cause I didn’t find out about it until she sent it to me.” He claimed he did not become aware of this debt until two weeks ago.¹⁶

¹¹ Tr. 55.

¹² Tr. 56.

¹³ Tr. 56-62.

¹⁴ Tr. 56-57. Applicant was approximately 40 years old at that time.

¹⁵ Tr. 27-28, 71-74.

¹⁶ Tr. 75-76.

The debt listed in SOR ¶ 1.h is a judgment entered in March 1998 (amount \$1,802). Applicant denied this debt at his hearing, but when confronted with his answer to the SOR where he previously admitted the debt, he acknowledged that it was his debt.¹⁷ Applicant stated he has not paid this judgment, but he will.¹⁸

Applicant was asked if he had been delinquent on the debt listed in SOR ¶ 2.a (2) he stated “no,” and further stated “I have always been current.” When presented with GE 2 and directed to page 5, where it showed the account was charged off for \$1,287, Applicant’s response was “Yes, but it’s also paid.” He then admitted at one time the account was delinquent, but he then paid it.¹⁹ Applicant claimed he was confused about which account was at issue. He admitted that this account was delinquent.²⁰ I do not find his testimony credible.

Applicant acknowledged that after he pays his monthly expenses he has approximately \$1,500 remaining in expendable income. He has a person who lives with him and she pays some of the expenses. He also acknowledged he has approximately \$47,000 in assets.²¹ He testified as follow:

- Q. Mr. [Applicant], you also listed on your personal financial statement that you had approximately \$8,000 in savings; is that correct?
- A. That is correct.
- Q. Have you increased that since the time you completed the financial statement?
- A. Have I increased it?
- Q. Is it---do you have more than \$8,000 in savings today?
- A. Yes, sir.
- Q. Approximately how much in savings do you have?
- A. About ten thousand.
- Q. Ten thousand. Is there any reason why you didn’t use the \$10,000 to pay off the debts we’ve discussed today?
- A. I can. I’d planned on taking my-like I said-refinancing my home, and paying everything off with my home.
- Q. But you’ve been made aware of these debts for, at the very least, according to your testimony, two weeks; correct? You stated that the dentistry bill you were only made aware of two weeks ago.
- A. Right. That is correct, sir.
- Q. But you received the Statement of Reasons in February, correct?
- A. Okay.

¹⁷ Tr. 76-79.

¹⁸ Tr. 94-95.

¹⁹ No documentation was provided to show it was paid.

²⁰ Tr. 79-82.

²¹ Tr. 83-90.

- Q. I think the question is if you're testifying that you have \$10,000 in savings, why didn't you take some of that money and pay some of these debts? You admitted that you owe some of these debts.
- A. That is correct, ma'am.²²

Applicant went on to testify that he had \$27,000 in stocks. He further testified:

- Q. Okay, so at the time you had \$8,000 in the bank, you just testified that that's up to about \$10,000. Counsel's merely asking, you're looking at me like I made that up. You just testified.
- A. No, no, no.
- Q. That \$10,000, is what you testified that your savings has now increased since you filled out this personal financial statement.
- A. No. The savings have dwindled, ma'am.²³

Applicant's personal financial statement (PFS) which was completed on December 29, 2007, listed he owned three cars. At his hearing he testified he still owns three cars, but one car is different. He stated he owned a 1990 Datsun, a 1994 Suburban²⁴ and had a truck he sold and then purchased a 2006 Mazda.²⁵ He has a car payment on the Mazda. Applicant then contradicted himself several times. He was specifically asked if had purchased any additional cars or were these the same two cars he had. He confirmed he had purchased the Mazda. He did not admit to any other car purchases until he was questioned further. Applicant was asked about how many car loans he had. He testified one. When he was shown AE D and the car loan that was listed, he testified that car was sold two to three weeks ago when he traded it in for the Mazda he now owns. He confirmed that the car loan he is currently paying is for the recent 2006 Mazda purchase. When he was shown there is a second car loan listed in AE D and asked about which car this pertained to. He testified that that vehicle was also traded in for the 2006 Mazda. He confirmed he traded in two cars, a Toyota²⁶ and a Mercedes for the Mazda. The following testimony was provided:

- Q. Okay. But wait a minute. What car was traded in?
- A. That was a Mercedes that I had, and the Toyota.
- Q. Okay. And the Mercedes was—you had it three weeks ago?
- A. Yes; it's gone now.
- Q. And what did you owe on the Mercedes?
- A. \$25,000.

²² Tr. 103-105.

²³ Tr. 106-107.

²⁴ Tr. 90-92. Applicant testified he had a 1994 Suburban, but later testified it was a 2000.

²⁵ Tr. 90.

²⁶ It is unclear whether Applicant owned a Toyota and was confused or whether he had another car.

- Q. \$25,000?
A. That's correct.
Q. And when did you purchase the Mercedes?
A. The Mercedes was purchased in 2006. No, 2007.
Q. When in 2007?
A. April.
Q. All right, Now you want to explain to me, when you put down three cars, why didn't you just tell me back when you said, when we were ask-when the Counsel was asking on your personal financial statement, and you said, Oh, those three cars are the 1990 Datsun, the 2000 Chevy Suburban and the 2006 V6 truck. And now you're telling me you also had a Mercedes. But you didn't tell me that before, did you?
A. No. I didn't, ma'am.
Q. Yes. Why didn't you tell me that?
A. I don't know, ma'am.
Q. So you had four cars?
A. Four cars. That's correct.
Q. And you listed three?
A. Right.
Q. And one was a \$25,000 Mercedes. But you neglected to list that?
A. That is correct, ma'am.
Q. Do you have any explanation for that, Mr.[Applicant]?
A. No. ma'am.
Q. None?
A. No.²⁷

Applicant has approximately \$100,000 in equity in his house and has equity in a time-share²⁸. He stated he has paid his taxes on time and "I've cherished my credit report."²⁹ He stated the following with regards to his delinquent debts: "What I had planned on doing was coming up with an agreement and just pay all the debts off...."³⁰ He was going to refinance his home and pay them.³¹ He had not taken action on his plan because he was waiting to see how far "the market was going to go down."³²

²⁷ Tr. 109-111.

²⁸ Tr. 93. AE D is a credit report that shows that the time share account was opened in July 2006 and has a balance of \$9,762. He is current on the payments.

²⁹ Tr. 94.

³⁰ Tr. 95.

³¹ Tr. 96.

³² Tr. 114.

Applicant testified he currently has about \$4,000 in his savings and the reason the balance has decreased is because he purchased furniture. He paid for it in cash.³³ He admitted he checked his credit report in 2001, 2003 and 2006 and was aware of some of his delinquent debts. When asked why he did not do something about them he responded: "I can't answer that, ma'am."³⁴ Applicant testified he intends to resolve his delinquent debts.

Applicant's testimony throughout the hearing was evasive, incomplete, false and deceptive. I find Applicant lied about numerous issues at his hearing and his testimony lacked credibility and was unbelievable. I find he deliberately and intentionally falsified information on his SCA.

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.

³³ Tr. 125-126.

³⁴ Tr. 126-127.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18: “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

The guideline notes several conditions that could raise security concerns. I have considered all of them and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant had numerous delinquent debts that have remained unpaid for years, despite having the income and assets to resolve the debts. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered AG ¶ 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”); (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 individual 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 behavior is recent because he has many delinquent debts that remain unpaid, despite his ability to pay them. His conduct casts doubt on his reliability, trustworthiness and good judgment. I find (a) does not apply. Applicant claimed he was originally unaware of some debts that his wife incurred and that his wife was responsible or paying one of the car loans. He became aware of these issues as far back as 2001 and 2003 and has not resolved them. Although his wife may have some responsibility for these debts they are listed in his name and he has not acted responsibly toward resolving them. Therefore, I find (b) only partially applies. There is no evidence Applicant has received any financial counseling or that he has initiated a good-faith effort to pay overdue creditors or resolve the debts. Applicant has not provided documented proof of debts he disputes. I find none of the remaining mitigating conditions apply.

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. I have specifically considered (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”); and (b) (“deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative”) under this guideline. I have considered all of the facts and find Applicant deliberately omitted, concealed, misled, and falsified information on his SCA and at his hearing. He deliberately failed to list all of his children. He deliberately failed to list some delinquent debts, despite being aware of them for many years. He deliberately failed to list he had a tax lien at one time. Applicant’s testimony was often incomplete, misleading and false.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered AG 17(a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”); (b) (“the offense is so minor, or so much time has passed, or the behavior is

so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"); (e) ("the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress"). Applicant did not make an effort to correct the omissions and falsifications on his SCA before being confronted. His actions can not be considered minor because he failed to divulge information that was pertinent to his security clearance investigation thereby casting doubt on his reliability, trustworthiness and good judgment. No evidence was presented to confirm he has taken steps to reduce his vulnerability. I find none of the mitigating conditions apply.

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 has had delinquent debts and judgments that he has been aware of and has failed to resolve for many years. He has the financial means to pay these debts, but has not. He deliberately and intentionally failed to divulge information that was required for his security clearance investigation. I considered his demeanor and credibility at his hearing and conclude his testimony was evasive, lacked candor, and was untruthful. Overall, 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 failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraphs 1.e-1.i:	Against Applicant
Paragraph, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge