



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



In the matter of:)
)
-----) ISCR Case No. 07-18512
SSN:-----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 14, 2008

Decision

HOWE, Philip S., Administrative Judge:

On May 23, 2007, Applicant submitted his Electronic Security Clearance Application (e-QIP or SF 86). On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. The action was taken under 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.

Applicant acknowledged receipt of the SOR on March 21, 2008. He answered the SOR in writing on April 5, 2008, and requested his case be decided on the written record in lieu of a hearing.

On April 24, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on June 6, 2008.

I received the case assignment on July 22, 2008. The Government offered Items 1 through 7. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, and 1.f through 1.h of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b, 1.d, and 1.e of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 52 years old. He has three adult children, and one minor child. He is married, but separated since 2002 from his wife. A divorce is pending. Applicant works for a defense contractor, and his gross income every two weeks is \$,1323.07. (Items 4-6)

The SOR alleges Applicant owes eight delinquent debts. He admits five of them, and denies three. The denied delinquent debts are to be paid by his wife after the divorce, but there is no divorce finalized and no divorce decree specifically stating the debts are allocated in that manner. Applicant denies receiving any notices of collection or delinquency in the six years he and his wife have been separated. The delinquent debts listed in the SOR appear on Applicant's January 14, 2008, credit report. (Items 1, 4-6)

The delinquent debts Applicant admits he owes, and on which he has taken no action to pay in whole or in part by installment plan, are as follows:

1. A credit card debt for \$6,370, charged off in March 2004. (¶ 1.a)
2. Another bank credit card debt for \$7,722, charged off in December, 2003. (¶ 1.c)
3. A collection agency for a bank debt of \$9,617, placed for collection in December 2005. (¶ 1.f)
4. The U.S. treasury for overpaid leave, \$1,660, over 120 days delinquent as of March 2006. (¶ 1.g)
5. The U.S. treasury for overpaid leave, \$2,124, placed for collection in June 2004. (¶ 1.h) The total amount owed for these debts is \$27,503. (Items 1, 4-7)

The delinquent debts Applicant denies being his responsibility because he claims they were incurred by his wife, even though they appear on his credit record. They are:

1. A collection service for a cell telephone debt, in the amount of \$371, placed for collection in April 2004. (¶ 1.b)
2. A collection service debt for an insurance bill in the amount of \$164, placed for collection in December 2003. (¶ 1.d)
3. Another collection agency for another cell telephone bill in the amount of \$372, placed for collection in November 2005. (¶ 1.e) The total amount of these three debts is \$907. (Items 1, 4-7)

Applicant's personal financial statement dated February 9, 2008, submitted with his answers to the DOHA Interrogatories, shows a net monthly remainder of income of \$280. Applicant did not include any debt repayments on the financial statement as a deduction, showing he is not repaying any delinquent debts. (SOR allegation ¶ 1.i) (Item 6)

Applicant answered Questions 28 a. (*In the last seven years, have you been over 180 days delinquent on any debt(s)?*), and 28.b. (*Are you currently over 90 days delinquent on any debt(s)?*) on the e-QIP with negative responses. Applicant certified on that form that his answers to all questions were "true, complete, and correct to the best of (his) knowledge and belief and are made in good faith." In fact, these two answers were false because Applicant owed the debts listed in the SOR ¶¶ 1.a. to 1.h. Applicant claims any delinquency notice may have gone to his wife's address, and he never received them. He admitted he "should have been more diligent in regards to my financial affairs. (Items 4 and 5)

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 and 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 an 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 adverse to an applicant 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt and took no action in the past five years to pay these obligations. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose between 1999 and February 2004. He accumulated substantial delinquent debt due to his spending habits. I find that because the behavior occurred under normal circumstances it is likely to recur, and does raise concerns about his current reliability, trustworthiness, or good judgment. The evidence does not raise or support this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” Some of these delinquent debts arose before his marital separation in 2002. Since then Applicant has taken no action to resolve or identify these debts in a responsible manner. I consider his explanation for not paying the \$907 of telephone and insurance bills not to be persuasive, as these debts are properly his to pay. I find this potentially mitigating condition is not a factor for consideration in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant did not seek or attend counseling. He has not resolved any of the delinquent debts, either by payment or settlement. He is not financially sound and is unprepared for future contingencies. I conclude these potentially mitigating conditions do not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “involving 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, or determine

trustworthiness”, is potentially disqualifying. Applicant failed to disclose over \$28,000 in delinquent debt. He admitted he failed to keep track of his debts for the past six years.

The personal conduct guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(a), it may be mitigating where “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted by the facts.” Here, there is no evidence from Applicant that he took such action. This mitigating condition does not apply. The remaining six mitigating conditions do not apply based on the record evidence.

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 considers 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) the 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 commonsense 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 was a mature adult and parent, who spent about \$28,000 and consistently failed to repay it over the past six years. He has not changed his behavior in those years, and did not make any attempts to repay even the smallest debts. He admits he has not been diligent in managing his financial affairs. This lack of responsibility for his finances, and his deliberate failure to disclose his debts to the Government on the e-QIP, raise substantial questions about Applicant’s reliability, trustworthiness, and ability to protect classified information. While these significant debts remain unpaid, and his veracity is shown to be lacking, they are sufficient reasons to raise security concerns.

Overall, the record evidence leaves me with great questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations and personal conduct. I also conclude the “whole person” concept against Applicant.

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 to 1.l:	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 the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge