



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



In the matter of:)	
)	
)	ISCR Case No. 07-18545
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

August 20, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 22, 2006. On March 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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.

On April 15, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 16, 2008. The case was assigned to another administrative judge on May 21, 2008. The case was transferred to me on June 4, 2008. On June 6, 2008, a Notice of Hearing was issued, scheduling the hearing for July 16, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. The Applicant offered one exhibit which was admitted as Applicant Exhibit (AE) A.

Applicant also testified. The transcript was received on July 23, 2008. 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, Applicant admitted the factual allegations in ¶¶ 1.a – 1.e, but denies the allegations in ¶¶ 2.a and 2.b.

Applicant is a 27-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with his company since September 2005. He served on active duty in the United States Navy from September 2001 to September 2005. He separated at the rank of E-5. He recently married in January 2008. He and his current wife have an eight-month-old daughter. He has a two sons, ages six and three, from a prior marriage, and a six-year-old daughter from a prior relationship. (Tr at 5, 24-25, 74; Gov 1.)

On June 22, 2006, Applicant completed a Questionnaire for National Security Position, (e-QIP) in order to apply for a security clearance. He answered “No” in response to question 28(a) “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” He also answered “No” in response to question 28(b) “Are you currently over 90 days delinquent on any debt(s)?” He answered, “Yes” in response to question 28(b) “In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?” He listed a \$10,487 garnishment for past child support. (Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$17,071 judgment entered in August 2007 (SOR ¶ 1.a: Gov 4 at 1); a \$12,742 balance on an automobile loan placed for collection in November 2006 (SOR ¶ 1.b: Gov 4 at 2); a \$487 credit card account charged off as a bad debt in December 2005 (SOR ¶ 1.c: Gov 3 at 3; Gov 4 at 1); a \$5,216 credit union loan charged off as a bad debt in August 2006 (SOR ¶ 1.d: Gov 2 at 5; Gov 4 at 2); and a delinquent child support account with an approximate balance of \$7,986 (SOR ¶ 1.e; Gov 3 at 2; Gov 4 at 1).

In an undated response to interrogatories, Applicant indicated that he could not afford to pay the debts alleged in SOR ¶¶ 1.a and 1.d, and that he will seek financial counseling. He provided a copy of the child support orders issued against him, and copies of his paycheck statement for January 20, 2008 and February 8, 2008. His net pay after deductions including child support is \$344.41. He is paid bi-weekly. (Gov 2.)

At hearing, Applicant testified that his financial finances became a problem after his divorce. He and his first wife divorced in April 2007. His ex-wife ran up the credit card balance. He does not want to pursue action against her because it would hurt his two sons financially. The amount of delinquent child support is high because he was not

aware of the existence of his oldest daughter until she was four-years-old. He is paying child support for all of his children. (Tr at 17 -19.)

Applicant states that he did not intentionally falsify his security clearance questionnaire. He claims he left the questionnaire blank and was going to answer it later. He alleges that a woman who worked in the security office at the time, changed the questionnaire to indicate that he answered "No." He had nothing to corroborate this assertion. The woman is no longer employed with the company. (Tr at 17, 29-33)

Applicant pays \$325 per month for his oldest daughter. He pays \$802 per month for his two sons. (Tr at 51.) He provided a copy of two recent pay statements dated July 11, 2008, and June 28, 2008. His net pay after his deductions including child support is \$337.05 every two weeks which is approximately \$674.10 per month. (Tr. at 41; AE A.) Aside from paying for child support, Applicant has not attempted to resolve the delinquent accounts alleged in SOR ¶¶ 1.a – 1.d. (Tr at 50.) He claims the judgment alleged in SOR ¶ 1.a is the same debt that is alleged in SOR ¶ 1.b. (Tr at 49.)

Applicant and his new wife intend to establish a budget and attend financial counseling. He was waiting for the outcome of his security clearance investigation to attend financial counseling. His new wife owns a home and is a GS-12 with the federal government. He has two step-children, a girl, age 16, and a boy, age 14. (Tr at 42-45, 52.)

Applicant has been handling classified information since he was on active duty in the United States Navy. He would never accept money in return for taking negative action against the government. (Tr at 21.)

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has five delinquent accounts with the total approximate balance of \$43,393. Of that amount, \$7,986 relates to past

due child support. There is a possibility that the debts alleged in SOR ¶¶ 1.a and 1.b are the same account. However, the credit reports in the record do not provide enough information to confirm they are the same account. Applicant did not provide documentation that would verify that they are the same account.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) is not applicable. Applicant's history of financial irresponsibility is too recent to apply this mitigating condition. Although Applicant is paying child support for his children, he took no steps to resolve the delinquent accounts alleged in SOR ¶¶ 1.a – 1.d. It is unlikely he will be able to resolve these accounts based on the amount of take home pay he receives after his child support is deducted.

FC MC ¶ 20(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) does not apply. Although Applicant's recent divorce adversely affected his finances, I cannot conclude that he acted responsibly under the circumstances because he took minimal action towards resolving his delinquent accounts.

FC MC ¶20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) does not apply. Applicant has not attended financial counseling. He intends to do so in the future. His financial problems remain due to his inability to pay his delinquent accounts.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to Applicant's child support obligations (SOR ¶ 1.e). He is making regular payments towards his child support obligations. However, he has not taken steps towards resolving the remaining delinquent accounts.

Applicant has not mitigated the concerns raised under Guideline F.

Personal Conduct

The security concern relating to the guideline for Personal Conduct 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.

Personal conduct concerns are raised because Applicant failed to list the delinquent debts alleged in SOR ¶¶ 1.c and 1.d in response to questions 28(a) and 28(b) on his security clearance questionnaire, dated June 22, 2006. There is circumstantial evidence to support the premise that these two accounts were more than 90 days delinquent at the time Applicant responded to question 28(b), and should have been entered in response to question 28(b). There is circumstantial evidence to support the premise that the debt alleged in SOR ¶ 1.b was more than 180 days delinquent, and should have been entered in response to question 28(a.) The following Personal Conduct Disqualifying Condition (PC DC) potentially applies to Applicant's case.

PC DC ¶ 16(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 claims that he left the answers to these questions blank and an employee in the security office changed his answers to "No." I do not find this explanation credible. At the end of the security clearance questionnaire, there is a section titled, "Additional Comments." Applicant had the opportunity to indicate that he might have delinquent debts in this section. While I would like to give Applicant the benefit of the doubt, his explanation was too implausible absent some corroboration.

None of the Personal Conduct Mitigating Concerns (PC MC) apply. I find against Applicant under the Personal Conduct concern.

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. I considered Applicant's active

service in the United States Navy. I considered that Applicant's divorce adversely affected his financial situation. I considered that Applicant is dutifully making his child support payments. However, questions remain under the financial considerations concern due to Applicant's failure to take action towards resolving his remaining delinquent accounts. Applicant did not mitigate the concerns raised under financial considerations. Concerns are raised about Applicant's trustworthiness and reliability under personal conduct due to his omission of delinquent debts on his security clearance questionnaire, and his implausible explanation for the omission during the hearing.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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.

ERIN C. HOGAN
Administrative Judge