



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



In the matter of:)	
)	
)	ISCR Case No. 08-00108
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: Pro Se

March 18, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP), on January 18, 2007. On September 15, 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 October 28, 2008, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on December 23, 2008. The FORM was forwarded to Applicant on December 29, 2008. Applicant received the FORM on January 5, 2009. He had 30 days from receipt of the FORM to submit any additional material. He did not respond. The FORM was forwarded to the hearing office on February 26, 2009 and assigned to me on March

3, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 28, 2008, Applicant admitted SOR ¶¶ 1.b, 1.d, 1.e, and 1.f. He denies SOR ¶¶ 1.a, 1.c, 2.a, and 2.b. (Item 3)

Applicant is a 53-year-old employee with a Department of Defense contractor seeking to maintain a security clearance. He has been employed with the defense contractor since August 1995. Prior to this job, he served on active duty in the United States Army, retiring after over 20 years of active duty service. He is married and has four children. (Item 4)

On January 18, 2007, Applicant completed an Electronic Questionnaire for Security Investigations Processing, e-QIP. He answered “No” in response to Section 28.a “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “No” in response to Section 28.b “Are you currently 90 days delinquent on any debt(s)?” (Item 4)

Applicant’s background investigation revealed the following delinquent accounts: a \$997 credit card account charged off in April 2002 (SOR ¶ 1.a: Item 7 at 2; Item 8 at 3, 5); a \$1,721 delinquent cell phone account placed for collection in September 2003 (SOR ¶ 1.b: Item 7 at 2; Item 8 at 8); a \$1,264 cable television account placed for collection in November 2003 (SOR ¶ 1.c: Item 7 at 2; Item 8 at 6, 9); an \$8,265 amount owed from an automobile repossession that was charged off in January 2004 (SOR ¶ 1.d: Item 7 at 2; Item 8 at 6); a \$676 delinquent cell phone account that was placed for collection in January 2004 (SOR ¶ 1.e: Item 8 at 9); and a \$123,000 debt owed to the Internal Revenue Service for tax years 1984 – 1990. (Item 8 at 4; Item 5.)

Applicant stated that he and his wife filed federal tax returns for tax years 1984 – 1990, but did not pay the taxes owed. He also did not pay his state income taxes for those years. His state tax debt was resolved through garnishment of his wages. In 2005, Applicant and his wife hired a tax attorney. Applicant claims the attorney did not do much towards resolving the tax problem. They eventually fired the attorney and attempted to negotiate a payment plan with the IRS on their own. At some point, they hired another financial company to represent them due to the complicated process. The IRS levied his wages in April 2007 but the levy was released in June 2007. He stated that all of his other delinquent bills resulted from the IRS levy of his wages. He was unable to catch up on his bills. On October 18, 2007, one his sons got into trouble which resulted in a strain on his family finances. He intends to resolve all of his delinquent accounts. (Item 5; Answer to SOR.) No information was provided regarding Applicant’s current financial status.

In his response to the SOR, Applicant denies that he owes the debt alleged in SOR ¶ 1.a. He claims to have resolved it six years ago. He provided no documentation

verifying payment. He denies owing the cable television bill alleged in SOR ¶ 1.c. He admits owing the debts alleged in SOR ¶¶ 1.b, 1d, and 1.e. He intends to resolve these accounts. He has been negotiating with the IRS pertaining to \$123,000 tax debt alleged in SOR ¶ 1.e. The current status of negotiations is unknown. He states that he is a retired American soldier and would never compromise classified information. (Answer to SOR)

Applicant claims that he did not indicate that he had delinquent debts on his e-QIP application due to oversight. He claims he listed the delinquent accounts in a prior security clearance application completed in 2004, but overlooked them on his current e-QIP application. (Answer to SOR) He provided no information about his work performance.

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’s unresolved accounts date back to 1984. He owes the IRS approximately \$123,000 for seven years of unpaid federal income taxes. He provided no proof that the delinquent accounts alleged in the SOR are resolved.

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 has a history of financial irresponsibility. Although he began to attempt to resolve his delinquent federal income taxes in 2005, he neglected to do so for over 15 years. The other delinquent accounts remain unresolved. His failure to timely pay his federal income taxes over a period of seven years, and his unresolved delinquent accounts cast doubt on his reliability, trustworthiness, and good judgment. Applicant’s financial issues remain. He has not provided proof that any of the debts are resolved.

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) partially applies because Applicant mentioned his son encountered some trouble in December 2007 which created a financial burden for the family. However, Applicant had unresolved delinquent accounts for years prior to this event. He also states that he was unable to pay his delinquent accounts because his wages were levied by the IRS from April to June 2007. This is not a circumstance beyond his control. It was within Applicant's control to pay his taxes in a timely manner. In addition, the debts became delinquent several years prior to his wages being levied. FC MC ¶20(b) is given very little weight.

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. There is no evidence that Applicant attended financial counseling. It is unlikely that his financial problems will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant indicates that he intends to resolve these accounts but has provided no verification that any of the delinquent accounts were resolved. He has been working to resolve his IRS tax debt for the past several years. However, these debts were incurred between 1984 - 1990. Applicant did not explain why he failed to resolve or pay his delinquent federal income tax debts prior to this time.

Applicant's failure to honor his financial obligations to his creditors remains a security concern. He has not mitigated the security concerns raised under financial considerations.

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 his delinquent debts that were over 180 days old in response to section 28(a) and his delinquent debts that were currently 90 days old in response to section 28(b) on his e-QIP application, dated January 18, 2007. Personal Conduct Disqualifying Condition ¶ 17(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) applies to this allegation. Applicant's explanation that he forgot to list his delinquent accounts due to oversight conflicts with his testimony that he began to resolve his delinquent federal tax debts several years prior to submitting the e-QIP application in 2007. All of the other delinquent accounts were incurred years prior to Applicant completing his e-QIP application. I do not find Applicant's explanations for omitting his delinquent debts on his e-QIP application credible. None of the mitigating conditions apply under Guideline E.

Guideline E is found against Applicant.

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 provided no information about his work performance. At the close of the record, Applicant provided little evidence that he has taken steps to resolve his delinquent accounts. There was insufficient evidence to conclude any of the accounts were resolved. Conflicting statements in the case file indicate Applicant was aware that he had delinquent accounts at the time he completed his e-QIP application. Applicant failed to mitigate the security concerns arising under 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:	Against Applicant
Subparagraph 1.f:	Against Applicant

Paragraph 2, Guideline E:	AGAINSTAPPLICANT
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.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