



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00346
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

January 8, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 16, 2007. On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F and Guideline E that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant acknowledged receipt of the SOR on July 16, 2008. He answered the SOR allegations in writing on July 27, 2008, and requested a decision without a hearing. On August 22, 2008, the government submitted a File of Relevant Material (FORM) consisting of ten exhibits (Items 1-10). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the October 8, 2008, due date. On November 19, 2008, the case was

assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$44,229 (SOR ¶¶ 1.b through 1.i) following a November 2000 bankruptcy discharge (SOR ¶ 1.a). Under Guideline F, personal conduct, Applicant was alleged to have deliberately falsified his October 2007 e-QIP by denying any debts over 180 days delinquent within the past seven years (SOR ¶ 2.a) or currently over 90 days delinquent (SOR ¶ 2.b). Applicant admitted the Chapter 7 bankruptcy as well as the debts, but indicated that the student loan debt in SOR ¶ 1.e was the same debt alleged in SOR ¶ 1.d. In response to the personal conduct concerns, Applicant responded, "I admit but I needed to read question better." He added that he was seeking consolidation of his outstanding debt (Item 2). After considering the evidence of record, I make the following findings of fact.

Applicant is a 37-year-old divorced driver/mechanic with a 13 year old son.¹ He has been living and working in the Middle East since about October 2004. He has worked for his current employer, a defense contractor, since January 2005. The available record does not show that he holds a security clearance (Item 4).

Applicant served on active duty in the United States Army from 1995 to 2001 (Item 7). While he was in the military, he fell behind in several financial obligations. On July 25, 2000, he filed for Chapter 7 bankruptcy, listing liabilities of \$59,291, including \$16,960 in secured debt, \$16,000 of which was for a 1998 model-year vehicle. About \$10,361 of the \$42,331 in unsecured debt was for two student loans owed since the mid-1990s. He reported that his monthly expenses exceeded his monthly take home pay by \$132. On November 9, 2000, Applicant was granted a discharge of those debts legally dischargeable, which did not include his student loans (Item 5).

After he was honorably discharged from the Army, Applicant was unemployed until February 2002, when he started working as a driver for an aquarium (Item 4). According to his DD 214, he received disability severance pay of \$21,333.60 for the period September 29, 1999, to September 28, 2002 (Item 7). In April 2004, he went to work as a driver for a maid service/cleaning service. In September 2004, he began overseas employment in the Middle East as a mechanic with a defense contractor. In January 2005, he began his present employment in a more stable country in the region (Item 4).

In application for a security clearance, Applicant executed an e-QIP on October 16, 2007. He responded negatively to questions 28.a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28.b, "Are you currently over 90

¹Applicant did not provide the dates of his marriage and divorce on his e-QIP (Item 4).

days delinquent on any debt(s)?,” and indicated, “I have not check[ed] my credit report in awhile.” (Item 4).

A check of Applicant’s credit on November 10, 2007, revealed several accounts had been charged off and/or placed for collection since his bankruptcy. A detailed listing of the financial accounts is set forth in the following table.

Debt in SOR	Delinquency history	Payment status
¶ 1.b. Utility services debt in collection \$1,813	Account opened Jan 99, \$1,576 past due balance transferred for recovery as inactive since Jun 02. Placed with assignee Dec 06, \$1,813 balance as of Mar 07 (Items 6,7).	Unpaid as of Jul 08 (Item 2).
¶ 1.c. Charged off auto loan \$16,145	\$16,145 auto loan opened Nov 00, charged off Oct 02 with \$10,570 balance, \$11,132 balance in collection as of Nov 03 (Items 6,7)	Unpaid as of Jul 08 (Item 2).
¶ 1.d. Past due student loan \$10,734	\$5,121 student loan taken out May 96, \$5,240 student loan taken out Jun 95 (Item 5), transferred to lender May 05. Balance \$10,734 in collection as of Oct 07 (Item 6). ²	Sought discharge in bankruptcy (Item 5), student loans usually not dischargeable and still listed as past due on credit reports (Items 6, 7). Unpaid as of Jul 08 (Item 2).
¶ 1.e. Past due student loan \$10,672	Same debt as SOR ¶ 1.d	See ¶ 1.d
¶ 1.f. Credit card debt in collection \$1,514	\$1,080 Visa credit card debt placed for coll Sep 05, \$1,446 balance as of Oct 07 (Item 6), \$1,514 balance as of Mar 08 (Item 7).	Unpaid as of Jul 08 (Item 2).

²Applicant listed three student loan debts on his bankruptcy petition in the amounts of \$851 opened April 1994, \$5,240 opened June 1995, and \$5,121 opened May 1996 (Item 5). Recent credit reports show one outstanding student loan account opened May 2005 (Items 6, 7) with a balance of \$10,734 as if October 2007 (Item 6).

¶ 1.g. Credit card debt in collection \$741	Credit card opened Jan 04, \$485 credit card debt sold to assignee Mar 07, \$653 past due balance as of Jun 07 (Item 6), \$741 balance as of Apr 08 (Item 7).	Unpaid as of Jul 08 (Item 2).
¶ 1.h. Cable television debt in collection \$701	Delinquent cable television balance placed for collection Oct 04, \$701 past due as of Dec 05 (Items 6,7).	Unpaid as of Jul 08 (Item 2).
¶ 1.i. Credit card debt in collection \$698	Credit card with \$350 limit opened Aug 03, for collection Sep 04, \$698 balance charged off as of Dec 06, to new assignee May 07 (Items 6, 7).	Unpaid as of Jul 08 (Item 2).
¶ 1.j. Credit card debt in collection \$628	Credit card with \$400 limit opened Aug 03, for collection May 04, \$628 balance charged off as of Dec 06, and still past due as of Sep 07 (Items 6, 7).	Unpaid as of Jul 08 (Item 2).
¶ 1.k. Utility services debt in collection \$507	Account opened Jun 05, \$507 in collection as of Nov 07 (Item 6), still past due as of Mar 08 (Item 7).	Unpaid as of Jul 08 (Item 2).
¶ 1.l. Telephone services debt in collection \$76	\$75 debt unpaid since Jan 03, in collection as of Jun 06, still past due as of Mar 08 (Items 6, 7).	Unpaid as of Jul 08 (Item 2).

Applicant's son was living with one of Applicant's sisters as of October 2007 (Item 4). It is unclear whether he pays her any money to care for his son. He earned \$37,792.16 in gross wages during the first quarter of 2008 (Item 7). In response to DOHA's request to update the status of his past due accounts, Applicant provided an April 10, 2008, credit report that showed he had made no progress toward resolving his delinquent debts despite reported income and expense figures indicating he had a net monthly remainder of between \$4,700 (Item 7) and \$4,966 (Item 8). He attributed his financial problems following his bankruptcy to issues with his divorce and custody of his son (Item 7).

As of mid-July 2008, Applicant intended to satisfy his delinquent debts through a debt consolidation plan (Item 2). He provided no evidence to indicate that he had entered into any consolidation agreement.

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 overarching 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.

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 for financial considerations is set out in AG ¶ 18 of the adjudicative guidelines:

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.

Applicant was afforded a financial fresh start through a Chapter 7 bankruptcy discharge in November 2000 (SOR ¶ 1.a). Although he left active duty in 2001, he was paid disability severance of \$21,333.60, and he had earned income from civilian employment since September 2002. He made no effort to satisfy his student loan (SOR ¶¶ 1.d and 1.e, same debt) that survived the bankruptcy. In November 2000, he took out an automobile loan that was charged off in October 2002 with a balance over \$10,000 (SOR ¶ 1.c). Over the 2003/04 time frame, he opened four credit card accounts that were later charged off due to nonpayment (SOR ¶¶ 1.f, 1.g, 1.i, 1.j). Power, telephone, and cable bills went unpaid in recent years (SOR ¶¶ 1.b, 1.h, 1.k, 1.l). Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

AG ¶ 19(e) ("consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis") applies to the period before his bankruptcy. He had incurred some \$59,291 in liabilities when his annual income was less than \$30,000. Based on the limited expense information available for recent years, AG ¶ 19(e) would appear to no longer apply. As of 2008, he reported net discretionary funds each month in excess of \$4,000, which suggests an unwillingness to satisfy debts (see AG ¶ 19(a)) rather than continued spending beyond his means.

Applicant attributes his delinquent debt to his divorce and custody issues. While divorce is potentially mitigating, he did not provide sufficient evidence to establish AG ¶ 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"). There is no evidence that he pays any alimony to his ex-wife, or that he pays his sister to care for his son. He may well have incurred legal fees in a custody battle but I cannot speculate as to what impact that might have had on his finances. Moreover, he appears to have the financial means to make payments on his delinquent debts whether or not he qualifies for the foreign income tax credit. Even if he failed to monitor his credit while living overseas, he knew as of April 2008 that DOHA was concerned about his outstanding delinquent debts. Promises to pursue debt consolidation are not enough to satisfy either AG ¶ 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”) or AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”). His inattention to his financial matters, especially after receipt of the SOR, continues to raise serious concerns about his judgment, reliability, and trustworthiness.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in Guideline E, ¶ 15 of the adjudicative guidelines:

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.

Applicant responded negatively to the financial delinquency questions 28.a and 28.b on his October 2007 e-QIP, when his past due balances totaled about \$28,387. When first asked by DOHA about his failure to list his debts, Applicant responded in April 2008, “I had not got current credit report.” (Item 7). Assuming he was unaware of the status of some of his accounts, he must have known that he had defaulted on his student loans and that he had not paid them. They were listed on his bankruptcy petition and he has not denied the outstanding balance alleged other than to indicate that SOR ¶¶ 1.d and 1.e pertain to the same debt. In response to DOHA’s allegations that he deliberately falsified his responses to questions 28.a and 28.b, Applicant did not claim that he lacked knowledge of his debts, but rather that he had somehow erred in reading the e-QIP (“I needed to read [the] question better.” Item 2). A reasonable inference of knowing and willful falsification is warranted, given the number of debts charged off and/or placed for collection, and his inconsistent explanations for the omission of delinquent debts from his e-QIP. AG ¶ 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”) applies.

Available mitigation shows that Applicant did not deny the delinquent debt when asked by DOHA to confirm the status of his past due accounts. He provided a credit report showing that he had not satisfied his past due accounts as of April 2008. However, in the absence of any evidence that he brought the debts to the attention of the government before he was asked about them, I am unable to conclude that he made the prompt, good faith rectification required under AG ¶ 17(a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”). Furthermore, in light of his inconsistent explanations for failing to list any past due debts (*i.e.*, unaware of the status of the debts vs. misread the questions on the e-QIP), AG 17(d) (“the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive

steps to alleviate the stressors, circumstances, or factors that caused untrustworthy , unreliable, or other inappropriate behavior, and such behavior is unlikely to recur”) also does not apply. Applicant has yet to admit that he put his interest ahead of his obligation to be fully candid about his finances.

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 conduct and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In November 2000, most of his delinquent debts were discharged through bankruptcy. He made no effort to repay his student loan debt that was not discharged, and he subsequently fell behind on other financial accounts. While Applicant intends to seek debt consolidation, there is no evidence of any payment arrangements with his creditors, or with a debt consolidation firm to resolve the debts, despite available information showing he has the income to make payments. His lack of candor on his e-QIP about his indebtedness reflects an unacceptable tendency to act in self interest. Due to persistent concerns about Applicant's financial judgment and personal conduct, I am unable to conclude that it is clearly consistent with the national interest to grant him access to classified information.

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 (Duplication of ¶ 1.d)
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge