



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



In the matter of:)
)
) ISCR Case No. 08-00555
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: [mother], Personal Representative

September 19, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On April 15, 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 provided a written undated answer to the SOR and requested a hearing before an Administrative Judge. The case was assigned to me on August 7, 2008. DOHA issued a notice of hearing on August 11, 2008, and I convened the hearing as scheduled on September 3, 2008. The government offered Exhibits (GE) 1 through

18, which were admitted. Applicant testified and submitted Exhibits (AE) A through D, which were admitted. One witness testified on Applicant's behalf. The record was held open to allow Applicant to submit additional documentary evidence, which he did and it was marked as AE E through I. Department Counsel offered a memorandum marked as GE 19 and did not object to the additional documents. They were admitted and the record was closed. DOHA received the transcript of the hearing (Tr.) on September 11, 2008.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.g, and 1.h. He denied the allegations in SOR ¶¶ 1.e and 1.i. He failed to answer the allegations in SOR ¶¶ 1.b and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 39 years old and graduated from high school in 1989. He became a security guard in 1996. He has had a secret clearance since approximately 2001. Applicant lives at home with his parents. He is not married. He has two daughters ages 14 and 4.

Applicant has a tax lien that was filed against him by the federal government in April 2007, for \$16,630. He stated that he was granted a "hardship" by the Internal Revenue Service (IRS). Applicant did not provide any documentary evidence to support his claim. He stated that the IRS advised him they do not send "hardship" letters. He admitted that he has failed to pay his taxes since 2001. He also admitted that he did not file his income taxes for 2007 and 2006 and could not remember if there were other years he failed to file.¹ He believed he did not owe each year and was entitled to a refund some years, but could not specifically identify which years. He stated he filed for 2005 and believed he owed money, but did not pay it. His excuse for not paying was that he did not have the money. He believed he did not owe taxes for certain years. He stated he claims eight exemptions on his taxes. He does not own a house and has two children. Applicant did not provide any evidence to support his position. He does not have an installment plan to pay his taxes. He provided no documentary evidence at all from the IRS.²

Applicant admitted he owes the debt in SOR ¶ 1.b, which was for a credit card that he defaulted on sometime in 1999 or 2000, when he was unemployed for a period of time. The amount owed is \$1,130. He admitted he knew he stopped paying on the card. He stated he had spoken to the creditors at the time he stopped paying and received letters from them back in 1999 or 2000. He has been aware of this delinquent

¹ Tr. 28-37, 68-71, 92-101; GE 14, 15, 16. Applicant's failure to file his income taxes was not alleged in the SOR. It will not be considered for disqualifying purposes, but will be considered when analyzing the whole person and his credibility.

² Tr. 28-37, 58, 68-71, 92-101, 140-142.

debt since then. He was offered settlement agreements, but could meet the terms. He has not made any payments to resolve the debt.³

Applicant admitted he owes the debt in SOR ¶ 1.c, which is a delinquency on a credit card in the amount of \$1,660. He admitted he stopped paying on the debt sometime around 2000. He acknowledged he received statements from the creditor and was aware he owed the debt. He has not made any payments to resolve the debt.⁴

The delinquent debt listed in SOR ¶ 1.d is for a debt in the approximate amount of \$1,061. The debt was for a credit card that Applicant stopped paying on in 2000. The creditor got a judgment against Applicant. Applicant began making payments on the judgment. Applicant provided a copy of a motion to dismiss the case based on the following statement: "paid, settled, and satisfied."⁵ The motion is dated August 12, 2008, and the case was dismissed on August 18, 2008.⁶

The debt in SOR ¶1.e is for child support that was placed for collection in the amount of \$1,639. Applicant stated he did not owe this debt. He stated he did not dispute it with the credit bureau, but he did dispute it with the child support division of the state. He stated he had receipts to prove he does not owe this debt. He stated that he went to court in March 2005 and was told by the judge he could pay his child support in cash. Applicant provided a copy of a court order for child support. Presumably this court order is for his younger child. He also provided receipts for payments of \$299 for March 2006 through December 2006.⁷ It is clear Applicant paid child support for one of his children during these months. It is unclear which child the arrearage is for and whether Applicant satisfied the alleged arrearage. He was unemployed for a period and admitted he got behind in his payments for the older child. He did not provide any documentation from the state's child support division to show he has satisfied the balance owed. He did provide proof that he paid his child support for one daughter during the months March through December 2006.⁸

Applicant admitted he owes the debt listed in SOR ¶1.h. He entered into an agreement in September 2007 with the creditor to pay a total of \$5,073.23. He is required to make \$200 monthly payments, which began in October 2007. He provided receipts for eight \$200 payments. He stated he has been making payments each

³ Tr. 37-43.

⁴ Tr. 43-46.

⁵ Tr. 46-53; AE A. He also provided three receipts in his Answer to the SOR that show payments of \$200 to the same creditor.

⁶ AE G.

⁷ AE F.

⁸ Tr. 29-30, 53-57, 102-115, 127-134.

month.⁹ This debt was for a loan that Applicant took out in 2000 and stopped paying in 2004. The reason he stopped paying was because the interest rate was too high. He acknowledged he was aware of the debt and that he knew it was delinquent and he owed it. Applicant believes this is the same debt as listed in SOR ¶ 1.f, but failed to provide documentation to substantiate his position. The credit report lists the two debts with different account numbers.¹⁰

Applicant acknowledged that he owed the medical debt listed in SOR ¶ 1.g. It was placed for collection in August 2005. He paid the debt on August 11, 2008.¹¹ He stated he believed his insurance was to pay it and he was unaware of it.

The delinquent debt to the video store listed in SOR ¶ 1.i is in the amount of \$311. Applicant stated his car was stolen on March 1, 2002, and he reported it to the police. He filed a supplemental report on March 2, 2002. The report reads: "The victim [Applicant] telephoned District IV and advised this officer that he forgot to mention that his Federal Officer ID and Badge were inside his vehicle when it was stolen."¹² Applicant stated at his hearing that his wallet was stolen from the vehicle and someone used his video store card and incurred the debt. He never contacted the creditor at the time or the credit bureau to dispute the debt. He stated his car and wallet were recovered, but he believed someone used his video card.¹³ I did not find his testimony credible, with regard to someone misusing his video card.

Applicant signed a security clearance application (SCA) on August 25, 2006. In response to questions whether he had debts that were more than 180 delinquent or that were currently over 90 days delinquent, he responded "no." At his hearing he stated that at the time he filled out his SCA he did not know he had delinquent debts.¹⁴ He concurred he had signed and certified his answers were true. He further explained that he did not list his delinquent debts because he did not have the correct dates and years and he did not have all of the information at the time. He also stated that he needed to fill out the SCA to get a Top Secret Clearance so he could get a better job. I find Applicant deliberately and intentionally failed to list his delinquent debts. I find Applicant's explanations were not credible. He testified that he stopped paying on many of his debts because he was unemployed for a period of time, but never resumed

⁹ AE D and I.

¹⁰ Tr. 29, 56-66, 72; GE 3 and 4.

¹¹ Tr. 73-74; AE B.

¹² AE C.

¹³ Tr. 74-81.

¹⁴ Tr. 83-85.

paying. On most of the debts he received notices from the creditors regarding his delinquency. He also had earlier testified to being aware of his debts.¹⁵

Applicant lives with his mother and pays her approximately \$300 a month for rent, but sometimes it is less, depending on what he can afford. He owes his mother \$5,000 for a car and pays approximately \$200-\$300 a month on this debt. He pays \$800 a month in child support for his 4-year-old daughter and \$400 for his 14-year-old daughter.¹⁶

Applicant stated he was unemployed for approximately 8-9 months in 1996 and 1997, again from November 2000 to January 2001, and from August 2006 to December 2006. He stated his mother paid his child support when he was unemployed.

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.

¹⁵ Tr. 82-101; GE 1 and 8.

¹⁶ Tr. 102-103, 115-126.

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”). Appellant had delinquent debts that he was aware of since he stopped paying them as far back as 1999 and 2000. Many of Applicant’s delinquent debts remain unresolved and others he waited years to address. I find both disqualifying conditions apply.

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 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”); (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 has many debts that have been delinquent for years that remain unpaid. He has not paid his taxes for several tax years, including 2006 and 2007. He owes the IRS money, but has no plan on how to pay the federal government his taxes. I find (a) does not apply. Applicant experienced periods of unemployment that impacted his ability to pay his bills. Unfortunately, once Applicant was working again, he did not do anything to contact his creditors and resume payment on his delinquent debts. Instead he let many of them remain dormant for years. He lives at home, pays minimal rent and expenses, yet failed to resolve his delinquent debts. He did not take action on one debt until a judgment was entered against him. He has since paid that debt. He has an agreement with one creditor to pay \$200 a month, but he only provided proof of eight payments when there should be eleven. I find (b) does not apply. Applicant did not present any evidence that he has received counseling for the problem, nor are there clear indications that the problem is under control or being resolved. He did not make a good-faith effort to repay his creditors. Most of his debts remain unpaid and he has not contacted the creditors to resolve them for many years. It appears Applicant has paid child support for his two daughters, but the documents he provided did not clear up the amount that was in arrears and placed for collection. I find (c) and (d) do not apply.

Applicant testified that his tax debt was somehow a “hardship” debt. He provided no evidence to show that he did not have to pay this debt or it was somehow forgiven. He did not provide any evidence to show he had set up an installment plan to pay the debt or that payment was deferred for a period of time. He did testify that for the past seven to eight years he failed to pay his taxes during some of those years, but he was not sure which ones. He takes eight exemptions on his taxes when he does file. He did not provide any documented proof to substantiate his dispute or “agreement” with the IRS. He failed to provide any other documented evidence to substantiate other disputes he has with creditors. He disputes the video store debt, but failed to provide documented proof that he did so with the creditor or credit bureau. Although he filed a police report that his car and his federal ID were stolen, it did not include his wallet. I find (e) does not 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”). I have considered all of the facts and find Applicant deliberately omitted and concealed his delinquent debts on his security clearance application. Applicant’s testimony was not credible or believable. He clearly was aware that he stopped paying his debts when he was unemployed for a period of time and never resumed. At first he claimed he did not know about the debts and then he said the reason he did not list his delinquencies was because he did not have the correct dates or years. He was aware he stopped paying on credit cards in 1999 and 2000 and on a loan in 2004 because as he testified the interest rates were too high. I find (a) applies.

The guideline also includes examples of conditions that could mitigate the security concerns arising under personal conduct. I have considered all of them 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”) and (c) (“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”). Applicant concealed his delinquent debts by failing to list them on his SCA. He filled it out in 2006 and did not make an attempt to correct it. He testified at his hearing that he was aware of his debts. Failing to divulge information that is pertinent to a security clearance determination is a serious issue. It is not a minor offense, but goes to the crux of good judgment, reliability and trustworthiness. Applicant’s testimony and explanations were not believable. 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 numerous debts that have been delinquent for years. Although he had periods of unemployment, once he

resumed working he did not attempt to resolve the delinquent debts. A three-year-old medical debt was not paid until a few weeks before his hearing. One debt he has a payment plan for, but it was set up years after the debt was due, and he has missed some payments. Another debt was finally paid, but it appears it was only after the threat of legal action. Applicant is irresponsible in his obligations to pay his taxes. It is clear Applicant was concerned about his chances of obtaining a Top Secret clearance so he could get a better job and deliberately failed to list his financial delinquencies, which he was aware of at the time. 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 under Guideline F, Financial Considerations and Guideline E, 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:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph, 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge