



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



In the matter of:)	
)	
)	ISCR Case No. 08-01298
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Pro Se

December 4, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 6, 2007. On July 22, 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 August 28, 2008, DOHA received Applicant's Answer to the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 29, 2008. The case was assigned to me on October 8, 2008. On October 14, 2008, a Notice of Hearing was issued, scheduling the hearing for October 31, 2008. The case was heard on that date. The Government offered ten exhibits which were admitted as Government Exhibits (Gov) 1 – 10. The Applicant testified. The record was held open until November 14, 2008, to allow Applicant to submit additional

documents. No documents were offered. The transcript was received on November 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Issue

The Notice of Hearing was sent out less than fifteen days prior to the hearing. Applicant waived the fifteen day notice requirement. (Tr at 6.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.e, 1.x, 1.aa, and 1.bb, but denies all remaining allegations.

Applicant is a 34-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as an electrician with his company since August 2007. He has a high school education. He is married and has three children, ages 12, 9 and 3. He and his wife separated a few weeks prior to the hearing. (Tr at 4, 6-8, 59; Gov 1; Gov 2.)

On March 15, 2007, Applicant completed a Questionnaire for Public Trust Position (SF 85P) in relation to his job with a previous employer. He answered, "No," in response to question "22(a) Your Financial Record. In the last 7 years, have you or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?" He also answered, "No," in response to question "22(b) Your Financial Record. Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the federal government." (Gov 2.)

Applicant was hired by his current employer in August 2007. He completed an Electronic Questionnaire for Investigations Processing, (e-QIP) on September 6, 2007 in order to apply for a security clearance. He answered "Yes" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He listed a \$1,200 debt related to a truck repossession in December 2006. He could not afford the payments so he surrendered the truck back to the company. He answered "No" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 2.)

A subsequent background investigation revealed that Applicant filed for bankruptcy under Chapter 7 on July 31, 1998. His debts were discharged on November 25, 1998. (Gov 4; Gov 10 at 3.) Applicant filed for bankruptcy in 1998 because of issues with a truck that he purchased in 1996 for \$27,000. The truck had an extended warranty. In 1998, the truck had mechanical problems. The warranty company would not pay to fix the truck. Applicant could not afford to make the loan payments and pay for the vehicle repairs, so he allowed the truck to be repossessed. He owed

approximately \$17,000 on the loan for the truck. He filed for bankruptcy in order to clear up this account. Approximately \$20,000 was discharged in his bankruptcy. (Tr at 51-54.)

In August 2001, Applicant was charged with Deposit Account Fraud related to three bad checks written to a convenience store. The charges were dismissed in September 2001 after costs and restitution were paid. (Gov 5 at 3-4.) Applicant was charged with Deposit Account Fraud in July 2001 and August 2001 related to three bad checks written to a grocery store. The charges were dismissed in September 2001 after costs and restitution were paid. (Gov 5 at 2, 5, 6.)

In March, May, August – November 2000, Applicant was taken to court for failure to pay monthly rent on his mobile home lot. In February – July 2001 and September 2001, he was taken to court for failure to pay monthly rent. He paid the rent after a judgment was entered. The debts are resolved. (Gov 6; Gov 10 at 3.)

On August 10, 2007, a \$2,449 judgment was entered against Applicant on behalf of a credit company for a deficiency balance on an automobile loan. On December 14, 2007, a garnishment was filed against Applicant. On May 19, 2008, the judgment was satisfied through wage garnishment. Applicant's wages were garnished \$300 each pay check or \$600 a month. (Gov 7; Gov 8 at 3; Gov 9 at 12.)

Applicant owes the following delinquent accounts: a \$416 cell phone account placed for collection in February 2007 (SOR ¶ 1.f: Gov 8 at 1; Gov 10 at 4); a \$194 cell phone account placed for collection in November 2006 (SOR ¶ 1.g: Gov 10 at 8); a \$625 credit card account placed for collection in March 2005 (SOR ¶ 1.h: Gov 8 at 2; Gov 9 at 8; Gov 10 at 4); a \$903 furniture rental account placed for collection in February 2006 (SOR ¶ 1.j: Gov 8 at 2; Gov 9 at 4; Gov 10 at 4); a \$412 utility account placed for collection in June 2007 (SOR ¶ 1.k: Gov 8 at 3); and a \$1,145 account placed for collection in January 2007 (SOR ¶ 1.l: Gov 8 at 3).

Additional delinquent debts include: a \$210 medical account placed for collection in September 2002 (SOR ¶ 1.m: Gov 8 at 2; Gov 10 at 8); a \$100 medical account placed for collection in April 2005 (SOR ¶ 1.n: Gov 10 at 9); a \$51 medical account placed for collection in January 2006 (SOR ¶ 1.o: Gov 8 at 2; Gov 10 at 10); a \$420 medical account placed for collection in December 2005 (SOR ¶ 1.p: Gov 8 at 2; Gov 10 at 6); a \$185 medical account placed for collection in October 2006 (SOR ¶ 1.q: Gov 8 at 2); and a \$166 medical account placed for collection in September 2003 (SOR ¶ 1.r: Gov 10 at 8).

Additional delinquent debts include: a \$229 medical account placed for collection in June 2005 (SOR ¶ 1.s: Gov 8 at 2; Gov 10 at 7); a \$112 medical account placed for collection in September 2003 (SOR ¶ 1.t: Gov 8 at 2; Gov 10 at 9); a \$180 medical account placed for collection in August 2002 (SOR ¶ 1.u: Gov 9 at 7; Gov 10 at 8); a \$544 medical account placed for collection in February 2005 (SOR ¶ 1.v: Gov 8 at 1; Gov 9 at 9; Gov 10 at 6); a \$301 medical account placed for collection in October 2006

(SOR ¶ 1.w: Gov 9 at 9); and a \$120 debt owed to a city placed for collection in May 2009 (SOR ¶ 1.x: Gov 10 at 9).

Additional delinquent debts include: a \$2,674 medical account placed for collection in April 2005 (SOR ¶ 1.y: Gov 8 at 2; Gov 10 at 5); a \$300 medical account placed for collection in March 2005 (SOR ¶ 1.z: Gov 8 at 2; Gov 10 at 7); a \$242 water bill placed for collection in October 2005 (SOR ¶ 1.aa: Gov 9 at 12; Gov 10 at 7); a \$50 medical account placed for collection in January 2006 (SOR ¶ 1.bb: Gov 10 at 10); a \$329 telephone account placed for collection in June 2006 (SOR ¶ 1.cc: Gov 9 at 12; Gov 10 at 6); a \$180 medical account placed for collection in February 2008 (SOR ¶ 1.dd: Gov 8 at 2); and an \$85 medical account placed for collection in March 2007 (SOR ¶ 1.ee: Gov 8 at 2).

From 1994 to 2000, Applicant worked for a company as a shipping clerk. He earned \$13.50 an hour in 2000. His company was bought out by another company and the plant closed. Applicant found work but the pay was only \$7 per hour. He worked a couple of weeks then got a job as an electrician's helper. In 2001, he entered into an apprenticeship with a union eventually earning a journeyman card. It was a five year program. Since he was starting out, the pay was not as high as his shipping clerk's job. (Tr at 55 – 57, 84-85.)

For the past five years, Applicant has been the sole provider for his family. His income was not sufficient to pay all of the bills. His wife is physically capable of working but after paying child care expenses, there would be little extra income added to the family if she was employed. (Tr at 25, 59-60, 80-82.) Applicant states there is nothing in the world that would make him jeopardize his country. (Tr at 15.)

Applicant states that he did not intentionally falsify his trustworthiness application or his security clearance questionnaire. He had difficulty understanding both forms when he completed the application. He was not aware of the extent of his delinquent accounts until he was served interrogatories pertaining to his delinquent accounts. In hindsight, he admits that he should have answered "yes" to the question pertaining to having debts that were over 180 days old. (Tr at 27, 29, 33-34, 46-47.)

Applicant claims that the telephone debt alleged in SOR ¶1.cc is paid. His phone service is back on. (Tr at 49.) The debts alleged in SOR ¶¶ 1.m – 1.w, 1.y, 1.z, 1.bb, 1.dd, and 1.ee are all medical accounts. Applicant has worked for numerous employers over the past eight years. Some of his employers did not provide health insurance. Most of the medical bills related to routine medical bills of Applicant's family. The \$2,674 medical debt alleged in SOR ¶ 1.y were medical expenses incurred by Applicant from a 2006 car accident. The medical bill was for an ambulance ride and hospital treatment. He was determined to be at fault in the accident. (Tr at 61-63.)

The record evidence indicates the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e have been resolved. There is no record evidence indicating the debts alleged in SOR ¶¶ 1.f – 1.ee are resolved. Applicant states the garnishment which resolved the debt

alleged in SOR ¶ 1.e resulted in his getting behind on other bills. His phone is currently turned off because he could not pay the phone bill. He ended up selling two vehicles. (Tr at 86-87.) He intends to file for Chapter 13 bankruptcy but had not done so at the close of the record. (Tr at 27.)

Applicant has not attended financial counseling. He is current on federal and state income taxes. He recently received a raise. He earns \$22.61 an hour. (Tr at 82-83.) His net monthly take home pay without overtime is approximately \$3,000. His rent is \$750. Other monthly expenses include groceries and clothes \$500 to \$600; \$720 car expenses including insurance (a 2005 small SUV and a 2002 motorcycle); \$230 medical insurance; children's medical insurance \$66; and utilities \$300. His total monthly expenses are approximately \$2,566. If this amount is accurate, Applicant has approximately \$434 left over each month after expenses. (Tr at 67-72; Gov 3 at 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.

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 encountered financial difficulty since 1998 when he filed for bankruptcy. From 2000 to 2001, he wrote several bad checks and struggled to meet his rent payments. He recently paid off (through garnishment) a \$2,449 judgment entered against him in May 2008 related to an automobile repossession. He currently has 23 unresolved delinquent accounts with the total approximate balance of \$10,173. Applicant's financial condition is such that he is unwilling or unable to resolve these accounts.

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 has a long history of financial problems. He received a fresh start as a result of his bankruptcy discharge in 1998 but continues to incur delinquent accounts. The

majority of Applicant's debts remain delinquent and he has no definite plan in place to resolve these accounts. He continues to have significant financial problems.

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) applies, in part. In 2000, Applicant was laid off from a job that he held for six years. The next job he found reduced his pay by half of what he was making at his previous job. His financial situation is further aggravated by he and his wife's recent separation. I give this mitigating condition less weight because Applicant has not established a plan to resolve 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. While most of his delinquent accounts have relatively low balances, he has taken no action to pay off any of the accounts, which indicates that his financial situation is not under control.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Although the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e are resolved, Applicant did not pay these debts until after he was taken to court. He has not developed a plan to resolve his 23 remaining delinquent accounts. While Applicant testified at hearing that he intends to file for Chapter 13 bankruptcy, he had not done so at the close of the record. Even if he had filed for Chapter 13 bankruptcy, it would be too soon to conclude that his financial situation is stable.

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 several financial delinquencies on his security clearance questionnaires. Specifically, he failed to list his delinquent debts that were over 90 or 180 days old in response to sections 28(a) and 28(b) on his security questionnaire (e-QIP) dated September 6, 2007. He also did not list the legal judgments obtained against him for unpaid rent (SOR ¶ 1.d) in response to section 22(a) on his questionnaire for public trust position. He did not list his

delinquent debts that were over 180 days old on the same questionnaire for public trust position in response to section 22(b).

Personal Conduct Disqualifying Condition (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) potentially applies in Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of his judgments and delinquent accounts must be done with a deliberate intent to deceive. I find Applicant did not deliberately intend to falsify his security clearance questionnaires. Applicant claims that he did not remember all of his financial delinquencies. He did not obtain a copy of his credit report until he received some interrogatories which listed his delinquent accounts. I find his explanation credible. During the hearing, Applicant admitted that he was somewhat confused about the security clearance application.

The personal conduct concern is found for 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. I considered that Applicant has resolved the debts alleged in SOR ¶¶ 1.b – 1.e. However, Applicant has had additional delinquent accounts for several years and has no plan for resolving the accounts. While Applicant's recent marital separation further complicates matters, he took no steps such as financial counseling to develop of plan for resolving these accounts prior to his separation. His financial problems remain. At this point, Applicant did not mitigate the concerns raised under financial considerations. Personal conduct concerns are mitigated because Applicant did not intend to falsify his security clearance questionnaire and application for a public trust position by omitting his delinquent debts.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
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
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For 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