



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



In the matter of:)
)
) ISCR Case No. 08-01392
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

December 7, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 42-year-old employee of a defense contractor. He is alleged to be indebted to 7 creditors in the approximate amount of \$26,136. In addition, it is alleged that he falsified his June 24, 2009 Electronic Questionnaire for Investigations Processing (EQIP). Applicant has not mitigated the Financial Considerations security concerns because he has failed to show he acted responsibly with respect to his outstanding debts. He did not mitigate the Personal Conduct security concerns created by his intentional omission of his outstanding debts from his EQIP. Eligibility for access to classified information is denied.

Statement of the Case

On April 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on April 21, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 3, 2010. DOHA issued a notice of hearing on June 7, 2010, scheduling the hearing for July 22, 2010. On July 22, 2010, Applicant did not appear. However, he contacted the DOHA office and orally requested a continuance based upon his hospitalization the day of the hearing and subsequent treatment for his medical condition. He provided documentation that he was in the emergency room on July 22, 2010, and therefore unable to attend as scheduled. Applicant's request for a new hearing date was granted, and the hearing was rescheduled on August 12, 2010, a date after his medical treatment concluded. His hearing was held on September 28, 2010, as scheduled. The Government offered Exhibits (GE) 1 through 11, which were admitted without objection. The Applicant offered Exhibits (AE) A through W, which were all admitted without objection. Applicant called two witnesses, and testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on October 12, 2010, Applicant presented a 21 page submission, marked AE X through AE CC. Department Counsel had no objections to AE X through CC and the exhibits were admitted. DOHA received the transcript of the hearing (Tr.) on October 14, 2010.

Findings of Fact

Applicant admitted the SOR allegations 1.b., 1.d., 1.e., and 1.g. He denies allegations 1.a., 1.c., 1.h., 2.a., and 2.b. Allegation 1.f. was omitted from the SOR through a typographical error. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He served in the Army from 1988 to 1991 and from 2000 to 2004. He received an honorable discharge in 1991, and an honorable discharge for medical reasons, after he was diagnosed with three bulging disks, in 2004. He was married from 2000 to 2004, and has a 21-year-old son from that marriage. In 2004, he divorced. He is now engaged to the mother of his two additional children, ages two and five. (GE 1; GE 3; AE B; Tr. 39-51.)

In April 2006, Applicant applied for a security clearance for the first time. He did not have a clearance while in the Army. On his April 2006 EQIP, he did not list any debts over 180 days delinquent in the past 7 years or that he was currently over 90 days past due on any debts when he completed section 28 of the application. In June 2009, he was again asked to complete an EQIP. As alleged in SOR allegation 2.a., he indicated "yes", he had debts over 180 days delinquent in the past 7 years and that he was currently over 90 days past due on some debts in answer to section 26. However, he only listed creditors with whom he had made payment arrangements or had satisfied the account on this application. He failed to disclose any accounts that he was still delinquent on. As alleged in SOR allegation 2.b., he also indicated he had not had any property repossessed in the past seven years. However, his vehicle had been repossessed, as noted below. Applicant claims his omissions were unintentional. He

does admit that he was “embarrassed” by the existence of his debts. In fact, when he discussed omitting his debts during his subject interview, he admitted in his adopted written report of his subject interview that he told the investigator he failed to list his debts because he was “embarrassed” and “did not know what to list because of his last experience with his security clearance processing.” As set out below, these answers were incorrect. (GE 1; GE 3; GE 5; GE 10; Tr. 40-44, 90-93.)

Applicant has experienced financial problems since 2000 or 2001. He is alleged to be indebted to 7 creditors in the approximate amount of \$26,136. Each of these debts can be found on credit reports dated May 2006, July 2009, March 2010, May 2010, and July 2010. (GE 2; GE 4; GE6; GE 7; GE 9.)

Applicant attributes his debts to a series of events that began in approximately 2000-2001. Applicant was serving in Kosovo during this timeframe. He sent money back to his wife to pay their bills, but his wife was diverting the funds to other means. He did not have internet access or much opportunity to call his wife while deployed and he relied on her to satisfy their accounts. When he returned from his deployment, he discovered he had a number of delinquent debts. Disputes over the debts eventually led Applicant and his wife to file for divorce. The divorce decree assigned half of the debts to each party. Applicant testified that he was unable to satisfy the debts assigned to him, as he was unemployed for a year after leaving the Army. His EQIP shows that he was unemployed from October 2008 through April 2009. His debts are as follows. (GE 1; GE 3; Tr. 62-68.)

Applicant was indebted on a judgment against him in the approximate amount of \$348, as alleged in allegation 1.a. Applicant incurred this debt when he received an overpayment on his unemployment benefits. His wages were garnished to satisfy this debt and it is now paid. Applicant produced an Acknowledgement of Satisfaction of Judgment as proof this debt is paid. (AE X; Tr. 72-73.)

Applicant is indebted on a store credit card in the approximate amount of \$3,137, as alleged in allegation 1.b. Applicant testified that his ex-wife incurred this debt when they were married and it was assigned to Applicant in their divorce. However, in his adopted subject interview, he indicated that this debt was solely his debt, and he used the card to purchase his children’s school clothing. Applicant has reached a settlement agreement with this creditor. He agreed to make payments of \$117.65 per month until he has satisfied a reduced amount of \$1,411.74. Applicant provided documentation from the creditor outlining their agreement and bank statements that show he made two payments, one in September 2010 and one in October 2010, under this plan. (GE 5; AE L; AE P; AE Y; Tr. 74-77.)

Applicant was indebted to the Federal government for an overpayment he received when he was discharged from the Army in the approximate amount of \$799, as stated in allegation 1.c. This debt was satisfied in February 2010 when Applicant’s income tax return was applied to this debt. Applicant presented a notification from the U.S. Department of Treasury that shows this debt was satisfied. (AE R; AE Z; Tr. 77-79.)

Applicant is indebted to a collection agent in the approximate amount of \$19,767, as alleged in 1.d. This debt was incurred when Applicant surrendered a vehicle for repossession. He purchased the vehicle in 2005 for approximately \$26,000. He owned it for two and one-half years. He made payments on the vehicle for the first two years, but was unable to continue to afford the vehicle. He called the lender and surrendered it. He believes the vehicle was resold by the creditor for more than he owed on the vehicle at the time of surrender. He has joined a class action law suit against the creditor. He also provided documentation that he has hired a credit counseling company to negotiate with this creditor on his behalf. To date, there is no agreement with this creditor. Applicant disputes the full debt and has requested an accounting from the company, through the credit counseling service. (AE BB; Tr. 79-83, 105-108, 113.)

Applicant is indebted to a collection agent for a phone company in the approximate amount of \$885, as alleged in 1.e. This debt was incurred when Applicant acquired cell phone service for his oldest child. At hearing, Applicant claimed this debt had been paid. However, he was unable to provide documentation to establish payment. He indicated, in his post-hearing exhibits, that he has now listed this debt with his consumer credit counseling service, but he provided no documentation to support this claim. (AE T; AE Q; AE AA; Tr. 84-87.)

Applicant is indebted to a collection agent for a bank in the approximate amount of \$280, as alleged in 1.g. Applicant claims he satisfied this debt for a negotiated amount of \$183. He provided a copy a bank statement showing \$183 had been deducted from his bank account on April 28, 2010. However, neither the name of the creditor paid, nor the amount paid match the original debt as stated in Applicant's credit reports. (AE BB; Tr. 87-90.)

Applicant is indebted to a collection agent for a phone company in the approximate amount of \$920, as alleged in 1.h. Applicant disputes this debt and claims it is a duplicate of the debt in SOR allegation 1.e. However, he offered no documentation to establish his claim. Applicant's credit reports show Applicant had two different account numbers with this creditor, opened at different times. (Tr. 89-90.)

In August 2007, Applicant attended a course on personal financial management offered through his employer. It was an eight hour class and Applicant presented documentation that he successfully completed the training. Applicant has also been working with the consumer credit counseling service, since March 2010, to manage his debt. (AE CC; AE W; Tr. 96-97.)

Applicant is well respected by his supervisors, colleagues, fiancée, and friends. Each speaks highly of Applicant's dedication and trustworthiness. He has completed a number of training courses through his present employer and is dedicated to his job. He also has been awarded a number of certificates from his employer and medals by the Army, including the Achievement Medal, the National Defense Service Medal, the Army Service Ribbon, the Antarctic Deployment Ribbon, and the Kosovo Service Medal. (AE C; AE D; AE E; AE F; AE G; AE H; AE I; AE P; AE BB; Tr. 45-52.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Since 2001, Applicant has not been financially solvent. He admits that he did not attempt to satisfy his debts until approximately 2008. In addition, he has a number of debts that remain unsatisfied. The Government established the disqualifying conditions in AG ¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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 not acted responsibly, or in a timely manner, to attempt to resolve his delinquent debt. Of Applicant's seven debts listed in the SOR, Applicant is making payments on one debt as alleged in 1.b. Two debts, 1.a., and 1.c., have been paid involuntarily, through garnishment. He is disputing 1.d. He was unable to present proof that he has satisfied or otherwise resolved 1.e., 1.g., and 1.h. His debt is current and on-going. Applicant's conduct does not warrant application of AG ¶ 20(a).

Applicant's debts may have been due, in part, to his ex-wife's mismanagement of money and their subsequent divorce, but he has had ample time to resolve his debts since then. Further, while he suffered two periods of unemployment, the first in 2004-2005 and the second in 2008 through April 2009, he failed to demonstrate responsible behavior toward his debts during his periods of employment. He has been employed with his present employer since April 2009 and has made little progress on his debts listed on the SOR. AG ¶ 20(b) is only partially mitigating.

Applicant presented evidence that in August 2007 he attended a financial management class. What effect, if any, this class had on Applicant's finances is unclear, as he did not focus on repaying any of his debts until 2008. He indicated he has been working with a consumer credit counseling service, since March 2010, however, his financial problems are not fully resolved or under control, despite having satisfied SOR allegations 1.a and 1.c., and successfully making two payments in the debt in 1.b. AG ¶ 20(c) does not apply.

Applicant has made a good faith effort to satisfy the creditors in SOR allegation 1.b. The same cannot be said for the debts in 1.a. and 1.c. On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.¹ Further, as previously noted, Applicant failed to provide documentation that 1.e., 1.g., and 1.h. have been resolved. AG ¶ 20(d) only applies in part.

Applicant disputes the legitimacy of his debt on his repossessed vehicle. He has enlisted the help of a consumer credit counseling service to dispute this debt. He has presented no evidence to substantiate a dispute with any of his other unsatisfied creditors. AG ¶ 20(e) is mitigating only with respect to allegation 1.d.

¹ ISCR Case No. 08-06058 (App. Bd. Sept. 21, 2009).

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant failed to list his delinquent debts on his 2009 EQIP in Sections 26(b) and 26(m). He clearly knew he had debts that had not been resolved since his last security interview and were over 180 days delinquent in the past 7 years and that he was currently over 90 days past due on some debts. Additionally, he knew he had a vehicle repossessed. Yet, he chose not to include the debts on the EQIP because he was embarrassed of them. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made

aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SF 86. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he fails to take responsibility for his actions. He has not provided information in this record to show that he has met his burden of proof for his personal conduct.

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 relevant 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments

under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his supervisors, friends, colleagues, and fiancée. He has honorably served in the U.S. Army. Those who know him best report that he has a high degree of honor and trustworthiness. His standards are reflected in the certificates he received during his employment with the government contractor and in the Army. However, he has not acted in a trustworthy manner when it comes to addressing his financial delinquencies or in completing his EQIP.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Financial Considerations and Personal Conduct security concerns.

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.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge