



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



In the matter of:)
)
) ISCR Case No. 08-01562
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

October 22, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E, Financial Considerations and Personal Conduct. 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on April 20, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July

24, 2009. DOHA issued a notice of hearing on August 3, 2009, scheduling the hearing for August 18, 2009. The case was reassigned to me on August 12, 2009. The hearing was convened as scheduled. DOHA received the transcript of the hearing (Tr.) on September 2, 2009.

Procedural and Evidentiary Rulings

Notice

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Evidence

The government offered Exhibits (GE) 1 through 5, which were received without objection. Department Counsel requested administrative notice of a document which he described as a printout of what is viewed on the computer screen when an applicant is electronically filling out a security clearance application. The printout was marked Hearing Exhibit (HE) I. The request for administrative notice was denied. The government then offered the document as a government exhibit. The document was remarked as GE 6 and admitted without objection.

Applicant testified on his own behalf, called two witnesses, and submitted Exhibits (AE) A through N, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted numerous documents, which were marked AE O through DD and admitted without objection. Department Counsel's memorandum is marked HE II.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He is seeking to renew his security clearance. He has worked for his current employer since 2004. He served in the military from 1997 through 2001, and was honorably discharged. He is attending college. He was married from 1999 until his divorce in 2000. He married again in 2001. He has three children, ages 10, 6, and 3. He has custody of his 10-year-old child from his first marriage.¹

Applicant was laid off from his employment in about February 2003. His wife was eight-months pregnant, and he lost his medical insurance. She had a difficult pregnancy then was unable to work. He obtained another job, but at a lesser salary. He worked several jobs with periods of unemployment until he was hired by his current employer in November 2004. During his period of underemployment and unemployment, a number of debts became delinquent and his leased car was repossessed. Applicant also engaged in a protracted custody battle over his oldest child, which involved high legal

¹ Tr. at 71-72; GE 1.

fees.² Applicant stated that he attempted to work with his creditors and various collection companies after his employment stabilized:

I took budgeting classes and began trying to sort through the entire negative portion of our credit history. I made every attempt to deal with all of the collectors. It was overwhelming. Many of the debts had changed hands several times. Most of the debt collectors had trouble providing any original information on the debts or sources. Some of the companies did not even exist anymore.

Frustrated I did what amounted to burying my head in the sand. I stopped checking my credit report. I gave up trying to get any kind of credit and resolved myself to save for anything we needed.³

The SOR alleges 21 delinquent debts. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, 1.h, 1.j, 1.l, 1.m, and 1.t. He denied owing the remaining debts. The total amount owed on the nine debts that Applicant admitted owing is about \$14,500. Four of the nine debts that Applicant admitted owing are medical debts, totaling \$364. Those four debts are alleged in SOR ¶¶ 1.h, 1.j, 1.m, and 1.t. Six of the twelve debts that Applicant denied owing are also medical debts, totaling \$700. Those six debts are alleged in SOR ¶¶ 1.b, 1.o through 1.r, and 1.u. Applicant provided evidence of numerous payments to medical providers. It also appears that several of the medical debts may be duplicates.⁴ Other individual debts are addressed below.

Applicant denied owing the delinquent debt of \$596 alleged in SOR ¶ 1.c. The debt is listed on the credit report dated October 5, 2007, but it is not listed on credit reports dated July 16, 2008, January 23, 2009, April 20, 2009, and August 17, 2009.⁵

On August 25, 2009, Applicant settled the delinquent debt of \$4,777 to a collection company on behalf of a financial institution, with a payment of \$2,982. This debt was alleged in SOR ¶ 1.d.⁶

SOR ¶ 1.f alleges a delinquent debt of \$12,374 for the deficiency owed on a car lease after it was repossessed in December 2003. Applicant admitted he had a car that was leased through the creditor named in the allegation, and the car was repossessed. He disputes the amount of the debt. He stated that he paid the lease for five years on a six-year lease and he did not believe he should still owe more than \$12,000. The credit

² Tr. at 29-32, 50-58; Applicant's response to SOR; GE 1, 2.

³ Applicant's response to SOR.

⁴ Tr. at 39, 60-64; Applicant's response to SOR; GE 2-5; AE U, W, Z-CC.

⁵ Applicant's response to SOR; GE 3-5; AE H, M.

⁶ AE W, X.

reports list the account as opened in January 2001, with payments of \$475 per month for 64 months. The high credit on the debt is listed as \$30,460, and the first delinquency is listed as occurring in December 2003. The balance on the debt was listed as \$12,533 on the 2007 credit report and \$12,374 on the four credit reports from 2008 and 2009.⁷

Applicant denied owing the delinquent debt of \$605 to a telecommunications company, as alleged in SOR ¶ 1.i. He admitted that he and his wife had cell phone service with the company, but he stated they discontinued the service after the end of their contract. He stated that he disputed the debt with the telecommunications company, but he did not dispute it with the credit reporting agencies. He was uncertain if the credit management company he is utilizing disputed the debt. He did not submit any documents in support of the dispute. The debt is listed on the 2007 credit report and both 2008 credit reports. It is not specifically listed under the telecommunications company on the two reports from 2009, but both reports list a debt of \$605 to a collection company.⁸

A state tax lien of \$8,481 for tax year 2003 was filed against Applicant in December 2007, as alleged in SOR ¶ 1.n. The state notified Applicant that he did not file his state income tax return for that year. Applicant stated that he filed both his state and federal tax returns for that year. His federal return was filed electronically, but he had to mail his state return. He stated that he did not keep a paper copy of the return, and he lost the electronic copy from his computer when the computer crashed. The state has recouped this debt through garnishment of Applicant's wages.⁹

SOR ¶¶ 1.k and 1.s concern delinquent debts to the same telecommunications company alleged in SOR ¶ 1.g. Applicant admitted owing the debt alleged in SOR ¶ 1.g but denied owing the other two debts. There is insufficient evidence for a determination that these represent distinct debts.¹⁰

Applicant has not made any payments on the four remaining non-medical debts that he admitted he owed. Those four debts, as alleged in SOR ¶¶ 1.a, 1.e, 1.g, and 1.l, total about \$9,400.¹¹

Applicant was questioned about his finances for his background investigation on November 8, 2007. He admitted to his delinquent debts and described how he got into financial difficulties. He stated that both he and his wife were working at that time, and they were in good financial shape. He stated he had contacted a financial counseling/credit management company the month before, and he intended to make

⁷ Tr. at 31, 68-70; Applicant's response to SOR; GE 2-5; AE H, M.

⁸ Tr. at 66-68; Applicant's response to SOR; GE 2-5; AE H, M.

⁹ Tr. at 49-50; Applicant's response to SOR; GE 2-4; AE F.

¹⁰ Tr. at 60-61; Applicant's response to SOR; GE 2-5; AE H, M.

¹¹ Tr. at 64-65; Applicant's response to SOR.

arrangements to pay his delinquent debts. Applicant is now earning a good income. He has a budget. He worked in Iraq and made about \$152,000 in 2008. He also worked in Iraq during 2009. Applicant contracted with the credit management company in December 2008. He stated that he will pay his delinquent debts after the credit management company verifies the debts and negotiates settlements. He and his wife have paid a number of debts not alleged in the SOR.¹²

Applicant submitted a Questionnaire for Sensitive Positions (SF 86) on August 28, 2007. He answered “No” to Question 27b, which asked “In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?” He also answered “No” to Questions 28a and 28b, which asked “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “Are you currently over 90 days delinquent on any debt(s)?” Applicant denied intentionally falsifying the SF 86. He stated that he did not know all the facts of his credit history when he submitted the SF 86, and many of the debts had been sold to collection companies. He stated that he knew his credit report would be pulled, and he would be able to discuss his finances with an investigator. At the hearing, he continued to deny any intent to mislead the government about his finances. Finally, after several evasive answers, he admitted that he knew the answers to the financial questions on the SF 86 were untruthful.¹³ After considering all the evidence, I find that Applicant intentionally falsified his SF 86.

Applicant submitted a performance appraisal from his company for the annual period ending September 2008. It reflected superior job performance, both in the U.S. and overseas. A witness who has known Applicant since they served together in the military testified to Applicant’s character, the source of Applicant’s financial difficulties, and that Applicant’s financial problems were being addressed.¹⁴

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 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

¹² Tr. at 35-40, 59; Applicant’s response to SOR; GE 2; AE A-E, G, J-L, N, P-W, Z-CC.

¹³ Tr. at 41-48, 73-75, 102-103; Applicant’s response to SOR; GE 1, 2, 6.

¹⁴ Tr. at 76-82; AE I.

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 the 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 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* Executive Order 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 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.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

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 settled one debt after the hearing. He has not resolved a number of other debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed his financial problems to his divorce, custody battle, unemployment, underemployment, and his wife's medical issues. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant told the background investigator in November 2007, that his finances had stabilized, both he and his wife were working, he had contacted a credit management company, and he intended to pay his delinquent debts. He did not contract with the credit management

company until December 2008. His tax debt was paid through a wage garnishment; he settled one debt after the hearing; and he paid a number of medical debts. Applicant earned \$152,000 last year. He also worked in Iraq in 2009, which would indicate a substantial salary for this year. Because of the amount of money he earned, without additional voluntary and timely payments on his delinquent debts, I am unable to make a finding that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received some financial counseling. He earned a large salary the last two years. However, he has not made sufficient payments on his delinquent debts for a finding that there are clear indications that his financial problems are resolved or under control. AG ¶ 20(c) is partially applicable.

Applicant paid several debts. AG ¶ 20(d) is applicable to those debts. Those payments do not support a finding that he made a good-faith effort to pay or resolve all his delinquent debts. AG ¶ 20(d) is not applicable to the unpaid debts.

Applicant paid a number of medical debts and disputed others. I find that AG ¶¶ 20 (d) and 20(e) are applicable to the medical debts alleged in SOR ¶¶ 1.b, 1.h, 1.j, 1.m, 1.o, 1.p, 1.q, 1.r, 1.t. and 1.u. The debts in SOR ¶¶ 1.k and 1.s are duplicates of the debt alleged in SOR ¶ 1.g. AG ¶ 20(e) is applicable to the duplicate debts. It is also applicable to the debt in SOR ¶ 1.c, which does not appear on the four most recent credit reports. Applicant did not submit documents in support of his dispute of the debt to a telecommunications company alleged in SOR ¶ 1.i. AG ¶ 20(e) is not applicable to that debt.

Guideline E, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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.

Applicant intentionally falsified his SF 86 in August 2007, when he failed to divulge an automobile repossession and delinquent debts. AG ¶ 16(a) is applicable as a disqualifying condition.

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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant discussed his finances and delinquent debts when he was interviewed for his background investigation in November 2007. That does not constitute a prompt, good-faith effort to correct the falsification before being confronted with the facts. While he receives credit for discussing the information with the investigator, it is insufficient to establish a mitigating condition. I find that no mitigating conditions are applicable.

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) 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. I considered Applicant's honorable military record, important service to this country as a contractor in Iraq, favorable employment performance, and his character evidence. Applicant went through a difficult period financially, caused by his divorce, a protracted custody battle, unemployment, underemployment, and his wife's medical issues. He has worked for his current employer since 2004. His service in Iraq generated a large income. Applicant does not have a huge amount of delinquent debt remaining. His failure to address his finances speaks more toward a disregard of his obligations rather than an inability to pay his debts. He intentionally provided false information on his SF 86; he was less than truthful in his response to the SOR; and he was evasive at the hearing. Serious doubts remain about Applicant's judgment, honesty, and trustworthiness.

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 not mitigated 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
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

Subparagraphs 1.j-1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m-1.u:	For Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraphs 2.a-2.c:	Against Applicant
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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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge