



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



In the matter of:)
)
) ISCR Case No. 08-02717
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from financial considerations and personal conduct. He falsified his security clearance application. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application on October 23, 2006 (Electronic Questionnaire for Investigations Processing (e-QIP)) (GE 1). On October 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹

¹ 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 answered the SOR on October 21, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on November 24, 2008. DOHA issued a notice of hearing on December 1, 2008. I convened the hearing as scheduled on December 16, 2008. The government offered exhibits (GE) 1 through 4, which were received without objection (Tr. 34). Applicant testified on his own behalf, presented one witness, and submitted exhibits (AE) 1 through 6, which were received without objection (Tr. 40). I kept the record open to allow Applicant time to submit additional matters in support of his case. He submitted AE 7 post-hearing. DOHA received the transcript of the hearing (Tr.) on December 24, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the allegations in SOR ¶ 1, except for SOR ¶ 1.j, which he denied. He also denied all the allegations under SOR ¶ 2. After a thorough review of all evidence of record, including his demeanor and testimony, I make the following findings of fact.

Applicant is a 54-year-old principal engineer scientist (Tr. 122). He completed his Bachelors of Science degree in electrical engineering in June 1976 (Tr. 6). He has worked for government contractors for the last 32 years. Except for a five month period of unemployment, from May to September 2001, he has been consistently employed since November 1995 to the day of his hearing (Tr. 80-83).² He was underemployed from September 2001 until around 2002-2003.

In August 2008, he was hired by his current employer, a government contractor. His supervisor over the past four months considers Applicant to be dedicated, honest, and a good employee (Tr. 144). He has known Applicant since August 2008, when he hired him from another government contractor to come and work for his company. In his opinion, Applicant is reliable and always gives his best effort. He believes Applicant made an honest mistake when he submitted his security clearance application and recommended his continued access to classified information.

At his hearing, Applicant presented character statements from friends, co-workers (some of them retired service members), and a facility security officer (FSO), most of whom have know him for around five years (AE 6 and GE 4). Applicant is considered to be honest, trustworthy, and a model employee. At his prior job, he was the point of contact for dealing with classified documents and computer systems. He has a reputation for knowing and diligently following security rules and regulations. In his references' opinions, he has been a strong team member, an important asset to his employer, and a dedicated husband and father. There is no reason to doubt his patriotism, honor, and love for the United States. He is not considered a security risk. All his references endorsed his continued access to classified information. His FSO believes Applicant was provided wrong advice, and that with proper instruction

² Applicant also had a two-month period of unemployment during 1995.

Applicant would not have made the mistakes that led to his pending security clearance determination.

In 1977-1978, Applicant received access to classified information at the secret level from the Department of the Navy (Tr. 7). Thereafter, he had access to classified information on-and-off based on his employment needs. Applicant has had continued access to classified information at the secret level from 1998 to his hearing (Tr. 134). There is no evidence, and the government did not allege, that Applicant has ever compromised or caused others to compromise classified information. Since 1998, Applicant has submitted several security clearance applications. However, all but his last application were paper applications. His October 2006 application was an e-QIP completed using his work computer. He claimed he was unfamiliar with the electronic security clearance application, and was confused filing the application.

Applicant married his first wife in 1980 and they were divorced in 1987 (Tr. 116-118). He adopted his wife's two children from a prior marriage. The two children are now adults and live independently. He married his second wife in 1988 and they were divorced in 1997. He married his third wife in 1997 and they were divorced in 1999. He married his fourth wife in November 1999 and they were divorced in August 2001. He married his current wife in October 2001. He has no other children.

Applicant's background investigation addressed his financial situation and included the review of his October 2006 security clearance application, his responses to DOHA interrogatories (GE 3 & 4); and two credit bureau reports (CBRs) (GEs 2 & 4).

The SOR alleges 11 delinquent/charged off accounts. Applicant admitted that seven of the 11 delinquent debts alleged in the SOR were his legal obligations. He challenged three of the SOR allegations because they are duplicates of already alleged debts. I find that SOR ¶¶ 1.a and 1.i allege the same debt (Tr. 127); 1.b and 1.g allege the same debt (Tr. 124-125); and 1.d and 1.k allege the same debt. He also claimed SOR ¶¶ 1.a, 1.i, 1.b and 1.g are the same debt. However, he failed to present documentary evidence to establish these four debts are the same. Applicant paid all delinquent debts after receipt of his October 2008 SOR, except for SOR ¶ 1.a (same as 1.i) which remains outstanding. Applicant's insurer paid SOR ¶ 1.j before his receipt of the SOR.

Applicant admitted his debts have been delinquent since 2001. He stopped paying his debts when he lost his job and was unemployed for a period of five months in 2001. Applicant explained that his financial problems were caused by a combination of factors; i.e., two periods of unemployment (the first for two months in 1995, and the second from May to September 2001), a period of underemployment after September 2001, and his four divorces (Tr. 27, 43). He testified that prior to 1996, he had excellent credit. He acquired most of his delinquent debts between 1998 and 2001 (Tr. 44, 130).

Applicant claimed he made no effort to settle, pay, or resolve the debts alleged in SOR ¶¶ 1.d (\$10,212) (a water purification system for the foreclosed mobile home (Tr.

87-88)); 1.e (\$10,360) (note for a repossessed car he gave to his ex-wife (Tr. 89)); 1.f (\$25,253) (mortgage for repossessed mobile home Applicant purchased for ex-wife (Tr. 95-96)); and 1.h (\$3,559) (computer he purchased for ex-wife (Tr. 102-103)), because these items were awarded to his ex-wife by his 1999 divorce decree (Tr. 104). Applicant's 1999 divorce decree awarded the mobile home to his ex-wife (AE 7). However, the divorce decree is silent with respect to the debt for the computer and the car. Applicant testified he purchased the computer and the car, and that his ex-wife kept both items as part of the division of assets during the divorce. He claimed she agreed to pay for both items. Applicant presented no documentary evidence to establish his claims.³

In 2003-2004, Applicant and his current wife were in the process of buying a home. His delinquent debts surfaced during his home loan application process. Applicant claimed that a banker (a friend of his wife) advised him to forget about the old delinquent debts – to let them go, because they would eventually drop off his credit report (Tr. 66-67, 135, GE 4). Applicant and his wife bought the home in August-September 2004.

During his December 2006 background interview with a government investigator, Applicant was confronted with the same delinquent obligations alleged in the SOR. He admitted that he acquired the debts, but claimed that his ex-wife took responsibility for most of them, some pursuant to his 1999 divorce decree. Applicant stated he had no intention to pay the debts (GE 3).

In October 2006, Applicant submitted a security clearance application (GE 1). In response to question 27 (asking whether in the last seven years he had his wages garnished or had any property repossessed for any reason), Applicant deliberately answered "No" and failed to disclose that he had his car repossessed (SOR ¶ 1.e), that the mobile home he purchased was repossessed (SOR ¶ 1.f), and that his mortgage was foreclosed for lack of payments (GE 3).

In his answers to question 28 (asking whether during the last seven years he had been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any debts), Applicant answer "No," and deliberately failed to disclose the delinquent debts alleged in SOR ¶¶ 1.b through 1.f, 1. h, and 1.i.

Applicant repeatedly averred he never intended to deceive the government or to falsify his security clearance application – that he made an honest mistake (Tr. 43-45). He claimed he omitted the required information because of the following reasons (Tr. 27-29, 43): (1) it was the first time he completed an e-QIP and he was confused; (2) he misread or did not read completely question 27 (Tr. 59-60); (3) an assistant facility security officer told him to go back only five years (instead of the seven years required by the e-QIP); (4) he believed the delinquent debts had dropped off his CBR (a banker told him that the debts would fall off); (5) when he submitted his e-QIP he was in a

³ Moreover, there is no evidence the creditors agreed to release him from these obligations and generally, a family court decision does not release him from responsibility for debts.

stable marital situation, he was current in all his present debts, and forgot about his past delinquent debts; (6) he knew that the debts and foreclosures would be discovered and addressed when the investigators reviewed his CBRs (Tr. 62); (7) he did not disclose the repossessions and foreclosures because those debts were assigned to his wife by the 1999 divorce decree; and (8) he believe the sale of the foreclosed property covered the debt owed (Tr. 98-103, 111).

Applicant testified that since September-October 2001, he and his current wife have been reestablishing his credit. They have lived within their means, and they do not abuse their credit or use credit cards. Since 2001, they have paid all their new debts. He has been able to pay his new creditors because of a stable marriage and good working opportunities.

As soon as he realized the adverse impact his bad credit would have on his ability to possess a security clearance (i.e., he received the SOR), Applicant cashed in his 401(k) to pay his delinquent debts (AE 1). He paid all six delinquent debts after receipt of his October 2008 SOR (except for 1.a). He explained he never attempted to resolve his debts before October 2008, because he did not have the financial means to do so. His earnings were not sufficient to pay for his delinquent obligations and his family's day-to-day living expenses (Tr. 72-73). He also explained he made an honest mistake when he followed the wrong advice from his banker friend to let the debts lapse and fall off of his CBR.

Applicant expressed sincere remorse and embarrassment for the way he handled his past financial problems. He promised never to get in the same situation again. He explained his financial problems were caused by a unique set of circumstances and misunderstandings that were unlikely to repeat themselves. He has learned his lesson and he is now well aware of what it is required of him to show that he is reliable, trustworthy, and financially responsible.

Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁴

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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

factors listed in the adjudicative process. The Administrative Judge's controlling 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."⁵ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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

Under Guideline F, the security concern is that an Applicant's 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

⁵ *Egan, supra*, at 528, 531.

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The SOR alleged seven delinquent/charged off accounts (not considering duplications) totaling approximately \$55,000. Of these, only SOR ¶ 1.a (same as 1.i) (\$1,279), remains outstanding, because Applicant claims it is a duplicate of a paid debt. He failed to present documentary evidence to support his claim. Applicant acquired all of his delinquent debts from 1998 to 2001. He stopped paying his debts in 2001, when he was unemployed/underemployed. The debts alleged in SOR ¶¶ 1.d (\$10,212) and 1.f (\$25,253) were awarded to his ex-wife pursuant to his 1999 divorce decree.⁶

He presented no evidence (other than his testimony) of any efforts to settle, pay or resolve his legal obligations from 2001 to December 2008. He claimed he did not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

⁶ See *supra* foot note 3.

Applicant receives credit for paying all his delinquent debts (but one), albeit after receipt of the SOR. Notwithstanding, I find that AG ¶ 20(a) does not apply. His financial problems are recent and not isolated. He carried a large delinquent debt for seven years, waiting for the statute of limitations to lapse and his debts to fall of his CBR. The ongoing nature of his delinquent debts and the number of debts show “a continuing course of conduct.”

Applicant presented evidence that established circumstances beyond his control contributing to his inability to pay his debts, i.e., his numerous divorces; he was unemployed/underemployed during five months in 2001; and for a period of time he was underemployed and did not have the financial means to pay his past debts and his family’s day-to-day living expenses. AG ¶ 20(b) applies, but only partially.

Applicant’s evidence is not sufficient to show he acted responsibly under the circumstances. He carried a large delinquent debt for seven years, waiting for the statute of limitations to lapse and his debts to fall of his CBR. He deliberately failed to take any action to resolve his delinquent debt. He was continuously and gainfully employed since September 2001 to the present. He changed employers several times, on each occasion improving his economic situation. He purchased cars, bought a home, and contributed to his 401(k). However, Applicant failed to take any action to resolve his debts until after he received the SOR.

He claimed he did nothing to resolve his delinquencies because of the bad advice he received. In 2003-2004 when he allegedly received the bad advice, Applicant was 47 years old, a college graduate, a successful employee of government contractor for many years, and had had access to classified information (on-and-off) for 25 years. Applicant knew or should have known that the government requires individuals entrusted with access to classified information to be responsible, trustworthy, and to display good judgment.

AG ¶ 20(c) applies. He paid his delinquent debts (except one). He has stable employment with sufficient income, and he no longer has any financial problems. Notwithstanding, Applicant favorable information is not sufficient to mitigate the financial considerations concerns. Considering the totality of the circumstances, Applicant’s last minute actions to repay his creditors do not raise to the level of good-faith efforts to resolve his debts. His failure to pay his debts for seven years shows lack of judgment and an unwillingness to abide by rules and regulations. His actions raise questions about his reliability, trustworthiness and ability to protect classified information.

Guideline E, Personal Conduct

Under Guideline E, the security concern is that 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. AG ¶ 15.

Applicant omitted relevant information in his answers to questions 27 and 28 of his security clearance application. I conclude Applicant's omission of the foreclosure and repossession of his mobile home (SOR ¶ 1.f) was not deliberate. His 1999 divorce decree awarded his ex-wife the mobile home. It was reasonable for Applicant to believe that the mobile home was no longer his property, and that all financial responsibility for it rested with his ex-wife.⁷ The divorce decree is silent with respect to Applicant's repossessed car, or any other loan, or item he purchased for his ex-wife. He presented no documentary evidence to show that the car, loans, or any items were his ex-wife's financial responsibility.

Considering the record as a whole, I find Applicant deliberately failed to disclose the debts listed in SOR ¶¶ 1.a - 1.e, and 1.h. He personally acquired these debts and stopped paying them when he lost his job and was unemployed for five months. He rediscovered his debts in 2003-2004 when he was in the process of buying his home, and elected not to pay his delinquent obligations. He chose to let the statute of limitations run so that the debts would expire, and with time, fall off his CBR. He was confronted with the delinquent debts in 2006 and he again stated his intent not to pay them. In light of Applicant's education, maturity, his employment history, his demeanor and testimony, and the lack of credibility of his numerous explanations, I find he knew about the debts and chose to ignore them. In 2006, when he completed his security clearance application, Applicant knew or should have known about his delinquent obligations and deliberately failed to disclose them.

Because of his extensive experience working for government contractors and holding a security clearance, Applicant knew the importance of accurately completing his security clearance application and telling the truth. Nevertheless, he failed to provide information that was material to making an informed security decision and made a false statement. AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire," applies.

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns:

- (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;

⁷ Generally, a family court decision does not release a debtor from responsibility for debts unless the creditors consent, or they are part of the legal action.

(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;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering all the mitigating conditions, I find none applies to this case. Applicant made no effort to correct his omissions until he was confronted with his delinquent debts. I do not believe his claims that security personnel told him to go back only five years, or that a banker told him to disregard his delinquent obligations. Considering the record as a whole, Applicant's extensive list of conflicting explanations is not credible. I specifically considered AG ¶ 17(c), and find it does not apply since his behavior is recent and shows Applicant's lack of reliability, trustworthiness, and judgment.

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 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 is a mature, educated, and well trained man. He has diligently and successfully worked for numerous government contractors for 32 years. He has held access to classified information on-and-off for approximately 30 years without any complaints or violations.

Because of his years in the service and his many years holding access to classified information, Applicant knew or should have known the importance of the trust placed on him by the Government. Notwithstanding, he failed to be candid and honest on his security clearance application and during his testimony at hearing. His behavior shows he lacks judgment, reliability, and trustworthiness.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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
Subparagraphs 1.a – 1.e, and 1.h:	Against Applicant
Subparagraphs 1.f, 1.g, and 1.i -1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a	For 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 continue Applicant's security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge