



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



In the matter of:)	
)	
)	ISCR Case No. 08-03110
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Pro Se

October 31, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86), on December 20, 2006. On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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.

Applicant acknowledged receipt of the SOR on June 30, 2008. He answered the SOR in writing on July 14, 2008, and requested a hearing before an administrative

judge. DOHA received the request shortly thereafter. Department Counsel was prepared to proceed on July 17, 2008, and I received the case assignment on August 4, 2008. DOHA issued a notice of hearing on August 15, 2008, which Applicant received on August 20, 2008. I convened the hearing as scheduled on September 8, 2008. The government offered 13 exhibits (GE) 1 through 13, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted six exhibits (AE) A through F, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 15, 2008. I held the record open until September 30, 2008, for Applicant to submit additional matters. On September 30, 2008, he submitted additional documents, which are marked as AE G through R, and admitted without objection. On October 8, 2008, Applicant requested permission to submit an additional document. I granted his request. The next day Applicant submitted AE S, which has been admitted into the record without objection. The record closed on October 9, 2008.

Findings of Fact

In his Answer to the SOR, dated July 14, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.d, 1.i, 1.n, and 1.q of the SOR. He denied the remaining factual allegations in the SOR.

Applicant, who is 51-years-old, works as a software developer and consultant for a Department of Defense. He has worked for this employer since December 2006.¹

Applicant graduated from college in 1980 with a degree in engineering technology. Following graduation, he worked for the state government until 1993, when he retired. Shortly before his retirement, he married. He has no children.²

Following his retirement, Applicant worked for two companies briefly, then decided to establish his own business. He set up a Subchapter S corporation related to information technology (IT) in the middle 1990s. His wife continued to work full-time at her job, while he developed his business. He obtained long-term contracts and eventually started to make some money. In the late 1990s, he decided to develop a second business and convinced his wife to leave her job to operate the first business. He rented office space, hired a marketing person, obtained more work contracts, and hired employees. Over time and due to a change in the business market, his contracts did not generate sufficient revenue to pay all the expenses needed to operate the second business. He used his personal income to pay his employees, which resulted in his inability to pay his own personal bills. The change in the business market and resulting loss of revenues ultimately caused his businesses to fail.³

¹GE 1 (Applicant' security clearance application (e-QIP)) at 6, 11.

²*Id.* at 9, 10, 12, 14; Tr. 28-29.

³Tr. 29-36.

Applicant's financial problems with his businesses created tax issues and financial problems at home. He and his wife separated in 2005 and are now divorced. In 2006, he and his wife decided to sell their home and use the proceeds to pay off debts. The proceeds from the sale of the house paid his federal tax lien, state tax liens, and the mortgages on the house. Applicant received almost \$13,000 in sale proceeds once his tax liens and mortgages had been paid. He did not provide information which reflects that this money paid other debts not listed in the SOR.⁴

Three months ago, Applicant moved into his parents house to save money. He also helps his parents with the care of his grandmother, who is 101 years old. His gross monthly income is \$7,520 a month and his net monthly income is \$5,884 a month. His monthly expenses total approximately \$2,300, leaving a net remainder of \$3,584.⁵

Concerning the remaining debts listed in the SOR, Department Counsel agreed, at the hearing, that the debts listed in SOR allegation 1.a. and 1.n are the same and in SOR allegations 1.l, 1.m and 1.p belong to the same creditor.⁶ These two debts total \$10,754 and are unpaid.⁷

Applicant admitted that he owed, but has not paid the debts listed in SOR allegations 1.b, 1.c, 1.d, 1.i, and 1.q, which total \$4,032. These debts relate to credit cards, except for 1.q, which is a medical bill. The September 2008 credit report indicates a zero balance for the debt listed in allegation 1.b. Applicant denied owing the debts listed in SOR allegations 1.e and 1.r, totaling \$1,950, in his response to the SOR, but acknowledged the debts at the hearing. Applicant denies any knowledge of the judgment in allegation 1.e. He believes a former employee obtained computer parts from another company without his knowledge and charged the purchase to his company. He did not receive any notice of a pending court action and did not appear in court to contest the case. He recently disputed this judgment with the credit reporting agency as not valid, but has not disputed the debt with the court. He stated that he tried to locate the creditor, but could not. These debts are not paid.⁸

Applicant believes that two judgments listed in SOR allegations 1.f and 1.h are the same. The record reflects that the creditor for the debt in allegation 1.h obtained a judgment in 1998 and a second judgment for a lesser amount in 1999. Applicant also

⁴GE 2 (Interrogatories and answers by Applicant plus attachments); AE B (Certificate of Release of Federal Tax Lien, dated September 20, 2006); AEs C, G and H (Verification of State Tax Lien identified in GE 6); AEs G and H (Verification of State Tax Lien identified in GE 7); AEs D and G (Verification of State Tax Lien identified in GE 10); Tr. 36-37.

⁵GE 2, *supra* note 4, at 5.; Tr. at 76-80.

⁶Accordingly, I find "For Applicant" with respect to SOR ¶¶ 1.a, 1.l, and 1.m to eliminate the duplication.

⁷GE 4 (Credit report, dated January 9, 2007) at 13, 14; Tr. 40, 58-62, 65-68.

⁸GE 3 (Credit report, dated April 1, 2008); AE A (Credit report, dated September 5, 2008) at 11; Tr. 40-47.

believed he paid these judgments a long time ago, but has not provided proof of payment. Applicant denied owing money to the insurance company identified as the creditor in SOR allegation 1.o and challenged this debt. As a result of his challenge, the debt has been removed from his credit report. I find that this debt is not owed by him. His most recent credit report indicates a charge off in the amount of \$3,206 for a bank, which is not listed in the SOR. His evidence indicates this bank has been paid in full. There are other debts on his newest credit report, which are not paid and not listed in the SOR.⁹

When Applicant completed his security clearance application in December 2006, he answered “no” to Questions 27c, 27d, 28a, and 28b, which concern the existence of delinquent debts and tax liens. Applicant denies that he deliberately falsified his answers to these questions. At the hearing, Applicant explained that he knew he had old debts. He fluctuated on whether to answer “yes” or “no” to the questions about his debts because he knew if he left something out, he would have a problem or if he answered “no” he would have a problem. Since his current bills were paid, he denied having any bills currently 90 days delinquent. He denied having any unpaid judgments in the last seven years because he had paid the 1998 and 1999 judgments, forgot about the judgment listed in SOR allegation 1.I, and believed he did not owe the judgment in SOR allegation 1.e. He acknowledges he had tax liens and could not provide a reason for his “no” answer on Question 27c.¹⁰

Applicant completed his security clearance application on-line at home starting in the evening and finishing it the next day because the recruiter had requested that he submit it immediately. He did not obtain a copy of his credit report prior to completing his security clearance application nor did he review any of his files while filing out the security clearance application. His recruiter advised him that he could correct problems in his interview.¹¹

Applicant’s team leader testified on his behalf. He has worked with Applicant for the last two years and sees him everyday. He described his work ethic as very good as Applicant assumes duties no one else wants to do, provides excellent insight and solutions to issues, and is reliable. His project manager had similar comments about Applicant’s work ethic and skills.¹²

⁹GE 9 (Information sheet on judgment); GE 11 (Information sheet on judgment); AE M (Mortgage satisfaction line); AE O (Mortgage); AE S (Credit report, dated October 4, 2008) at 2; Tr. 47-48,

¹⁰Tr. 72-76.

¹¹*Id.* at 84-92.

¹²AE F (Letter, dated September 3, 2008); Tr. 115-118.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated significant delinquent debt when his business operations failed to generate sufficient revenue to pay expenses. He still has significant unpaid debts and has shown no willingness to quickly resolve these debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial worries began in 2000 and continue to the present. Since his financial problems occurred over long period of time, this mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where "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." Applicant's financial problems occurred when the business markets changed and his business revenues declined. As a business owner, he properly used his own funds and borrowed money to assure that his employees were paid and pay his business expenses. He had no control over the business markets. I find this potentially mitigating condition is partially applicable in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant has not received any financial counseling, except a suggestion that he sell his house to help resolve his debt problems, which he did. He still has significant unpaid debts and has not yet developed

a strategy or payment plan to resolve these debts. Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant paid the outstanding tax liens and mortgages with the proceeds from the sale of his house. He, however, has not made any effort to resolve his remaining debts. I conclude these potentially mitigating conditions are partially applicable.

Finally, under AG ¶ 20(e), Applicant could mitigate the government’s security concerns by showing he had “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 denied owing any additional premiums to the insurance company identified in SOR allegation 1.o because he has cancelled the insurance policy. Subsequent to the hearing, he dispute this debt and the debt has been removed from his credit report. He challenged the validity of other debts, but did not provide “documented proof” that he disputed these debts. The mitigation condition applies to SOR allegation 1.o only.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct::

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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.

The government established that Applicant omitted material facts from his SF-86 when he answered “no” to Questions 27c, 27d, 28a, and 28b about his financial delinquencies, judgments, and tax liens. This information is material to the evaluation of Applicant’s trustworthiness to hold a security clearance and to his honesty. He denies, however, that he deliberately falsified his answer to these questions. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred. An administrative judge must consider the

record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹³ For DC ¶ 16 (a) to apply, the government must establish that Applicant's omission, concealment or falsification in his answer was deliberate.

Applicant admits that he considered answering "yes" to these questions because he knew he had financial problems in the past. He worried that if he failed to provide all the necessary information he may have a problem. Applicant has acknowledged that he chose to answer "no", not "yes", when he knew that he had financial problems with unpaid debts in the past and tax liens had been filed against his house. I find that Applicant intentionally falsified his answer to Questions 27c and 28a. He did not intentionally falsify his answer to Question 28b as he rationally thought the question meant his current debts, which he had paid. Likewise, he did not intentionally falsify his answer to Question 27d because the debts listed in SOR allegations 1.f and 1.h were more than seven years old and Applicant forgot about the other judgments. I do not accept his statement that he could correct his SF-86 after submission as truthful and accurate. In light of my findings, none of the mitigating conditions apply.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) 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.

In reaching a conclusion under the whole person concept, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When these problems first began, Applicant and his wife were operating two businesses. The second business did not develop as he had anticipated. The expenses for operating the business exceeded the revenue

¹³See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

regularly. He used his personal income and bank loans to pay these expenses to the detriment of his personal expenses. He accumulated debt due to circumstances beyond his control. His business is gone. He still has debt problems related to his business.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has not acted with due diligence to resolve his remaining outstanding debts, despite availability of almost \$3,000 a month after his expenses are paid. Applicant’s failure to honestly answer questions about his finances raises questions about his trustworthiness. He has not demonstrated a rational reason for his decision to answer “no” to two financial questions on his security clearance application. His failure at his hearing to candidly explain why he provided a false SF-86 remains a security concern.

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 the security concerns arising from his financial considerations.

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:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

Against Applicant

Subparagraph 1.d:

For 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.

MARY E. HENRY
Administrative Judge