



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-03497
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro Se*

January 22, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 19, 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 (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 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 in writing on September 7, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on November 5, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not object to the admission of the items attached to the FORM, and they are admitted. Applicant submitted a series of documents, which were marked AE A through F and admitted without objection. The case was assigned to me on January 7, 2010.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He is applying for a security clearance. He held a clearance in the past, but it has lapsed. He has a bachelor's degree, awarded in 1975. Applicant served on active duty as an officer in the United States Army from 1975 until he was honorably discharged in 1981. He served in the inactive reserve from 1981 until 1989. He is a disabled veteran and receives disability benefits. He married in 1976, and divorced in 1977. He married again in 1977, and is still married. He was separated for a number of years. His current status is unclear, but it appears he is separated. He has no children.¹

Applicant's mother had a stroke in 1993, followed by the onset of Alzheimer's disease. His father developed cancer in 1998, and he also eventually became afflicted with Alzheimer's. He lived with his parents during this period and was their primary caregiver. Applicant's and his parents' savings were depleted by the medical and other expenses incidental to their care. Applicant applied for credit cards in his own name and also co-signed for credit cards with his father. They used the cards until the cards reached their limit. They were unable to meet the payments, and several debts became delinquent. By 1998, Applicant's mother required 24-hour care. They obtained caregivers who worked 24 hours by shifts. Applicant moved in with his wife, who he had been separated from since 1985. He stated that the caregivers would not work the midnight shift if he was living at his parents' home. He continued to spend a lot of time at his parents' house. His parents both passed away in 2005. His father was 89 when he passed away, and his mother was 86 at the time of her death.²

The SOR alleges five delinquent debts and an unpaid judgment. Applicant admitted that at one point he owed the judgment for \$24,507 and the delinquent debt of \$19,815, as alleged in SOR ¶¶ 1.a and 1.f, but he provided documentation that the judgment was satisfied in December 2008, and the delinquent debt was paid in September 2009. He admitted owing the \$11,610 debt alleged in SOR ¶ 1.e. He stated that he is in contact with the collection company handling this debt and "will be working

¹ Items 4, 5; AE A.

² Items 4-6.

out a payment arrangement with them to settle this debt.” He denied owing the remaining three debts.³

The debts that Applicant denied owing include a bank (SOR ¶ 1.b-\$6,169), a collection company on behalf of the same bank (SOR ¶ 1.c-\$8,190), and another financial institution for a credit card (SOR ¶ 1.d-\$11,671). The two bad debts to the same bank alleged in SOR ¶¶ 1.b and 1.c are listed on a credit report obtained on April 7, 2007. However, the entries indicate that the debts were purchased by another lender and show a zero balance. The credit report entry for the SOR ¶ 1.b debt shows Applicant as an authorized user. The entry for the SOR ¶ 1.c debt shows the debt as a joint account. The credit report also lists a separate entry for the SOR ¶ 1.c debt as collected by a collection company, with a balance of \$8,190. The \$11,671 debt alleged in SOR ¶ 1.d is also listed on the 2007 credit report. It shows Applicant as an authorized user. Applicant disputed these three debts claiming they were his father’s debts. The debts alleged in SOR ¶¶ 1.b and 1.c do not appear on later credit reports. The debt alleged in SOR ¶ 1.d is listed on credit reports obtained in May 2009.⁴

Applicant responded to DOHA interrogatories in May 2008. He included a personal financial statement (PFS), which indicated he had a net monthly remainder (total net monthly income minus total net monthly expenses and debts) of minus \$920. The listed net monthly remainder was not accurate as Applicant’s mortgage of \$628 was double counted under both monthly expenses and debts. Applicant stated that the PFS is no longer accurate. He stated in his response to the SOR that his net monthly remainder at that time was a positive \$1,500, “which would provide for monthly payments on any remaining delinquent debts.”⁵

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2007. He answered “No” to Question 27d, which asked “In the last 7 years, have you had any judgments against you that have not been paid?” 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)?”⁶

Applicant denied intentionally falsifying the SF 86. He stated that he was unaware that a judgment was entered against him. Because he was not living at his father’s home, he did not always receive mail that was sent there. He stated that the default judgment to a collection company on behalf of a bank was entered against him in 2002.⁷ It is feasible that Applicant was unaware of the judgment. I find there is

³ Item 4; AE A-D.

⁴ Items 4, 5-9; AE A.

⁵ Items 4, 6.

⁶ Item 5.

⁷ Items 4, 6; AE A.

insufficient evidence for a determination that Applicant intentionally falsified the question about unpaid judgments.

Applicant admitted that the answers to Questions 28a and 28b were incorrect, but he denied that they were intentionally false:

In the past, when I filled out and completed written SF-85 and SF-86 Forms or other forms of security clearance applications for several job positions with other government contractors, some had asked for information only for the last 7 years on active accounts. That is why I had answered "NO" to several questions concerning my finances. I was assuming that the information being asked about was regarding current active accounts and not ones that were inactive or in collections.⁸

After considering all the evidence, including Applicant's age, education, and experience, as well as the questions themselves, I did not find Applicant's explanations to be plausible. I find that he intentionally provided false answers to Questions 28a and 28b.

Applicant left a job by mutual agreement following allegations of misconduct in 2006. He used the company's information technology (IT) resources for personal use. He indicated that he had difficulty concentrating and maintaining focus at work because of the impact his parents' deaths and the suicide of a co-worker had on him. He received counseling which helped him cope with his grief issues. There is no indication of any other similar conduct.⁹

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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

⁸ Item 4.

⁹ Items 4, 6; AE A.

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 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 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. 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 satisfied the \$24,507 judgment in December 2008, and the \$19,815 delinquent debt was paid in September 2009. He has not resolved another debt for more than \$11,000. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant was the primary caregiver for two elderly, sick parents before they passed away in 2005. He incurred a number of debts to help pay for their care. Those are conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant was clearly responsible for two debts and a judgment, totaling \$55,993. He paid the two largest debts, totaling \$44,322. He is in contact with the collection company handling the \$11,671 debt, and intends to work out a payment arrangement with them to settle the debt. I find that Applicant acted responsibly and initiated a good-faith effort to repay

his overdue creditors. There are clear indications that his financial problems are being resolved. AG ¶¶ 20(b), 20(c), and 20(d) are applicable.

Applicant disputed owing the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d. The 2007 credit report does not list a balance due for the SOR ¶ 1.b debt, and it lists Applicant as an authorized user on the account. The debt does not appear on any credit reports after 2007. The SOR ¶ 1.c debt does not appear on any credit reports after 2007. The 2007 credit report lists Applicant as an authorized user on the SOR ¶ 1.d account. Applicant established that he has a reasonable basis to dispute the legitimacy of the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d. AG ¶ 20(e) is applicable to those debts.

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 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;

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant left a job by mutual agreement in 2006, after he used the company's IT resources for personal use. That behavior, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations. AG ¶ 16(c) is applicable. It is also conduct that could create a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) is applicable.

Applicant intentionally falsified his SF 86 in March 2007, when he failed to divulge his delinquent debts. AG ¶ 16(a) is applicable as a disqualifying condition. There is insufficient evidence for a determination that he intentionally falsified the question about unpaid judgments. SOR ¶ 2.a is concluded for Applicant.

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 admittedly used his company's IT resources for personal use. That behavior happened in 2006, shortly after he lost his parents and the death of a co-worker by suicide. Applicant received counseling. There is no evidence of any similar incidents. AG ¶¶ 17(c), 17(d), and 17(e) are applicable to the conduct alleged in SOR ¶ 2.c.

Applicant has denied falsifying his SF 86. Those denials are not credible and are additional false statements. I find that no mitigating conditions are applicable to the intentional falsification of his SF 86.

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 have considered Applicant's service to this country as an Army officer and as a DoD contractor. His financial difficulties were related to his caring for his ill parents until they died. Those concerns are mitigated. He intentionally provided false information about his financial problems on his SF 86. Those concerns are not mitigated.

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 mitigated Financial Considerations concerns, but has not mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

