



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



In the matter of:)
)
) ISCR Case No. 08-03658
SSN:)
)
Applicant for Security Clearance)

Appearances

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

September 14, 2009

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 June 24, 2007 and resigned it on July 18, 2007. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E on November 7, 2008. 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. He answered the SOR in writing on November 29, 2008, and requested a hearing before an administrative judge. DOHA

received the request on December 1, 2008. Department Counsel was prepared to proceed on March 20, 2009. DOHA assigned the case to another administrative judge on April 16, 2009, who scheduled a hearing on May 22, 2009. Due to an unexpected emergency, the administrative judge could not proceed with the hearing as scheduled. DOHA reassigned the case to me on May 26, 2008. DOHA issued a notice of hearing on June 22, 2009, and I convened the hearing as scheduled on July 10, 2009. The government offered six exhibits (GE) 1 through 6, which were received and admitted into evidence without objection. Applicant and one witnesses testified on his behalf. He submitted five exhibits (AE) A through E, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 16, 2009. I held the record open until July 31, 2009 for the admission of additional evidence. In an Order dated July 27, 2009, I granted Applicant's request for additional time to submit this information. Applicant timely submitted the additional information, which has been admitted as AE F through AE N, without objection. The record closed on August 10, 2009.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice less than 15 days before the hearing. (Tr. 9.) 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. (Tr. 9-10.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.e-1.h, and 1.j-1.l of the SOR, with explanation. He denied the factual allegations in ¶¶ 1.b, 1.d, 1.i, 1.m, and 1.n of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 39 years old, works as a security guard for a Department of Defense contractor, a position he began in June 2007. Applicant has worked as a security guard or corrections officer since 2001. His supervisors describe him as hard working, with a willingness to help others. He works as a volunteer fireman in his community and has done so for the last 18 years.²

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

²GE 1; AE F; AE G; AE H; AE I; Tr. 15-20, 67-70.

In 2004, Applicant had significant credit card debt from the past. His father obtained a \$25,000 equity loan on his home to pay Applicant's debt. Applicant started payments on the equity loan immediately and has paid the monthly payment for the last five years. Five years of payments remain.³

Applicant started working as a corrections officer in 2002. His girlfriend developed problems during her pregnancy with his son in 2004. He missed time from work to care for her. As a result, the corrections department fired him in December 2004. Without an income, Applicant used his credit cards to pay his living expenses and to purchase items for his son such as diapers, formula, a crib, and clothes.⁴

Applicant obtained another position as a security guard, where he worked for two months. He then moved out of state with his girlfriend and son. Shortly after the move, his daughter was born. He obtained a job in security in the other state, where he worked for two years, earning sufficient income to pay his usual living expenses. While living out of state, he required hospital treatment for gout, a medical condition from which he suffers. He received assistance from community resources to help pay his medical expenses. He returned to his home state alone in 2007.⁵

Applicant currently earns \$820 bi-weekly in gross income, for an annual income of \$21,320. His bi-weekly net income is approximately \$670 for a total net monthly income of \$1,340. He works overtime when asked. His earnings statement for May and June 2009 reflect that he worked between 11.5 and 19 hours of overtime each pay period, except one pay period. This resulted in an additional net income of \$301 in May and \$136 in June. Because he is paid bi-weekly, he received an additional pay check in May 2009.⁶

In addition to the \$281 monthly equity loan payment, Applicant's monthly expenses include \$100 in rent to his father, with whom he lives, \$40 in car insurance, \$80 for gasoline, \$50 for utilities, \$25 for clothes, and \$160 in voluntary child support for total ordinary monthly expenses of \$736. He also pays \$200 a month on one debt and \$200 on a truck repair bill. He did not mention food expenses or other costs such as a hair cut. The transmission in his 2001 truck needs to be repaired and he estimates the repair cost at approximately \$1,500. He does not use credit cards now.⁷

In early 2008, the sheriff served him with court papers for the \$7,161 debt listed in allegation 1.i. Applicant contacted counsel for the creditor and developed a

³AE A; Tr. 50-51.

⁴AE A; Tr. 17-19.

⁵AE A; Tr. 52, 69-71.

⁶GE 2; AE L; Tr. 42-43.

⁷Tr. 44-48, 60.

repayment plan. On March 7, 2008, he signed a Stipulation In Lieu of Judgment, which set out the terms of his repayment agreement. He made the initial \$740 payment and each monthly payment since April 2008. His remaining balance owed on June 22, 2009 was \$3,951. If he fails to make the required payments, the creditor can request the court to enter judgment against Applicant for any unpaid balance.⁸

When the government mailed interrogatories to Applicant, it listed two additional credit card debts. Applicant verified that he resolved both debts in 2008. Applicant denies any knowledge of the debts listed in allegations 1.b, and 1.i. Applicant's credible denial of knowledge of these two debts is sufficient to refute the allegations of these two delinquent debts. The pertinent credit report did not have sufficient information for Applicant to locate the account.

Applicant also denied owing the debt listed in allegation 1.m. Upon further discussion at the hearing, Applicant believed 1.m. was an automobile repair store account, which he had paid. He verified that this debt is paid in full.⁹

Applicant does not deny owing the remaining debts, although he does dispute the current balances on several accounts. He has not paid the remaining debts, as he lacks funds to pay these debts in full.¹⁰

In the interrogatories sent to Applicant in July 2008, the government identified 16 unpaid debts, totaling \$38,763. Applicant fully resolved two debts and has complied with the payment plan for a third debt. He also proved that one listed debt is paid and two other debts are not his. Applicant has resolved five debts totaling \$4,895 and through the payment plan, has paid approximately 50% of the \$7,161 debt. He still owes 10 unpaid debts valued at \$26,707.

When Applicant completed his security clearance application on June 24, 2007, he hand wrote his answers.¹¹ He answered "no" to the following questions:

Section 28: Your Financial Delinquencies

- a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

⁸AE B; Tr. 37-39.

⁹Response to SOR; GE 4; GE 5; GE 6; AE K; AE M; Tr. 28, 34, 39-41.

¹⁰Tr. 28-41.

¹¹At the hearing, Department Counsel raised questions about whether Applicant accurately completed his security clearance application. The type SF-86, which is part of the record, reflected an incorrect employment history, which Applicant pointed out. Applicant insisted that he hand wrote his answers on the SF-86 and that he did not type his application. As requested at the hearing, Applicant provided a copy of his hand written answers. AE N. No issue is raised from this colloquy. Tr. 20-26, 77.

b. Are you currently over 90 days delinquent on any debt(s)?

Applicant acknowledges that he knew he had unpaid debts. He answered “no” because he didn’t think people needed to know his financial situation and because his finances were his personal business. He did not understand the need for the federal government to know about his finances because when other organizations of the State conducted background checks on him, the focus was criminal conduct, not his finances. He is embarrassed about his debts. At the hearing Applicant answered no to a question asking if he had a concern that his debts would hurt his chances of getting a security clearance.¹²

Supervisors, friends and his brother wrote letters of recommendation on his behalf. They praise his volunteer service as a fireman to the community. His brother advises that Applicant, who lives with his father, is available to assist with any health issues his elderly father may have. He also provides transportation and home repair for his father and other elderly relatives. All acknowledge he has financial difficulties, which they believe he will resolve.¹³

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

¹²GE 1; Tr. 54-58.

¹³AE G through AE J.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An 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 an 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 and has been unable to pay many of the obligations for a period of time. 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 arose over a period of time through the accumulation of credit card debt. The record contains insufficient evidence to show that his debt accumulation occurred under unusual circumstances which will not occur again. 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 issues relate to his employment, including periods of unemployment and lower wages. Since 2007, he has worked consistently and full-time. He earns just over \$10 an hour, which does not provide significant excess income to pay usual living expenses and delinquent debt. He is current in the debts he can pay. This mitigating condition partially applies.

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 financial counseling. Given his current level of income and his budget, financial counseling alone would not be sufficient to mitigate security concerns. His current expenses are under control. He is slowly working towards resolution of his outstanding debt problems. Thus, the mitigating condition has some applicability.

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 two debts and is currently paying on another debt. While he did not take the initiative to resolve this debt, he has complied with the repayment plan he developed. For five years, he has paid the equity loan on his father's house, which resolved past debt. This mitigating condition partially applies.¹⁴

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:

¹⁴AG ¶¶ 20(e) and 20(f) are not applicable in this case.

(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.

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification in his answer must be deliberate. The government established that Applicant omitted a material fact from his SF-86 when he answered "no" to Questions 28a, about debts over 180 days delinquent, and 28b, about debts currently 90 days overdue. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. 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.¹⁵

When he completed his SF-86 in June 2007, Applicant denied any delinquent debts when he knew he had many overdue debts. He did not think people needed to know about his finances. His statement is an admission that he intentionally falsified this answer. The government has established its case under AG ¶ 16(a)

Under AG ¶ 17, an applicant may mitigate the government's security concerns in the following manner in this case:

(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

¹⁵See 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)).

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.

After reviewing the facts of this case and the above mitigating conditions, I conclude that Applicant has not mitigated the falsification of his answer to questions 28a and 28b in his security clearance application. Guideline E is found against Applicant.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant works a full-time job which does not pay a high salary. With his limited income, he pays the loan on his father's house and his monthly living expenses. He pays support for his two children without a court order. He complies with the terms of his one debt repayment plan. He recently incurred two significant repair bills for work done on his

2001 truck, which he is paying. He acts responsibly towards his current bills and has decided against the use of credit cards.

In 2004, Applicant's father agreed to a \$25,000 equity loan on his house to pay off Applicant's accumulated credit card debt. Shortly after resolving all his credit card debt, Applicant acquired new and significant credit card debt when he lost his job. He has resolved about 25% of his old debts. Recognizing that his income prevents him from paying all the debts immediately, his failure to resolve some of the smaller debts when he had extra income raises questions about the strength of his commitment to pay his debts at this time. When he completed his security clearance application, he falsified his answer about delinquent debts and clearly intended to do so. This is a serious lapse of judgment on his part, which is a primary reason his clearance is denied. At the hearing, he explained his reasons for his conduct. He presented himself in a forthright and honest manner, not only about his falsification, but also when explaining his reason for not properly answering the question. His decision to send money to support two children he does not see indicates that he is a responsible individual. In much of his daily life, he is a reliable, dependable, hardworking, and honest person. He has learned that in the future he must answer security-related questions honestly.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances and personal conduct.

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:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge