



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



In the matter of:)	
)	
)	ISCR Case No. 08-03978
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

January 12, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 9, 2007. On July 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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.

On August 13, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 28, 2008. The case was assigned to me on September 16, 2008. On October 21, 2008, a Notice of Hearing was issued, scheduling the hearing for November 19, 2008. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered four exhibits which were admitted without objection as Applicant Exhibits (AE) A-D. The record was

held open until December 19, 2008, to allow Applicant to submit additional documents. He timely submitted a 30-page document that was admitted as AE E, and a three-page document that was admitted as AE F with no objection. The transcript was received on December 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the SOR allegations.

Applicant is a 55-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as an electrician with his company since October 2005. He has a high school education. He is divorced and has an adult son. (Tr at 5-6, 19, 59; Gov 1.)

On February 9, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. Applicant answered "No" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He also answered "No" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" (Gov 1.)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$1,631 account related to an apartment lease, placed for collection in December 2004 (SOR ¶ 1.a: Gov 3 at 48; Gov 4 at 1; Gov 5 at 10, 15-16); a \$3,052 credit card account charged off as a bad debt in December 2002 (SOR ¶ 1.b: Gov 3 at 22, 38; Gov 4 at 2; Gov 5 at 5); a \$1,712 credit card account placed for collection in December 2006 (SOR ¶ 1.c: Gov 3 at 21; Gov 4 at 2; Gov 5 at 4); a \$435 delinquent department store account (SOR ¶ 1.d: Gov 3 at 25; Gov 4 at 2; Gov 5 at 10); a \$4,284 bank loan charged off as a bad debt in July 2004 (SOR ¶ 1.e: Gov 3 at 18, 43-44; Gov 4 at 2; Gov 5 at 1, 13); a \$981 credit card account past due in August 2003 (SOR ¶ 1.f: Gov 3 at 23, 39; Gov 4 at 2; Gov 5 at 6); a \$146 account placed for collection in March 2008 (SOR ¶ 1.g: Gov 3 at 33, 41; Gov 4 at 3); a \$6,427 account placed for collection in March 2008 (SOR ¶ 1.h: Gov 3 at 33, 40; Gov 4 at 3).

Additional delinquent debts include: a \$2,423 jewelry store account placed for collection in February 2007 (SOR ¶ 1.i: Gov 3 at 31, 37; Gov 4 at 3; Gov 5 at 3, 5, 14); a \$4,829 account placed for collection in May 2002 (SOR ¶ 1.j: Gov 3 at 31, 36; Gov 4 at 3; Gov 5 at 4, 14); a \$262 telephone account placed for collection in February 2007 (SOR ¶ 1.k: Gov 3 at 32, 37-38; Gov 4 at 3; Gov 5 at 3, 15); a \$2,960 cell phone account placed for collection in April 2004 (SOR ¶ 1.l: Gov 3 at 29-30, 36; Gov 4 at 3; Gov 5 at 3, 15); a \$696 utility account charged off as a bad debt in April 2002 (SOR ¶ 1.m: Gov 3 at 34, 42; Gov 4 at 3; Gov 5 at 3, 15); a \$29,718 defaulted automobile loan account charged off as a bad debt in June 2003 (SOR ¶ 1.n: Gov 3 at 17, 40); and a \$2,514 account placed for collection in December 2002 (SOR ¶ 1.o: Gov 3 at 27, 41-42; Gov 5 at 10).

Additional delinquent debts include: a \$320 medical account placed for collection in March 2004 (SOR ¶ 1.p: Gov 3 at 6, 46; Gov 4 at 1; Gov 5 at 12, 14, 16); a \$349 medical account placed for collection in May 2004 (SOR ¶ 1.q: Gov 3 at 5-6, 46; Gov 4 at 1; Gov 12, 14-15); an \$88 medical account placed for collection in June 2005 (SOR ¶ 1.r: Gov 3 at 6-7, 47; Gov 4 at 1; Gov 5 at 8, 15-16); a \$176 medical account placed for collection in January 2005 (SOR ¶ 1.s: Gov 3 at 7, 47; Gov 4 at 1; Gov 5 at 8, 15-16); a \$34 medical account placed for collection in July 2007 (SOR ¶ 1.t: Gov 3 at 5, 45; Gov 4 at 1); and a \$106 medical account placed for collection in December 2007 (SOR ¶ 1.u: Gov 3 at 4, 45; Gov 4 at 1).

Applicant denied all of the debts alleged in the SOR because he claims that he had no knowledge of the accounts. In October 2008, he formally disputed the delinquent accounts on his credit reports. (Tr at 21; Gov 3; AE A; AE B; AE D.) In his divorce decree, Applicant was held responsible for paying the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, and 1.i. (AE E at 8) His ex-wife was held responsible for the debt alleged in SOR ¶ 1.f. (AE E at 10.)

The status of the delinquent debts is as follows:

SOR ¶ 1.a, \$1,631 collection account owed to an apartment company: Applicant admits to leasing an apartment with this company. He thinks he might have owed a security deposit but is not sure. (Tr at 21-23.) He disputed this account and it was removed from his credit report. (AE B at 1.)

SOR ¶ 1.b, \$3,052 credit card account. Applicant was held responsible for this account in his divorce decree. (Tr at 28-33; AE E at 8.) Debt remains unresolved.

SOR ¶ 1.c, \$1,712 credit card account. Applicant is not familiar with this account. (Tr at 33.) Status of debt uncertain.

SOR ¶ 1.d, \$435 department store credit card account. Applicant was held responsible for this account in his divorce decree. (AE E at 8.) He disputed this account with the credit reporting agencies but the debt was verified. (AE C at 1.) Applicant states he will be making payments to pay it off. (Tr at 33-34.) Status of debt uncertain.

SOR ¶ 1.e, \$4,284 charged off account. Applicant was held responsible for this account in his divorce decree. (AE E at 8.) Applicant believes he paid this account off but is not certain. He disputed the account. If the credit reporting agencies verify the debt, he will pay the debt. (Tr at 37-40.) Status of debt uncertain.

SOR ¶ 1.f, \$981 credit card account. Applicant's ex-wife was held responsible for this account in the divorce decree. (AE E at 10.) SOR ¶ 1.f is found for Applicant.

SOR ¶ 1.g, \$146 collection account. Applicant is not aware of this account. He disputed the account and it was deleted from his credit reports. (Tr at 41-42; AE B at 1.)

SOR ¶ 1.h, \$6,427 account placed for collection. Applicant has no knowledge of this account. (Tr at 42.) Status of debt uncertain.

SOR ¶ 1.i, \$2,423 jewelry store account placed for collection. Applicant was held responsible for this account in his divorce decree. (AE E at 8.) Applicant is working on this debt. He contacted the collection company. He is not sure what it is for but admits to buying several items at the jewelry store on credit so this might be a valid debt. (Tr at 42-43.) Status of debt uncertain.

SOR ¶ 1.j, \$4,829 collection account. Applicant is not aware of this account. He disputed the debt with the credit reporting agencies. It was deleted from his credit report. (Tr at 43-44; AE B at 1.)

SOR ¶ 1.k, \$262 telephone collection account. Applicant disputes this account. He was in the process of purchasing a home and arranged to have telephone service installed in the home. He decided not to purchase the home and disputed this debt with the credit reporting agencies. (Tr at 44-45.) Status of debt uncertain.

SOR ¶ 1.l, \$2,960 cell phone collection account. Applicant states this was a company phone and the employer was trying to hold him responsible for the bill. He disputed to account with the credit reporting agencies. It was removed from his credit report. (Tr at 45-46; AE B at 1.)

SOR ¶ 1.m, \$696 charged off utility account. Applicant admits to having an account with the company. He recalls paying all of his bills until he moved out of the area. He disputed this account with the credit reporting agencies. It was removed from his credit report. (Tr at 46-47; AE B at 1.)

SOR ¶ 1.n, \$29,718 defaulted automobile account. Applicant voluntarily turned in the car because he could not afford to make payments. The car was sold. The car dealership charged off the loss. Applicant paid taxes on the forgiven debt. Applicant disputed the account with the credit reporting agencies. It was deleted from his credit report. (Tr at 47-49; AE C at 1, 5.) SOR ¶ 1.n is found for Applicant.

SOR ¶ 1.o, \$2,514 charged off account. Applicant claims no knowledge of this account. (Tr at 50.) Status of debt uncertain.

SOR ¶¶ 1.p through 1.u are all medical accounts. Applicant has had some recent medical issues. Applicant resolved all of these medical accounts within the past year. (Tr at 50-51, 65; AE E at 15-20.) SOR ¶¶ 1.p through 1.u are found for Applicant.

Applicant states that he had no intent to deceive the government when he completed his security clearance application. He did not know the extent of the delinquent debts at the time he completed his application. He had some idea that he had some financial problems but was not sure. (Tr at 35-37.)

Since 2001, Applicant had several periods of unemployment. In December 2001, he was laid off and unemployed for 20 months. He collected unemployment the first nine months. The unemployment payments of \$300 a week did not match his previous income. After 20 months, he had a job for one week. He was then unemployed for three months. He then found a job for three months. After this job, he was unemployed for two weeks and found a job for one year. Upon completion of that job in 2005, he was unemployed for nine months until he was hired by his current employer. (Tr at 23-27.)

Applicant has not attended financial counseling. He does not own real estate and does not have a checking account. He deposits his paycheck in his roommate's account and she pays the bills. She keeps track of his expenses because he travels a lot with his job. His car is paid off. He is current on federal and state income taxes. (Tr at 52-58.) After the hearing, Applicant submitted a recent financial statement. His net monthly take home pay is \$2,940. His monthly expenses are \$870. After expenses, he has \$2,070 left over each month. (AE F at 2.)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has encountered financial difficulty since 2001. The SOR alleged 21 delinquent accounts, an approximate total balance of \$63,143.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition

(FC MC) ¶ 20(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) is not applicable. Applicant has a long history of financial problems. He did not start to resolve his delinquent debt until this year. He did not dispute his delinquent accounts with the credit reporting agencies until October 2008, three months after the SOR was issued. While he successfully disputed seven of the accounts (SOR ¶¶ 1.a, 1.f, 1.g, 1.j, 1.l - 1.n) and paid six medical accounts (SOR ¶¶ 1.p - 1.u), totaling \$1,073. Eight delinquent accounts remain unresolved with a total approximate balance of \$21,109. Applicant provided no evidence that he is paying on any of these accounts.

FC MC ¶ 20(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) applies, in part, due to Applicant's several periods of unemployment from 2001 to 2005. However, he has been continuously employed since October 2005, and did not begin to resolve his financial situation until recently. For this reason, this mitigating condition is given less weight.

FC MC ¶20(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) does not apply. Applicant has not attended financial counseling. It would be helpful for him to do so in order to develop a plan to resolve his delinquent accounts.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the medical debts alleged in SOR ¶¶ 1.p - 1.u. However, a significant amount of his delinquent debt remains unresolved and he has not developed a plan to resolve his remaining delinquent accounts. He recently began to resolve his delinquent accounts. It is too soon to conclude that he made a good-faith effort to resolve his accounts.

FC MC ¶20(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) applies with respect SOR ¶¶ 1.a, 1.f, 1.g, 1.j, 1.l, 1.m, and 1.n. Applicant provided sufficient documentary evidence to support that these debts were not his responsibility. He did not provide sufficient evidence to support his disputes with the remaining unresolved debts alleged in the SOR.

While Applicant has made some progress, he has not mitigated the concerns raised under Guideline F.

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.

Personal conduct concerns are raised because Applicant failed to list his financial delinquencies in response to sections 28(a) and 28(b) on his security clearance application, dated February 9, 2007.

Personal Conduct Disqualifying Condition (PC DC) ¶ 16(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) potentially applies in Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of his judgments and delinquent accounts must be done with a deliberate intent to deceive. I find Applicant did not deliberately intend to falsify his security clearance application. Applicant claims that he did not remember all of his financial delinquencies. I find his explanation credible.

The personal conduct concern is found for 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 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) 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. While Applicant has taken steps towards resolving his delinquent accounts, it is too soon to conclude that his financial issues have been resolved due to the significant amount of his unresolved delinquent debt. Applicant presented no plan as to how he intends to resolve these accounts. He did not mitigate the concerns raised under financial considerations. Personal conduct concerns are mitigated because Applicant did not intend to falsify his security clearance application.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge