



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

In the matter of: )  
)  
) ISCR Case No. 08-05619  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 28, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) in November 2005. He also executed a Security Clearance Application (SF 86), on August 7, 2008. On October 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 October 31, 2008, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on November 19, 2008. The FORM contained documents identified as Items 1 through 8. By letter dated November 24, 2008, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on December 5, 2008. His response was due on January 4, 2009. He filed additional information within the required time period. Department Counsel did not object to Applicant's submissions, and they are hereby admitted to the record. On January 15, 2009, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 24 allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.x.) and two allegations of disqualifying conduct under AG E, Personal Conduct. (Item 1.) In his Answer to the SOR, dated October 31, 2007, Applicant admitted 18 of the Guideline F allegations of financial delinquency (¶¶ 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k., 1.l., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.u., 1.w., and 1.x.). He denied three Guideline F allegations (¶¶ 1.a., 1.b., and 1.v.); and he stated he had paid three debts alleged to be delinquent on the SOR (¶¶ 1.i., 1.m., and 1.t). He denied the two Guideline E allegations of deliberate falsification of answers on his e-QIP and SF-86 (¶ 2.a. and ¶ 2.b.). (Item 3.)

Applicant is 35 years old and employed as a senior systems engineer by a federal contractor. Before becoming a government contractor, he served on active duty in the U.S. military from 1993 to 2001. Applicant was granted a security clearance in 2004. He was married in 2000 and divorced in 2005. The record indicates that he has no children. In 2006, he reported an adjusted gross income of \$71,667, and in 2007, he reported an adjusted gross income of \$116,761. (Item 4; Item 5; Item 6, 8-9.)

The delinquent debts alleged on the SOR total \$45,960. According to the credit report supplied by Applicant, the debts fell into delinquency between 1999 and 2007. At least eight of those accounts became delinquent between 1999 and 2005. In his answer to the SOR, Applicant denied responsibility for a state tax lien of \$1,033 and a state tax lien of \$2,750. Both tax liens were filed against him in 2006. He admitted a judgment levied against him in 2002 for \$2,720. (Item 1; Item 3; Item 6.)

Applicant also denied a credit card debt of \$140 (¶ 1.v.) Both liens and the credit card debt were listed as unsatisfied on a credit bureau report, dated July 3, 2008, that Applicant provided in response to DOHA's interrogatories. He provided no

documentation to corroborate his assertions that the two tax liens were satisfied or to establish that he did not owe the credit card debt. (Item 1; Item 6.)

In his answer to the SOR, Applicant stated he had paid the delinquent debts alleged at ¶1.i (\$214), § 1.m. (\$370), and ¶ 1.t (\$503). However, he failed to provide documentation to corroborate the payments he said he had made. He also stated he had made an arrangement to pay the delinquent debt alleged at ¶ 1.e., but he failed to provide documentation to corroborate a payment plan. (Item 3.)

In his answer to the SOR, Applicant stated that, in the future, he would pay the delinquent debts alleged at ¶¶ 1.f., 1.h., 1.l., 1.n., 1.o., 1.w., and 1.x. He stated an intention to satisfy most of his delinquent debts within the next two years. (Item 3.)

In his July 28, 2008 response to DOHA interrogatories, Applicant provided a list of his delinquent debts that he planned to pay or satisfy within the six months between August 2008 and January 2009. He failed to provide documentation to corroborate payment or satisfaction of those debts. (Item 6 at 6-7.)

In his response to DOHA interrogatories, Applicant provided a personal financial statement. In his statement, he reported a total net monthly income of \$4,386. He listed fixed monthly expenses of \$2,600. He listed a monthly payment of \$900 on a \$30,000 automobile loan. His monthly net remainder was \$886. (Item 6 at 4.)

Applicant completed and certified an SF-86 on August 7, 2008. Question 28a on the SF-86 asks the following question: "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant did not respond to Question 28a. He also did not respond to Question 28b. At the time he completed the SF-86, he was over 180 days delinquent on the debts alleged at SOR ¶¶ 1.m., 1.n., 1.i., 1.o., and 1.v. (Item 5.)

On November 18, 2005, Applicant completed and certified an e-QIP. Section 27 of the e-QIP asks several questions about an applicant's financial record. Question 27d asks: "In the last 7 years, have you had any judgments against you that have not been paid?" Applicant responded "no" to Question 27d. He did not report a judgment filed against him in October 2002 for approximately \$2,720. (Item 4.)

Question 28 on the e-QIP requests information on an individual's financial delinquencies. Question 28b asks: "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to Question 28(b). He did not report that the debts alleged at SOR ¶¶ 1.a. through 1.l. and ¶¶ 1.p. through 1.u., and ¶¶ 1.w. and 1.x. were over 90 days delinquent. (Item 4.)

In his answer to the SOR, Applicant denied intentionally falsifying his SF-86 by not responding to Question 28a. He attributed his omission to mistake. He also stated that when he completed his e-QIP in November 2005, he did not know the extent of his debt because his former wife took care of the family finances and paid the couple's bills. (Item 3.)

Applicant has not had financial credit counseling. He intends to speak to his creditors himself and arrange payment plans. (Response to FORM.)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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 substantial delinquent debt and was unable to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d)).

Applicant has a history of financial delinquencies that dates to at least 2001 and 2002. His delinquencies are recent and on-going. They have occurred under circumstances that are likely to recur.

Applicant was married in 2000 and divorced in 2005. Approximately half of the debts alleged on the SOR occurred after his divorce. For the last several years, he has had an income sufficient to pay or settle his delinquent debts, and he failed to do so. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. Applicant has made promises to pay or settle most his debts in the future. However, in determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not mitigate the facts of Applicant's case.

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern:

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.

When Applicant completed and signed his e-QIP in November 2005, he responded "yes" to a question asking if he had been over 180 days delinquent on any debts in the last seven years. He answered "no" to a question asking if he had any judgments placed against him in the last seven years that had not been paid. He answered "no" to a question asking if he was currently over 90 days delinquent on any debt.

When Applicant completed and signed his SF-86 in August 2008, he failed to provide an answer to a section of the form asking whether he was currently over 90 days delinquent on any debt and whether he had any debts in the last seven years that were over 180 days delinquent.

The SOR alleged that Appellant's responses to the financial questions on two security clearance applications showed he had deliberately falsified material facts by deliberately failing to admit and disclose a judgment, debts that were delinquent over 180 days in the last seven years, and debts that were currently 90 days delinquent.

This information raises a security concern under AG ¶ 16(a), which reads as follows: "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."

Appellant's disqualifying personal conduct might be mitigated if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶17(a).

Applicant denied his answers constituted deliberate falsification. He stated that he made a mistake in failing to respond to the questions relating to financial delinquencies when he completed his SF-86 in 2008. He further stated that when he completed the e-QIP in 2005, he was not aware of his delinquent debts because his wife paid the family's bills. The record reflects that a judgment was filed against Applicant in 2002, and at least eight debts alleged on the SOR dated to the period 1999 to 2005.

As a former U.S. service member, Applicant was familiar with the security clearance process and the importance of telling the truth to the government. His assertions that his falsifications were the result of mistake or lack of knowledge were not credible. Additionally, he provided no credible evidence to mitigate his failure to report his financial delinquencies on his SF-86 and his e-QIP. Nothing in the record suggests that he took prompt good faith action to correct the omissions, concealments or falsifications before he was confronted with the facts. AG ¶ 17(a). I conclude that his falsifications were deliberate.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an 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 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. Applicant had experience with security clearance applications in the past, and he knew it was important to answer those applications carefully and truthfully. In 2005, and later in 2008, he did not make

