



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 08-06197 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

July 23, 2009

Decision

MASON, Paul J., Administrative Judge:

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

Statement of the Case

Applicant submitted his Security Clearance Application (SCA, Item 5), on November 7, 2007. He was interviewed by an investigator from the Office of Personnel Management (OPM) on January 9, 2008. On December 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 4, 2009. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on April 8, 2009. Applicant received the FORM on April 20, 2009. His response was due by May 20, 2009. No response was received by DOHA. The case file was assigned to me on June 17, 2009.

Rulings on Procedure

In the last full sentence of Paragraph 2.a. of the SOR, there are references to subparagraphs 2(a) through 2(j). Those references are incorrect. The references should be to subparagraphs 1(a) through 1(j) of the SOR, which is the location of the omitted accounts. Another change is made in Item 7, containing Applicant's interrogatory answers dated March 22, 2008. Interrogatory 3, page 4, of Item 7 is amended as follows: the question is changed by inserting the date "November 7, 2007," in place of June 21, 2007; and by inserting the correct SCA question, "28A (LAST 7 YEARS, OVER 180 DAYS DELINQUENT ON ANY DEBTS?)," in place of "38. Your Financial Delinquencies - In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Pursuant to E3.1.17. of the Directive, the SOR is amended accordingly.

Findings of Fact

The SOR contains nine allegations under the financial considerations guideline. SOR 1.b. and 1.e. are the same account. SOR 1.f. is not reported in Item 9, the government's recent credit bureau report, even though Applicant acknowledged the delinquent account. The overdue debts are for a satellite television account, credit card accounts, and signature loans. The total amount of the debt is approximately \$33,000. Applicant admitted subparagraphs 1.a., 1.b., 1.e., 1.f., 1.g., 1.h., and 1.i. He denied subparagraphs 1.d., and 1.j. He also denied paragraph 2. (including subparagraph 2.a.) alleging an intentional omission of debts from his SCA dated November 7, 2007. He first realized he had debt in 2005 when he encountered trouble purchasing a car (Item 6, 7).

In an attachment to his answer, Applicant provided an explanation for each of the listed accounts. Three general explanations supplied were: (1) because of his extensive travel, he would experience significant periods without adequate funds between travel reimbursements; (2) his wife bore responsibility for some of the delinquent debts; and, (3) Applicant has been caring for his mother and supporting two households. Applicant believes he should receive his security clearance because he served the country (U.S.) in the United States Army (USA) for 17 years, and received an honorable discharge in September 1995. Since then, he has been employed for 13 years by defense contractors. He has worked as a Technician 4 for his current contractor since October 2007 (Item 4).

Applicant is 49 years old. He was married in January 1985. He has been separated from his wife since January 2003. In addition to Applicant's admissions to the SOR, I make the following factual assertions.

Financial Considerations

SOR 1.a., \$300, satellite television. Applicant provided no documentation to support his claim (Item 4) that the delinquent part of the debt was paid, and the debt is in a current status.

SOR 1.b., \$4,144, signature loan. According to the credit reports (Items 8, 9), this account became delinquent in October 2007. Applicant indicated he personally contacted the accounting department of the creditor, and was informed the account was not in the system. Applicant provided no documentation to support his assertions.

SOR 1.c., \$2,506, credit card. Applicant thought he paid the account (Item 4, 6), but provided no documentation to prove how or when the account was paid.

SOR 1.d., \$18,389, Applicant explained that he was on deployment at the time when the leased automobile was repossessed. He mailed in the final payment. His wife then returned the car to the lender (Item 4). Applicant told the lender he did not want to buy the car, and does not believe he owes for the car (item 6, 7). He provided no documentation to show that he made his final payment or why he does not owe a balance on the car, i.e., that he reached an agreement with the lender that he was released from liability. The credit reports (Items 8, 9) reflect the last car payment was in June 2003.

SOR 1.e., this is a duplicate entry of SOR 1.b., and is resolved in Applicant's favor (item 8, 9).

SOR 1.f., \$3,246, credit card. Applicant provided no proof he paid the account (Item 4). The last activity on this account is October 2002. The account does not appear in the most recent credit report (Item 9), and is probably unenforceable under the state statute of limitations. The statute identifies the amount of time available for creditors to file legal action to recover a debt. However, Applicant admitted he owes the account (Item 6). SOR 1.f. is found against Applicant.

SOR 1.g., \$214, unknown account type. Applicant claimed he was ahead of the account's payment schedule, and eventually paid the account off (Item 4, 6). This declaration lacks documentary proof.

SOR 1.h., \$726, credit card. There is no verification for Applicant's claim of satisfying the account (Item 6).

SOR 1.i., \$3,193, Applicant explained that he did not recognize this creditor. Yet, he admitted the account (Item 4, 6). I find that Applicant still owes the account.

SOR 1.j., \$306, Applicant explained he was deployed at the time. He believed the delinquent account is the responsibility of his wife (Item 4). Also, according to

Applicant, the relevant medical records may have been lost in a weather incident (Item 6). Applicant furnished no documentation to support his claims.

On January 9, 2008, Applicant was interviewed by an OPM investigator. During the interview, he acknowledged most of the debts listed in the SOR, and stated his intention to contact the creditors by January 31, 2008 (Item 6). The record contains no documentation of action taken.

On March 22, 2008, Applicant provided answers to interrogatories (Item 7) regarding the status of certain delinquent debts listed in the SOR, and action he intended to take to resolve the debts. Applicant furnished attached statements to five of the listed creditors. In these statements, he reiterated his intentions to pay off some of the creditors (*Id.*). Concerning SOR 1.c., Applicant supplied no verification that he made monthly payments as he stated. He did not provide support for his claim of agreeing with an official of the SOR 1.b. creditor to make payments. Regarding the creditor in SOR 1.h., Applicant claimed he resolved the debt in two payments of \$236 (Item 4). The payment claims are unsubstantiated.

Personal Conduct

On November 7, 2007, Applicant certified and signed an SCA. In response to question 28A requiring information about debts more than 180 delinquent in the last seven years, he answered "No," even though he had six past due accounts over 180 days delinquent. In support of his denial of SOR 2.a., Applicant claimed that he was deployed at the time the debts became delinquent, and his wife, from whom he has been separated since 2003 because of communication problems, should bear responsibility for the debts (Item 4). I do not find his claim credible.

Character Evidence

Applicant provided no independent evidence regarding his job performance or reputation in the community where he lives.

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 applied in conjunction with the variables listed in 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

¶ 18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

When Applicant furnished his SCA to the government in November 2007, he intentionally did not disclose he had debts over 180 days delinquent in the past seven years. In January 2008, Applicant was interviewed about the listed debts and declared he would check his credit report, then contact the creditors by January 31, 2008. The record contains no documentation to show he initiated action in support of his stated intention. In March 2008, Applicant provided attached statements to his interrogatory answers reiterating the claims in his answers that he had made payments to some of

the listed creditors. There is no independent documentation,¹ e.g., from the creditor or collection agency or banking institution, that verifies Applicant made any payments on any of the bills. FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*); FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); and, 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*).

FC MC ¶ 20.a. does not apply because there are nine overdue accounts. Two of the accounts became delinquent less than two years ago. In addition, Applicant intentionally lied about his delinquent debt history. His falsification and decision not to provide documentation to strengthen his claims about paying the debts continues to cast doubt on his judgment and reliability.

In his SOR answer, his January 2008 interview, and his March 2008 interrogatory answers, Applicant placed blame on his wife for his financial distress. Even if I accept Applicant's claim, I conclude that with the passage of time after his marital separation, specifically in 2005 when he experienced trouble buying a car, Applicant should have dedicated more attention to his financial obligations. He receives no mitigation under FC MC ¶ 20.b. Neither FC MC ¶ 20.c. nor FC MC ¶ 20.d. apply to the circumstances of this case as there is no evidence of financial counseling, and no documented evidence of a good-faith effort to repay the overdue creditors. Applicant's history of not meeting his financial obligations has not been mitigated. Accordingly, the FC guideline is found against him.

Personal Conduct (PC)

¶ 15. *The 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."

This guideline applies to intentional attempts to conceal or omit information from an SCA. I am unable to find in Applicant's favor under this guideline because he

¹ Relevant documentation includes receipts from the creditor, on-line responses showing the status of an account proving payment had been processed, or Applicant's checking account statement disclosing checking account activity.

deliberately omitted all his delinquent debt from his SCA. PC DC ¶ 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*) applies. Six of the nine listed debts in the SOR are delinquent by more than 180 days. By falsely claiming he had no past due accounts, Applicant tried to deceive the government regarding his financial status. The most reasonable explanation for his omission was to enhance his chances of obtaining a security clearance.

There are three mitigating conditions (MC) that are potentially applicable to the circumstances in this case. Those conditions are: PC MC ¶ 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC ¶ 17.c. (*the offense was 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*); and, PC MC ¶ 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*). PC MC ¶ 17.a. is not applicable as Applicant did not disclose his delinquent debt history until after he was confronted with the debts in his January 2008 interview (Item 6, Interrogatory answers). PC MC ¶ 17.c. is inapplicable because Applicant tried to conceal a large amount of delinquent debt owed to six of nine creditors. Applicant's intentional omission of material financial information in November 2007 continues to cast doubt on his reliability and judgment. Lastly, Applicant receives no mitigation under PC MC 17.d. because he still denies he deliberately falsified the SCA.

Though Applicant persists in his denial that he intentionally omitted material financial information from his SCA in November 2007, the number of delinquent accounts and the amount of the debt convince me he knew he had delinquent debt when he filled out the security form. His lack of candor in not admitting he intentionally concealed the information warrants a finding against him under the PC guideline.

Whole Person Concept (WPC)

I have examined the evidence utilizing the disqualifying and mitigating conditions of the FC and PC guidelines. Even though I have resolved both guidelines against Applicant, the case still must be weighed within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant's delinquent financial history began in 2002 when he fell behind in paying the account set forth in SOR 1.f. After he separated from his wife in 2003 because of communication problems, he should have interpreted that separation as a sign to pay closer attention to his financial accounts. Instead, the record shows he took no action to resolve the debts, even after he was confronted with them in January and March 2008, and even though he promised both times to obtain a credit report and/or take action. Regardless of the explanations for his past due indebtedness, Applicant (age 49) has furnished no proof that he paid any of the listed creditors. The lack of documentation, the lack of character evidence, the lack of financial counseling, and Applicant's poor credibility, necessitates a finding against him under the FC and PC guidelines.

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 (Financial Considerations, Guideline F): **AGAINST APPLICANT**

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| Subparagraph 1.a. | Against Applicant |
| Subparagraph 1.b. | Against Applicant |
| Subparagraph 1.c. | Against Applicant |
| Subparagraph 1.d. | Against Applicant |
| Subparagraph 1.e. | For Applicant |
| Subparagraph 1.f. | Against Applicant |
| Subparagraph 1.g. | Against Applicant |
| Subparagraph 1.h. | Against Applicant |
| Subparagraph 1.i. | Against Applicant |
| Subparagraph 1.j. | Against Applicant |

Paragraph 2 (Personal Conduct, Guideline E): **AGAINST APPLICANT**

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| Subparagraphs 2.a. | Against Applicant |
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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.

Paul J. Mason
Administrative Judge