



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



In the matter of:)	
)	
)	ISCR Case No. 08-06352
)	
)	
Applicant for Security Clearance)	

Appearances

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

June 26, 2009

Decision

DAM, Shari, Administrative Judge:

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

On December 10, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline I (Psychological Conditions). 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 answered the SOR on or about January 22, 2009, and waived his right to a hearing before an administrative judge. On February 4, 2009, Department Counsel prepared a File of Relevant Material (FORM), containing 16 Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on February 17, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted additional information to which Department Counsel had no objections. On May 28, 2009, DOHA assigned the case to me. I marked Applicant's submission as Applicant Exhibit (AE) 1 and admitted it into the record.

Procedural Matters

The Government notified Applicant that it withdrew SOR ¶ 1.w. (FORM)

Findings of Fact

Applicant admitted the allegations contained in SOR ¶¶ 1.a, 1.b, 1.c, 1.g, 1.j, 1.m, 1.q, 1.s, and 1.v, totaling \$22,641. He denied all other allegations, including those contained in SOR ¶ 2.a.

Applicant is 42 years old and divorced. He has two children for whom he pays child support. He was in the Army Reserves from 1985 to 1995 and honorably discharged as an E-5. In February 2007, he began his current position as an installation technical specialist for a federal contractor. Prior to this job, he has worked for private companies over the years. It is unclear in his e-QIP whether he was unemployed for a period of time within the past ten years. (Item 5)

On July 17, 2008, Applicant completed a set of Interrogatories regarding 16 specific delinquent debts. He asserted that he was attempting to establish a payment plan with some of the creditors. He noted that other creditors were not listed on his credit report. He submitted a budget, listing his net monthly income as \$4,435 and expenses as \$2,977, which included \$871 in child support. He also listed a monthly payment of \$436 for debt reduction. (Item 7)

On December 12, 2008, the Government filed an SOR, alleging 22 delinquent debts that totaled about \$30,800, and included a student loan in default and unpaid child support. According to credit bureau reports (CBR) dated January 2008 and November 2008, his delinquent debts began accruing in 2006. (Items 12 and 13) On May 1, 2009, Applicant entered into a Consumer Credit Counseling Service contract in which he agreed to pay \$353 per month on 11 delinquent debts, totaling \$9,581. Some of the SOR debts are included in the contract that was scheduled to begin on May 25, 2009, with his first payment. (AE 1 at 3-6) He did not submit proof that he made the first payment on the plan. The status of the debts is as follows:

Applicant asserted that he paid or is paying four debts:

1. SOR ¶ 1. j lists Applicant's student loan delinquent as of December 2007 in the amount of \$14,409. As of April 2009, the balance was \$16,949. Applicant agreed to pay \$50 per month to rehabilitate the loan and remove it from default status. He did not provide evidence that he has made those payments and that it is no longer in default. (AE 1 at 11-12) It remains unresolved.
2. SOR ¶ 1.v alleges that Applicant owes \$3,154 in child support arrearage since December 2007. According to a court order entered on April 6, 2009, his monthly payment of \$821 increased to \$871 to cover \$6,556 of arrears. The court also ordered him to pay \$1,000 toward the arrears, with a \$500 payment on May 15, 2009 and June 15, 2009. (AE 1 at 7-8) Applicant previously noted the \$871 child support payment in his July 2008 budget, but did not provide proof that he has been timely making payments over the last several months, or that he made the additional \$500 payment on May 15, 2009. It remains unresolved.
3. SOR ¶ 1.n for \$85 is owed a creditor. Applicant stated he is paying the debt, but did not submit any proof of payments. (AE 1 at 2) It remains unresolved.
4. SOR ¶ 1.u for \$69 is owed to a creditor. He claims he is paying it, but did not submit any proof of payment on this debt. (AE 1 at 2)

The monthly repayment plan was scheduled to be implemented on May 25, 2009, and includes ten debts (AE 1 at 2):

5. SOR ¶ 1.e for \$439 is owed to a utility company. The plan includes a \$16 disbursement to this creditor.
6. SOR ¶ 1.f for \$510 is owed to a utility company. It appears to be the same debt as listed in SOR ¶ 1.e. (Item 12)
7. SOR ¶ 1.g for \$567 is owed to a cell phone company. The plan includes a \$20 monthly payment.
8. SOR ¶ 1.h for \$535 is owed to a credit card company. The plan includes a \$20 monthly payment.
9. SOR ¶ 1.i for \$566 is owed to the same credit card company as in SOR ¶ 1.h.
10. SOR ¶ 1.l for \$121 is owed to a jewelry company. The plan includes a \$20 monthly payment.
11. SOR ¶ 1.o for \$314 is owed to a utility company. The plan includes a \$15 monthly payment. It was settled for \$186.

12. SOR ¶ 1.p is a \$3,293 debt owed on a car loan. The plan includes a \$127 monthly payment.
13. SOR ¶ 1.r for \$1,671 is a medical debt that was transferred to a new collection agency. The plan includes a \$51 monthly payment.
14. SOR ¶ 1.s is a \$717 medical debt. The plan includes a \$22 monthly payment.

Eight of the delinquent debts remain unresolved. Some of them are medical bills that he did not pay because he did not have insurance at the time he incurred them:

15. SOR ¶ 1.a for \$2,372 is a medical bill.
16. SOR ¶ 1.b for \$74 is a returned check fee.
17. SOR ¶ 1.c for \$107 is a medical debt.
18. SOR ¶ 1.d for \$297 is owed to a creditor. Applicant denied the debt and asserted that it no longer is in collections. He did not present any evidence that he has disputed it.
19. SOR ¶ 1.k for \$519 is owed to a credit card company. He asserted that it is included in the repayment plan, but did not provide proof of its inclusion.
20. SOR ¶ 1.m for \$440 is a medical debt.
21. SOR ¶ 1.q for \$266 is a medical debt.
22. SOR ¶ 1.t for \$275 is owed to a credit card company. He denies the debt, but did not produce any evidence that he has disputed it.

SOR ¶ 1.x alleges that Applicant was scheduled to appear in court on four counts of misdemeanor Simple Worthless Checks on December 10, 2008. In his Answer, Applicant stated that the case was dismissed. He provided proof that he has made several payments to his lawyer, but not a court order documenting that the matter was dismissed. (AE 1)

Applicant has received psychiatric treatment since approximately June 2002. According to a December 1, 2008 progress note by his psychiatrist, Applicant was not participating in counseling class and “is in need of continued Mental Health Services to maintain stabilization, prevent further deterioration and/or relapses.” (Item 6) The progress note further indicated that Applicant was not taking his medication. (*Id.*) In his Answer, which DOHA received on or about January 22, 2009, Applicant denied that he was not participating in counseling classes and noted that he had an appointment with his psychiatrist on January 20, 2009. He did not submit proof of compliance with the

recommended psychiatric treatment in his Answer or in the documents he submitted after receiving the FORM.

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 commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to 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 and has the ultimate burden of persuasion as to obtaining a favorable security decision." 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."

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to this guideline are 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating significant delinquent debt in 2006 that he has been unable or unwilling to pay or resolve until very recently. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concern. AG ¶ 20 includes six conditions that could mitigate security concerns arising under this guideline:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) cannot apply because Applicant's problems have been ongoing since 2006, involve numerous creditors and do cast doubt on his current reliability and good judgment.

Applicant did not document evidence of circumstances that may have been beyond his control and contributed to his financial problems, Hence, AG ¶ 20(b) does not apply. He presented evidence that on May 1, 2009, he entered into a debt repayment plan through a credit counseling company to address ten debts, which warrants a limited application of AG ¶ 20(c). He asserted that he has made a good-faith effort to pay four debts, including his child support and student loans, but did not submit proof of payment on those debts. Hence, AG ¶ 20(d) is not applicable. Although he denies several debts, he did not provide written documentation that he has disputed them, which is necessary to trigger the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

Guideline I, Psychological Conditions

AG ¶ 27 expresses the security concern pertaining to psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

AG ¶ 28 describes one condition that could raise a security concern and may be disqualifying in this case:

(c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Based on the evidence in the record, Applicant has failed to follow the treatment recommended by his psychiatrist. The Government raised the above disqualification.

AG ¶ 29 provides conditions that could mitigate the security concern raised under this guideline:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

After reviewing the evidence in this file, I find that none of the above mitigation conditions applies to this case. Applicant's depression is "readily controllable with treatment," however; he failed to demonstrate that he has been consistently complying with his doctor's recommendation. Hence, AG ¶ 29(a) cannot apply. There is no evidence that he is receiving counseling, that he has a favorable prognosis and that his depression is under control, which evidence is required to trigger the application of AG ¶ 29(b) or AG ¶ 29(c). Applicant has been receiving treatment for depression since 2002, which indicates that the illness is not situational. AG ¶ 29(d) is not applicable. AG ¶ 29(e) cannot apply because there is an indication of a current problem based on his treatment non-compliance.

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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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 is a 42-year-old man, who honorably served this country for ten years. For the past two years, he has been working for a federal contractor. However, over the course of the last three years, he has failed to demonstrate good judgment in managing his financial obligations and maintaining medical compliance. His behavior raises questions about his judgment and demonstrates a lack of reliability. For example, when the Government sent Applicant the July 2008 Interrogatories, which inquired into 16 specific debts, the Government placed him on notice of its concerns about his financial delinquencies. When it issued the December 12, 2008 SOR, it again notified Applicant that his financial delinquencies were creating security concerns and jeopardizing his employment. After he filed his Answer, the Government issued the FORM, specifically noting his failure to produce sufficient documentation or affirmative action to address his debts. Despite these repeated notifications, he waited until May 25, 2009, to implement a repayment plan. He asserted that he was paying some of his debts, and yet failed to document those assertions. He claimed he was in compliance with his doctor's treatment recommendations, but did not corroborate his statements with documentation.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under financial considerations and psychological conditions.

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
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.v:	Against Applicant
Subparagraph 1.w:	Withdrawn

Paragraph 2, Guideline I:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge