



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-06571
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro Se*

March 12, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP), dated November 22, 2007, and a Standard Form 86 – Questionnaire for Sensitive Positions (SF-86), with signed releases dated November 26, 2007. On December 2, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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, the 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 on December 10, 2008. In his August 18, 2008, response to the SOR, he admitted 5 of 25 allegations under Guideline F and declined to address the allegations raised under Guideline E. He also requested a determination based on the written record.

In response to Applicant's answer, Department Counsel prepared a File of Relevant Material (FORM), dated January 27, 2009. Applicant received the FORM on February 6, 2009. His response to that FORM was received and accepted without objection on by Department Counsel on February 25, 2009.

The case was forwarded to DOHA for assignment to an Administrative Judge for a determination. The case was assigned to me on March 3, 2003. Based upon a review of the complete case file and exhibits, I find it is not clearly consistent with the national security to grant Applicant a security clearance.

Findings of Fact

Applicant is a 26-year-old supply clerk who has worked for the same defense contractor since November 2007. He graduated from high school in May 2000. He joined the United States Army in November 2000 and served until January 2007. During his service, he was awarded the Army Commendation Medal, the Army Achievement Medal, and several lesser decorations, including a Combat Action Badge. Applicant served one year in Iraq. After being honorably discharged in January 2007 by reason of disability, he experienced a period of unemployment through March 2007. In March 2007, he was hired by his current employer, but in a different capacity than the one in which he currently works. Applicant married in 2006, but the couple had separated by August 2008. They have no children.

In November 2007, Applicant completed both an e-QIP and a SF-86. He noted in the "General Comments" area of the SF-86 that he had not checked his credit reports prior to completing the form.¹ In completing the November 3, 2007, e-QIP, Applicant denied having had his wages garnished or having had any property repossessed for any reason within the past 7 years. He did not mention the debts noted under SOR allegations 1.q and 1.v until later. Department Counsel conceded allegation 2.c, noting there is no record evidence to support falsification.²

In completing the November 22, 2007, SF-86, Applicant denied being over 90-days delinquent on any debts in response to question 28b. Similarly, he denied having ever been over 180-days delinquent on any debts in the last seven years in response to question 28a. Applicant had delinquent debts of this type, several of which he acknowledged when he was apprised of their existence. Applicant denies committing a falsity in giving these answers in November 2007.

In his response to the SOR, Applicant admitted to the debts contained in allegations 1.h (\$420, toward which he made one \$50 payment), 1.q (\$6,434), 1.r (\$75, for which he provided documentation of full account satisfaction), 1.v (\$13,290), and 1.y

¹ Item 6 (SF-86 Form).

² FORM at 4.

(\$5,653).³ He noted that the two largest debts, 1.q and 1.v, to which he admits, were related to his medical disability. He claims they were charged off because the creditors would not work with him while he was unemployed. In sum, Applicant paid \$125 toward an acknowledged debt of approximately \$26,000.

Applicant denied the remaining 21 debts, which amount to approximately \$22,100. In most of his denials, Applicant states terse, one or two sentence assertions regarding the accounts. For example, he suggests that some of the adverse credit entries pertain to his father and not to him. There is no tangible evidence supporting any such assertions. The record only reflects less than five attempts to formally dispute or make inquiry as to alleged debts. Similarly, there is no evidence of financial counseling.

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©, 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ⁴ The burden of proof is something less than a

³ The debts upon which the allegations are based come from credit reports dated December 6, 2007, May 30, 2008, and July 17, 2008. See Items 8 and 9 (Credit Reports), as well as Item 7 (Response to Interrogatories, dated Aug. 7, 2008).

⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

preponderance of evidence.⁵ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.⁶

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) and Guideline E (Personal Conduct) to be the most pertinent to the evaluation of the facts in this case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

Guideline F – Financial Considerations

Failure or an 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

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

⁸ *Id.*

⁹ Executive Order 10865 § 7.

rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Conversely, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.¹⁰ The Regulation sets out several potential disqualifying conditions.

Applicant's responses to the SOR and FORM include scant facts and little to no narrative as to how these debts were acquired or how they became delinquent. Over the years, Applicant acquired over \$48,000 in debt. He denies about half of this delinquent debt as being his. As to the half he admits, he only has paid approximately \$125 – a \$75 balance on one account and \$50 toward a larger bill. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 19(c) ("a history of not meeting financial obligations") apply. With such conditions raised, it is left to Appellant to overcome the case against him and mitigate security concerns.

Applicant details a three month period of unemployment following his honorable discharge from the service. He also notes that he was married prior to that discharge, but separated not long after his discharge. Applicant failed, however, to document any links between these incidents and any specific debts or show that he otherwise behaved responsibly as these delinquent debts accrued. Therefore, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") does not apply.

The delinquent debts at issue are numerous. Their origins are, for the most part, unknown. The debts, both admitted and denied, remain largely unaddressed. Of the approximately \$48,000 at issue, one account for \$75 was paid, \$50 was paid toward a larger balance, and a couple of accounts were disputed. Therefore, neither Financial Considerations Mitigating Condition (FC MC) AG ¶ 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") nor FC MC AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") applies. Moreover, Applicant failed to offer any evidence that he has received financial counseling. Nor is there evidence his financial problems are otherwise resolved or under control. Therefore, FC MC AG ¶ 20(c) ("the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control") does not apply.

Given hints of information regarding Applicant's medical disability and marital separation, there may be sufficient cause to consider the debts at issue mitigated. The burden, however, is on the Applicant to produce evidence of such mitigation and Applicant has produced scant evidence or narration regarding his disability, his separation, his finances, or his life. Moreover, taking him at his word that only the \$26,000 in debt to which he admits is properly attributable to him, he still has only paid

¹⁰ Revised Adjudicative Guideline (AG) ¶ 18.

about \$125 toward that balance. Further, he has been employed since March 2007 and received the SOR in December 2008. Applicant demonstrated minimal efforts in the intervening periods to address the debts at issue. With financial considerations security concerns left unmitigated, those security concerns remain.

Guideline E – Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.¹¹ Refusal to undergo or cooperate with required security processing or refusal to complete required forms, releases, or provide full, frank and truthful answers to lawful questions in connection with a personnel security or trustworthiness determination will normally result in an unfavorable clearance action or administrative determination of further processing for clearance eligibility. Department Counsel concedes the allegation noted at SOR 2.c regarding Applicant's answer on his November 7, 2007, e-QIP.¹² That leaves consideration of the financial questions posed on the SF-86 application regarding allegations 2.a and 2.b.

At the end of his SF-86, Applicant disclosed that he had not consulted his credit report. Not having reviewed his credit report and lacking direct knowledge of those accounts included, Applicant could not have deliberately concealed its contents. Moreover, Applicant denies concealing information or otherwise committing a falsity, and there is no evidence of intentional falsity. Lacking evidence of an intent to falsify, no disqualifying condition can be raised.

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 public trust position 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, as well as the "whole person"

¹¹ Revised Adjudicative Guideline (AG) ¶ 15.

¹² FORM at 4.

factors noted above. The facts of record are limited due to the brevity of Applicant's submissions. Applicant is a young man who, fresh out of high school, chose to serve his country in the U.S. Army. His service was distinguished and honorable.

In the current economic climate, debt has become common place. Delinquent and unaddressed debt, however, raise security concerns. Here, Applicant denies half the delinquent accounts at issue are his, citing to various possibilities for their entry on his credit reports. Thus far, however, minimal efforts have been exerted to dispute these entries with his creditors or the major credit reporting bureaus, or to otherwise seek their removal from his credit report. As for the delinquent debt to which he admits, payment has been made toward only \$125 of an admitted balance of approximately \$26,000. There is no tangible evidence that he sought financial counseling to help address his past delinquent debts, manage his present income, or plan for his future. There is no documentary evidence that he has explored or initiated bankruptcy, a repayment plan, or other strategy to address these delinquent debts. Indeed, there is no actual evidence of any comprehensive plan to start addressing the accounts raising financial security concerns so as to mitigate those concerns.

Also lacking, however, is evidence that Applicant intentionally tried to conceal or falsify information about his delinquent accounts. Applicant acknowledged in his SF-86 that he had not consulted his credit report. The scant facts of record reflect and support his lack of knowledge as to the extent of the debt reflected on his credit report at the time. Moreover, for much the same reason Department Counsel conceded the allegation at SOR 1.c, there is insufficient evidence to suggest intentional falsity or concealment as to SOR allegations 1.a and 1.b.

In sum, Applicant is a young man whose military career was cut short by medical disability. For vague reasons, he accumulated between \$26,000 and \$48,000 in delinquent debt. He failed to provide tangible evidence of efforts to address these debts. The delinquencies at issue remain largely outstanding and unaddressed. Consequently, for failing to carry his burden, financial security concerns remain unmitigated. Therefore, because any doubt concerning personnel being considered for access to classified information must be resolved in favor of the national security, clearance is denied.¹³

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	Against Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	Against Applicant

¹³ AG ¶ 2(b).

Subparagraph 1.e	Against Applicant
Subparagraph 1.f	Against Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	For Applicant
Subparagraph 1.i	Against Applicant
Subparagraph 1.j	Against Applicant
Subparagraph 1.k	Against Applicant
Subparagraph 1.l	Against Applicant
Subparagraph 1.m	Against Applicant
Subparagraph 1.n	Against Applicant
Subparagraph 1.o	Against Applicant
Subparagraph 1.p	Against Applicant
Subparagraph 1.q	Against Applicant
Subparagraph 1.r	For Applicant
Subparagraph 1.s	Against Applicant
Subparagraph 1.t	Against Applicant
Subparagraph 1.u	Against Applicant
Subparagraph 1.v	Against Applicant
Subparagraph 1.w	Against Applicant
Subparagraph 1.x	Against Applicant
Subparagraph 1.y	Against Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a	For Applicant
Subparagraph 2.b	For Applicant
Subparagraph 2.c	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. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge