DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-06802
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 19, 2006. On September 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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.

Applicant acknowledged receipt of the SOR on September 16, 2008. He submitted a notarized, written response to the SOR allegations on November 1, 2008, and requested a decision on the written record in lieu of a hearing.[1]

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on February 12, 2009. Applicant received the FORM on March 2, 2009. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. DOHA assigned this case to me on May 15, 2009. The government submitted seven exhibits, which have been marked as Item 1-7 and admitted into the record. Item 2 of the government's exhibits is Applicant's response to the SOR.

Findings of Fact

In his Answer to the SOR, dated November 1, 2008, Applicant admitted the factual allegations in ¶¶ 1.b through 1.d and 1.f of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.e, 1.g, and 2.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 35 years old, works as a logistics co-ordinator for a Department of Defense contractor, a position he has held since 2006. He served on active duty in the United States Air Force for four years and in the state Air Guard for more than seven years. He received an honorable discharge from both.[2]

Applicant and his wife married in 1996 and they have three sons, ages 11, 7, and 4. After his discharge from active duty in 1997, Applicant worked several different civilian jobs, which did not pay a salary commensurate with his military pay. As a result, he experienced difficulty in paying his bills. He enlisted in the Air Guard to help stabilize his income and work closer to home. Before accepting his present job, Applicant again worked various low paying civilian jobs for a short period of time.[3]

Applicant currently earns $102,000 a year. His gross monthly income totals approximately $8,500 and his net monthly income totals approximately $7,000. His monthly expenses, including his mortgage and two car payments, total approximately $5,000, leaving $2,000 for other expenses and repayment of debt. Applicant's credit reports reflect that he pays his current bills on time and that he has paid many of his debts in a timely manner in the past. He lives within his financial means.[4]

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[1]Item 2 (Response to SOR); Item 3.

[2]Item 2, *supra* note 1; Item 4 (e-QIP).

[3]*Id*.

[4]Item 5 (Interrogatories and attachments).

The SOR alleges $90,470 in unpaid debts based on credit reports dated October 31, 2006 and August 21, 2008. The largest debt relates to an unpaid mortgage debt of $79,130. Applicant verified that this debt is fully paid and he does not owe any money to this creditor. The SOR also indicates that Applicant is $1,000 past due on his current mortgage, although this debt is not listed on either credit report. Both credit reports verify that this mortgage debt is an account in good standing and the creditor does not show any past due amount on the loan. Both of these debts are resolved.[5]

Applicant denies the debts listed in SOR ¶ 1.a, a telephone bill from 2000, and 1.e, an unidentified $125 medical bill from 2003. He acknowledged the $50 medical bill in SOR ¶ 1.b. In his interview with the Office of Personnel Management (OPM) investigator in September 2007, Applicant acknowledged the telephone debt and indicated the medical bills belonged to his wife. He told the investigator that both medical accounts had been paid, one in July 2006 and the other in June 2007. In his response, Applicant indicated the telephone company no longer existed and the collection agent could not find an account in his name. He also indicated that the smaller medical bill had been submitted to the insurance company and the medical office had cancelled the debt. These three debts are not shown on the August 21, 2008 credit report. Because the medical bills are no longer on his credit report and his statements about the payment of these debts are consistent, I find that the two medical bills are paid.

Applicant acknowledges he owed a car loan debt on an automobile his wife wrecked in a car accident, but believed the debt had been resolved as the creditor again loaned him money to buy a car in 2005. In his response, he submitted a letter which shows that his present car loan with the same creditor is current. The account number on his current car loan is not the same as the account number on the unpaid car loan debt. Applicant has not provided any information which shows that this four year old debt is paid or being resolved. This account is not listed on the August 21, 2008 credit report. While he was in another area of the country for training, his wife failed to pay the rent on an apartment she rented. In his response, he indicated the debt had been satisfied, but he could not verify this information. This 2001 debt is not shown on the August 21, 2008 credit report.[6]

Applicant completed his E–QIP on October 19, 2006. He answered “no” to the following questions:

Question 28. Your Financial Delinquencies

a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

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[5]Item 1 (SOR); Item 2, *supra* note 1, attachments; Item 6 (Credit Report, dated October 31, 2006) at 9; Item 7 (Credit report, dated August 21, 2008) at 3.

[6]Item 2, *supra* note 1; Item 5, *supra* note 4; Item 7 *supra* note 5.

b. Are you currently over 90 days delinquent on any debts?

Applicant denies that he intentionally falsified these answers. At the time he completed his E-QIP, Applicant believed the debts listed in SOR ¶¶ 1.b, 1.d and 1.e belonged to his wife and he was unaware that any debts were in collection. He admits he knew about the car loan, but believed it had been settled and was not an issue. In his answers to interrogatories, he stated that he was unaware of any debts in collection. The OPM investigator did not discuss his answers to these questions during the interview.[7]

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. 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

[7]Item 2, *supra* note1; Item 5, *supra* note 4.

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 some delinquent debt in the past, which he did not pay for a period of time. The evidence is sufficient to raise these disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." While some of his debts occurred some time ago, Applicant did not present evidence which shows that his debts occurred under unusual circumstances which are not likely to reoccur in the future. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where "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." Applicant has not

provided any evidence which demonstrates that events beyond his control created his past financial problems. I find this mitigating condition is not applicable.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant has not sought or received financial counseling. However, the evidence of record reflects that his usual finances are under control. His monthly income is sufficient to cover his monthly expenses and provides additional income to cover unexpected expenses each month. Both credit reports reflect that over the years he has paid the majority of his debts in a timely manner. This mitigating condition is partially applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant demonstrated that the large mortgage debt is resolved and that his monthly mortgage payment is current. While the August 2008 credit report does not show any overdue debts, except the paid mortgage debt, Applicant has not provided sufficient evidence that the rent, telephone and car debts are resolved. The rent debt and the telephone debt are eight and nine years old respectively[8] and were most likely removed from the credit report due to age. Without more documentary evidence, I am unable to conclude that these debts are resolved. The two medical bills are more recent and not likely to have been removed from the credit report for age. Rather, Applicant's statements that these debts are resolved are paid supports an inference that these debts are paid. I conclude this mitigating condition applies to the debts in SOR ¶¶ 1.b and 1.d through 1.g.[9]

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

> 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.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or

[8]Based on their age, these debts are barred from collection under the State Statute of Limitations.

[9]AG ¶¶ 20(e) and 20(f) are not raised in this case.

> similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

For AG ¶ 16(a) to apply, Applicant's falsification must be deliberate. The government established that Applicant omitted material facts from his e-QIP when he answered "no" to Section 28 a and b about his past due debts. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response, he denies, however, that he had an intent to hide information about his finances. When a falsification allegation is controverted, the government has the burden of proving the omission was deliberate. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.[10]

Applicant denied intentionally leaving out information about his overdue debts. At the time, he completed his SF-86, none of his current debts were more than 90 days past due. Thus, he did not falsify his answer to Question 28 b. Concerning his "no" answer to Question 28 a, Applicant's failure to answer "yes" about his past debts is not proof that he intentionally falsified his e-QIP. He knew about the unpaid car loan when he completed his e-QIP, but thought it was resolved. He did not know about the other debts listed in his credit, three of which he believed belonged to his wife. Based on his beliefs, the government has not established that Applicant intended to hide his financial situation from the government. His belief, although mistaken, does not reflect intentional conduct on his part. Guideline E is found in favor of Applicant.[11]

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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

[10] *See* ISCR Case No. 07-08925 (App. Bd. Sept. 15, 2008); ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

[11] Even if I were to find the government had established disqualifying condition AG ¶ 16(a), mitigating condition AG 18(f), *the information was unsubstantiated or from a source of questionable reliability* would apply as the allegation of intentional falsification was unsubstantiated.

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. The major debt listed in the SOR is resolved. Applicant's financial statement indicates that he has sufficient income each month to pay his monthly expenses and has additional financial resources for unexpected expenses. He, however, has not provided sufficient information to explain how the remaining significant debts occurred. He has not shown that circumstances beyond his control caused these debts or that he has made an effort to resolve the debts. He needs to provide documentary evidence to show that these debts are resolved. Although he has not actually proven his debts are resolved, his belief at the time he completed his e-QIP that his debts were not an issue is sufficient to establish the lack of intent to falsify his answers on his security clearance application.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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.

MARY E. HENRY
Administrative Judge