



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-07432 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) on April 1, 2008 (Item 5). On January 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E (Item 1). 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 in writing on February 19, 2009, admitting all of the allegations in the SOR with some explanation (Item 4). He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 17, 2009. Applicant received a complete file of relevant material (FORM) on March 25, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions within 30 days of receipt. Applicant did not respond to the FORM or provide

additional material. The case was assigned to me on June 16, 2009. Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

Findings of Fact

I thoroughly reviewed the case file, and the pleadings. I make the following findings of fact.

Applicant is 32 years old and an analyst for a defense contractor. He is divorced with one child for whom he pays child support. He attended college for approximately three years but did not earn a degree. He served seven years on active duty in the Army (Item 5). He lists his current monthly net income as \$2,843.08 with monthly expenses of \$2,705. His monthly net remainder is \$138 (Item 6 at 16). Applicant to the best of his knowledge has not incurred delinquent debt in seven years. He feels he is barely living within his means at this time (Item 6 at 7).

Credit reports, Applicant's admissions, and the SOR list the following delinquent debts: a credit card account debt of \$1,263 past due since August 2001 (SOR 1.a); a debt in collection to a property management company of \$1,100 (SOR 1.b); a student loan debt in collection with the Department of Education for \$8,472 (SOR 1.c); a collection account for another property management company for \$10,134 (SOR 1.d); and a collection account for a cell phone for \$1,072 (SOR 1.e; See Item 6, Answer to Interrogatories, dated September 23, 2008, Item 6, Credit Report, dated April 1, 2008; and Item 8, Credit Report, dated November 19, 2008). The delinquent debts total \$22,040.

Applicant's financial problems started when he attended college from 1994 to 1997. He obtained credit cards and opened student loans. He did not understand how credit worked and he was financially irresponsible. He got behind on his payments. He did not receive financial guidance or assistance from his family. He joined the Army in August 1997. He purchased a truck and again got behind on payments. He did not understand finances and he and his wife incurred expenses they could not meet. They paid what bills they could when they could. His wife did not work steadily particularly after their child was born (Item 6 at 5-6).

Applicant admitted the debts listed in the SOR. Applicant admits the debt at SOR 1.a for a credit card he opened while in college. He has not made payments on this account for a number of years and does not plan to make payments since he does not have the means to make payments (Item 6 at 4).

Applicant admits the debt to a property management company at SOR 1.b. He left an apartment he rented from the company damaged and dirty. He tried to settle with the company but was not successful. He has not contacted the company in a few years to settle the account (Item 6 at 4).

Applicant admits he owes the Department of Education for student loans as listed at SOR 1.c. The initial debt was for \$10,869. His tax return was used to pay \$1,800. He would like to get it settled and paid in five years, but he did not provide specific plans for payment (Item 6 at 4).

Applicant admitted that he left another apartment he rented damaged and dirty but disputed the amount owed the property management company (SOR 1.d). He believes the damage was minor and should have been taken from his \$600 security deposit. He tried to negotiate the amount of damage with the property management company but they insisted the damage was significant. He would like to settle the account for approximately \$2,000. He has not followed up with the property management company nor had contact with them in a number of years (Item 6 at 3).

Applicant admits the cell phone debt in collection for \$1,072 at SOR 1.e. He stopped making payments on the account when he left the Army and moved. This account was not one of his priorities when he moved. Applicant plans to contact the creditor and settle the account and pay the creditor \$100 monthly (Item 6 at 4-5).

Applicant admits that the omission of delinquent debts on his security clearance application was intentional. He generally knew of his debt listed in the credit bureau reports at the time he completed his security clearance application but did not know the specific details. He did not believe it was important to list his debts. He had adequate time to research the information and complete the form. He did not ask his security manager or supervisor for guidance in completing the forms (Item 6 at 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 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 Consideration:

Under financial considerations, 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts as established by credit reports and his admissions raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The record from credit reports and responses to interrogatories shows his inability or unwillingness to satisfy debts and shows a history of not meeting financial obligations.

I considered Financial Considerations Mitigating Conditions (FC 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 current reliability, trustworthiness, or good judgment). Applicant has taken no action to pay the delinquent debts, so the debts are current. The debts are from various sources, credit cards, delinquent debts to two property management companies, student loans, and a phone bill, so the debts are not infrequent. Since the debts are current and not paid, they cast doubt on Applicant's current reliability, trustworthiness, and good judgment. The mitigating condition does not apply.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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 admits to financial problems in college and his wife's inability to find steady employment as reasons for his financial problems. However, Applicant was on active duty in the Army for over seven years. Since then the only period of unemployment seems to be shortly after he left active duty. He presented no information concerning any attempt to pay past due obligations since he has been employed. He has not established he acted responsibly in managing his finances and making payments on his obligations.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant presented no information to show he has a plan to pay the debts or any action that he has taken to pay his debts. Applicant appears to have sufficient income to make some payments on his delinquent debts since he has been steadily employed for almost twelve years. He has not presented a concrete plan to pay his delinquent debts or established any attempt to pay them. He has not presented sufficient information to indicate a good-faith effort to pay creditors or resolve debts. Even though he states he has not incurred delinquent debt in seven years, he has not established that his finances are under control and he acted responsibly towards his delinquent debts. He has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security

clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answers on his security clearance application concerning debts past due more than 180 days or 90 days raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness."

Applicant admitted that he deliberately failed to answer financial questions correctly and accurately on his April 1, 2008 security clearance application. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant admits that he knowingly and willfully provided false financial information on his security clearance application. I find none of the Personal Conduct Mitigating conditions at AG ¶ 17 apply. I find against Applicant as to Personal Conduct.

“Whole Person” Analysis

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has not taken sufficient action to resolve his past due debts. His indifferent attitude and lack of action show he does not exercise good judgment, and is not trustworthy or responsible. Applicant has been irresponsible towards his delinquent debts and financial obligations. This is an indication that he might be irresponsible towards the protection and handling of classified information. He also deliberately provided incomplete and false information on a security clearance application. This

course of conduct indicates he may not be truthful and careful in protecting classified information. Applicant has not mitigated the security concerns arising from his finances and personal conduct. Clearance is denied.

Formal Findings

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.e: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 2.a - 2.b: | Against 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.

THOMAS M. CREAN
Administrative Judge