



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

In the matter of:)	
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I)	ISCR Case No. 08-08178
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Thomas Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

April 7, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 10, 2008. On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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; 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 received the SOR on December 29, 2008. His answer to the SOR was undated and contained one attachment, which was admitted, without objection, as Applicant's exhibit (Ex.) A. In his answer to the SOR, Applicant requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 19, 2009. The FORM contained documents identified as Items 1 through 7. By letter dated February 20, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on February 26, 2009. His response was due on March 28, 2009. He filed additional information within the required time period. Department Counsel did not object to Applicant's submissions, which have been identified as Ex.s B through N and admitted to the record. On March 26, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 17 allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.q.) and two allegations of disqualifying conduct under AG E, Personal Conduct. (Item 1.) In his undated Answer to the SOR, Applicant admitted 14 of the Guideline F allegations of financial delinquency (¶¶ 1.b., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 1.p.) He denied three Guideline F allegations (¶¶ 1.a., 1.c., and 1.q.). He denied the two Guideline E allegations of deliberate falsification of answers on his e-QIP. (¶ 2.a. and ¶ 2.b.). (Item 3.)

Applicant is 54 years old and employed in a computer support position by a federal contractor. He has a high school diploma and some additional vocational school training. In 1973, he enlisted in the U.S. military, served for three years, and received an honorable discharge. He was married in 1978, and he has three adult children. In October 2008, he reported a net monthly salary of \$2,370. His fixed monthly expenses were \$770, and he paid \$2,064 toward his mortgage and three debts. His budget showed a negative monthly remainder of \$463. (Item 4; Item 5; Item 6, 8-9.)

The delinquent debts alleged on the SOR total \$38,736. In his answer to the SOR, Applicant admitted responsibility for debts totaling \$34,898. Credit reports supplied by Applicant and the government showed his debts arose between approximately 2005 and 2008. Judgments were levied against him in 2005, 2006, and 2007. He provided documentation to corroborate his assertion that a judgment levied against him in 2007 had been satisfied by wage garnishment and released. Additionally, he provided documentation to corroborate his statement that a judgment for \$470, levied by a medical provider, had been satisfied on August 5, 2005. (SOR ¶¶ 1.a and 1.c; Item 3; Item 4; Item 5; Item 6; Item 7; Ex. C; Ex. D; Ex. E.)

In addressing his additional debts, Applicant admitted financial responsibility for nine accounts in collection status (SOR ¶¶ 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.k., 1.o., and 1.p.) He denied and planned to dispute one collection account (SOR ¶ 1.q.). He admitted one unsatisfied judgment (SOR ¶ 1.b.), one education account in charged-off status (SOR ¶1.j.), one account that was 90 days past due (SOR ¶ 1.m.), and an unsatisfied debt resulting from the involuntary repossession of an automobile (SOR ¶ 1.n.) He also admitted an arrearage of \$7,169 on his home mortgage (SOR ¶ 1.l.)

In response to DOHA interrogatories, Applicant stated that his financial delinquencies had arisen because his wife had lost her job and he had taken a large pay cut in order to keep his job.¹ He did not specify when these events occurred or report how much income he and his wife had lost to unemployment and underemployment. (Item 7.)

In his answer to the SOR, Applicant provided a work sheet showing balances due on his debts, contacts he had made with creditors, and amounts he intended to pay each month to satisfy his delinquent debts. In response to the FORM, he provided documentation to show he had made a payment of \$50 on March 9, 2009 on a \$1,586 judgment levied by a medical provider (SOR ¶ 1.b.); a payment of \$25 on a \$43 collection account (SOR ¶ 1.d.); and a payment of \$25 on March 12, 2009 on a debt of \$9,784 resulting from an involuntary repossession of an automobile (SOR ¶ 1.n.). (Item 3, Ex. A; Response to FORM; Ex. G; Ex. J.)

Applicant provided documentation to show he had entered into a payment plan with a creditor on the debt alleged at SOR ¶ 1.m and had made a payment of \$85. He provided documentation showing a payment of \$25 on a \$323 debt alleged at SOR ¶ 1.p. He also provided documentation to support his statement that he had made a payment of \$25 on February 10, 2009 on a charged-off education debt of \$2,320, alleged at SOR ¶ 1.j. (Response to FORM, Ex. N; Ex. J; Ex. H.)

In his response to the FORM, Applicant acknowledged he had no payment plan in place for a \$10,055 credit card debt alleged at SOR ¶ 1. k., or a \$529 debt alleged at SOR ¶ 1.o. He also stated he was working with his mortgage holder on a forbearance plan. A notation on an exhibit in his response to the FORM indicated that his January 2009 mortgage payment was returned to him by the mortgage holder, suggesting that a satisfactory plan to address his arrearages was not yet in place. (Response to FORM; Ex. B; Ex. M.)

In his response to the FORM, Applicant stated his intent to dispute the debt alleged at SOR ¶ 1.q. on the advice of the creditor. He provided no documentation to indicate that he had filed a dispute. (Response to FORM; Ex. B.)

¹Applicant's Ex. A shows income of \$936 for his wife. This appears to be a monthly income in addition to Applicant's net monthly salary of \$2,370. Applicant's response to DOHA interrogatories also shows that Applicant's net biweekly pay appeared to be only \$1,185.14. The record is not clear regarding Applicant's net monthly family income. (Ex. A; Item 7.)

Applicant completed and certified an e-QIP on April 10, 2008. Section 28 on the e-QIP asks the following questions: “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” “Are you currently over 90 days delinquent on any debts?” Applicant answered “no” to both questions. At the time he completed the e-QIP, he failed to disclose that he was delinquent on the accounts set forth in ¶ 1.b. and ¶¶ 1.d. through 1. q. of the SOR.² (Item 4.)

Section 27 of the e-QIP asks several questions about an applicant’s financial record. Question 27d asks: “In the last 7 years, have you had any judgments against you that have not been paid?” Applicant responded “no” to Question 27d. He did not report a judgment filed against him in June 2006 for approximately \$1,586 which had not been paid. In his answer to DOHA interrogatories, Applicant stated that when he completed his e-QIP, he was aware of only the judgment alleged at SOR ¶ 1.a., which had been satisfied by garnishment in approximately September 2007. He responded affirmatively to Question 27b, which asks: “In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?” He then listed the wage garnishment related to the judgment alleged at SOR ¶ 1.a. He did not list the involuntary repossession of the automobile alleged at SOR ¶ 1.n.³ (Item 5; Item 7.)

In his answer to the SOR, Applicant denied intentionally falsifying his SF-86 by failing to report debts of over 180 days in the past 7 years and any current debts that were 90 days delinquent. He also denied that his failure to list the judgment alleged at SOR ¶¶ 1.b. was deliberate falsification.

Applicant and his wife planned to begin credit counseling on March 19, 2009. (Response to FORM; Ex. B)

Policies

When evaluating an Applicant’s suitability for a security clearance, an 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, the administrative judge applies these guidelines 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

² Applicant denied the judgments alleged at ¶¶ 1.a. and 1.c. of the SOR and provided documentation to corroborate that the judgments were satisfied in 2005 and 2007, before he completed his e-QIP in April 2008.

³ Applicant’s credit reports show that the automobile repossession occurred after Applicant completed his e-QIP. (Item 6; Item 7.)

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.

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 substantial delinquent debt and was unable to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies that dates to at least 2005 and 2006. His delinquencies are recent and on-going. They have occurred under circumstances that are likely to recur.

Applicant and his wife experienced a financial downturn when she lost her job and, at the same time, he took a pay cut in order to retain his job. The record indicates that these circumstances contributed to his delinquencies and were beyond his control. To show good faith in resolving his many financial delinquencies, Applicant has made initial payments on some of his debts, and he promises to pay or settle most his debts in the future. However, one of his major delinquencies, a debt of over \$10,000 to a credit card company, remains unresolved. The record is unclear regarding the status of his home mortgage arrearages. Applicant reported that he and his wife were scheduled to begin financial counseling in mid-March 2009. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(b) and 20(c) apply to the facts of

Applicant's case. I also conclude that AG ¶¶ 20(a), 20(d), and 20(e) do not apply in mitigation to the facts of Applicant's case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security 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.

When Applicant completed and signed his e-QIP in April 2008, he responded "no" to a question asking if he had been over 180 days delinquent on any debts in the last seven years. He answered "no" to a question asking if he was currently over 90 days delinquent on any debt. He answered "no" to a question asking if he had any judgments placed against him in the last seven years that had not been paid.

The SOR alleged that Appellant's responses to the financial questions on his e-QIP showed he had deliberately falsified material facts by deliberately failing to admit and disclose a judgment, debts that were delinquent over 180 days in the last seven years, and debts that were currently 90 days delinquent.

This information raises a security concern under AG ¶ 16(a), which reads as follows: "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

Appellant's disqualifying personal conduct might be mitigated if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶17(a).

Applicant did not make good-faith efforts to correct the omissions before being confronted with the facts. He denied his answers constituted deliberate falsification, and he offered no explanation for his failure to acknowledge or report on his e-QIP long-standing financial delinquencies that totaled nearly \$35,000.

When he completed his e-QIP, Applicant also denied knowledge of any unpaid judgments against him. In his response to DOHA interrogatories, he stated that when he completed his e-QIP, he was only aware of the judgment alleged at SOR ¶ 1.a, the judgment that caused Applicant's wages to be garnished in 2007. He did not report a judgment for \$1,586, filed against him by a medical provider in June 2006.

Applicant's silence and failure to address these omissions is a matter of security concern. He provided no credible evidence to mitigate his failure to report his financial delinquencies on his e-QIP. Nothing in the record suggests that he took prompt good faith action to correct the omissions, concealments or falsifications before he was confronted with the facts. AG ¶ 17(a). I conclude that his falsifications were deliberate.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an 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 security clearance 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. For a period of time before completing his e-QIP, Applicant was aware of his financial delinquencies, which dated to at least 2005. Most of his actions to pay or settle his financial delinquencies were recent. While he made preliminary payments to some of his debtors, he had not established a track record of consistent payment of his debts over a period of time.

He allowed three debts to proceed to judgment. One judgment was satisfied in 2005; the other judgment was resolved by garnishment, thereby putting Applicant on notice that he had financial problems. Even though he had financial difficulties, he did not approach his creditors, alert them to his financial problems, and attempt to find a responsible resolution for paying or settling his debts.

To their credit, Applicant and his wife are seeking financial counseling, and they might find it beneficial to seek legal advice about resolving their debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies and personal conduct.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n through 1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge