



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-08431

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

June 5, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant owed more than \$66,000 in delinquent child support in January 2008 when he applied for a security clearance. He also had state tax liens for more than \$3,700 in overpayment of unemployment compensation filed in 2003 and 2007. He repaid almost \$4,300 of these debts through garnishment and payroll deduction starting in September 2008. He denied any delinquent debt on his security clearance application, and failed to mitigate resulting financial and personal conduct security concerns. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on January 4, 2008. On November 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. 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 (DoD) for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on December 3, 2008. He answered the SOR in writing on December 12, 2008, and requested a determination be made without a hearing “unless further explanation or information is required.” On January 20, 2009, Department Counsel ascertained in a telephone conversation that Applicant actually did desire a hearing and converted the case to request a hearing before an administrative judge pursuant to Directive ¶ E3.1.8. Department Counsel was prepared to proceed on January 30, 2009, and DOHA assigned the case to me on February 5, 2009.

DOHA issued a Notice of Hearing on February 17, 2009, and I convened the hearing as scheduled on March 10, 2009. Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant’s Exhibits (AE) A and B. I granted Applicant’s request to leave the record open until March 24, 2009, to permit submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on March 19, 2009. On April 9, 2009, Department Counsel forwarded Applicant’s additional submissions without objection to their consideration. These documents were collectively marked AE C, admitted, and the record was closed.

Findings of Fact

Applicant is a 41-year-old employee of a federal contractor, where he has worked for two and a half years as a rigger and commercial truck driver. In his answer to the SOR, he admitted all of the allegations were true, with some explanations. Applicant’s admissions are incorporated into the following findings of fact.

Applicant served in the Navy from 1991 to 1995, and the Army from 1996 to 1998 when he was discharged with a disability. While in the Navy, he had a girlfriend for a couple years who subsequently had a son and named him the father on official records. She later filed for child support, which he only discovered when he first applied for his commercial driver’s licence in 1998. He has not spoken to the mother since 1996, and has never been able to make contact with his son. Between March 1996 and January 2008, he was under a county court order to pay the mother \$341 per month in child support. Over those years, he sporadically made payments totaling \$8,786. With assessed interest on delinquent payments, his total due to the county in January 2008 was \$66,148. (AE C at 4-6; Tr. at 31-38, 57-59.)

In September 2008, Applicant’s employer began deducting \$203.22 from his biweekly paychecks for payment of child support. This results in an average monthly payment of \$441, which Applicant understood to be \$341 for current support and \$100 toward the delinquent debt. (AE B at 2; Tr. at 36, 49.) The county reported a balance due of \$65,595 in November 2008. (GE 3 at 1.) Applicant provided an account statement from the county prepared on March 13, 2009, purporting to show all of his debts, that reflected no charges for child support or interest after January 2008, but

provided no other evidence concerning whether his child support obligations continue. He was not aware of his son's actual age. (AE C at 4-6; Tr. at 59.) Between September 2008 and February 2009, a total of \$2,642 was garnished from his wages for child support. (AE B at 2.)

Applicant's current state of residence filed tax liens against him in the amounts of \$985 in April 2003, \$2,739 in June 2007, and \$2,193 in September 2008. It is unclear from the evidence whether these represent three distinct debts, or updated amounts on the same outstanding debt. Applicant explained his understanding that these liens resulted from his receipt of more unemployment compensation than he was entitled to during periods he was briefly out of work with previous employers as a truck driver. His girlfriend, with whom he lived for ten years, was handling their joint finances at the time. He was unaware the state had obtained the judgments against him on which the liens were based until his employer began garnishing his wages for them in November 2008. (GE 2 at 3; GE 4; Tr. at 34, 38-39.) That garnishment is also \$203.22 per paycheck. Applicant's payroll clerk annotated, on the printout showing these deductions, that the initial amount requested in this garnishment action was \$2,254, and after the February 2009 payments he had paid \$1,626 and still owed \$628. (AE B at 1.)

Applicant stopped living with the woman who had been handling their finances and her two children in October 2008 due to her dissatisfaction with his income after his child support garnishment of over \$400 per month began. He moved in with a long-time friend and the friend's wife, and currently pays about \$1,400 per month in rent and vehicle expenses. His income varies based on number of hours worked, but he estimated his net take home after all deductions at \$1,600 to \$1,800 per month, plus an additional \$974 in monthly VA disability payments. Other than child support and the tax liens, Applicant's other debts have been generally paid on time. He said he would complete a Personal Financial Statement form provided to him by Department Counsel and submit it after the hearing, but did not do so. (GE 3; AE C at 2, 3; Tr. at 44-47, 54.)

When Applicant completed his SF 86 in January 2008, he said he had not had any debts delinquent by 180 days during the last 7 years, and had no debts currently 90-days delinquent. In his answer to the SOR, Applicant explained:

I admit that I answered no to [Questions 28a and 28b]. I was not intentionally misleading or un-truthful. I have been making payments on the account brought into question which I thought meant I was current in my payments. I did not understand that neither the arrears amount for child support nor the tax liens would be considered to be past due as I have been making these payments via payroll deduction and was unaware that any amounts in arrears would be considered as past due amounts. Prior to October 2008 I was not handling my personal finances and did not know that the debt(s) to [state] Employment Security Department had not and were not being paid. I understand it is my responsibility to have knowledge and insure that my financial obligations are handled properly. I have remedied this situation and am making payments as necessary to

resolve the issue that have been brought forth as part of your investigation.

During the hearing, he reiterated that he did not know about the tax liens until his employer began garnishing his wages for them in November 2008. However, he admitted that he did know about the child support delinquency, and had not been making recent payments toward it around the time he completed his SF 86. He explained, "I guess this is just something that I was trying to get through it at work, trying to make it as easy as possible to go through the stuff at work with my bosses sitting there." (Tr. at 40-42; 51.) The county account printout confirms that his last payment before January 2008 was in May 2006, and the two payments before that were in March and May of 2005. (AE C at 5-6.) Applicant further clarified that he had been informed about the overpayment of unemployment benefits during three different years, but "when I received notice of that, I just basically gave it to my ex to take care of to pay back because I didn't want that as a lien or a judgment on me." He continued, "then when they said there was an overpayment, I was like, 'Okay. No problem. I'll take care of it.' And it never got taken care of." (Tr. at 54-56.)

Applicant's supervisor wrote that they have worked closely together for 16 months, and commented on his professionalism, dedication, strong work ethic, timeliness, conscientiousness, and willingness to help others. His longtime friend and current landlord wrote that Applicant is an upstanding individual who is only trying to live his life in a respectable way. He further commented that Applicant views his current work as a way of supporting his country after having been discharged from military service for medical reasons. (AE C at 3.) Applicant offered no evidence of financial counseling, and did not demonstrate a knowledgeable grasp of his budget or other financial circumstances.

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 used to evaluate 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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

AG ¶ 18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted, and the evidence supports, the applicability

of two of these potentially disqualifying conditions: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” (Tr. at 62.) One other disqualifying condition could also be implicated by the existence of tax liens: “(g) failure to file annual Federal, state, or local income tax returns as required, or fraudulent filing of the same.” Applicant admitted the existence of the tax liens, but they do not correspond to any failure to file or pay taxes so AG ¶ 19(g) is inapplicable. The undisputed evidence demonstrated Applicant’s inability to pay delinquent child support debt in excess of \$65,000, and unwillingness to do so until his wages were garnished, thus raising security concerns under AG ¶ 19(a). The evidence also established a lengthy history of not meeting these financial obligations that supports security concerns under AG ¶ 19(c). The evidence of record raises questions about Applicant’s self-control, judgment, and willingness to abide by rules and regulations under which people are expected to fulfill their lawful financial obligations.

AG ¶ 20 provides conditions that could mitigate security concerns arising from financial considerations. The only potentially applicable conditions are:

(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; and

(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.

AG ¶ 20(a) provides no mitigation because more than \$65,000 in delinquent debt, incurred regularly over the past ten to twelve years, continues to be outstanding. The past ten years’ worth of child support went largely unpaid because Applicant chose to support his girlfriend and her children rather than comply with the court order to provide support for his son. This pattern and the amount of remaining debt support substantial doubt about his current reliability, trustworthiness and good judgment. AG ¶ 20(b) also provides little to no mitigation since he did not act responsibly toward either

his ongoing child support obligations or his receipt of unwarranted unemployment compensation after becoming aware of them. There is no evidence of counseling and little indication the problems will be resolved anytime soon. At the \$100 per month rate that Applicant testified he is repaying back child support, it would take more than 54 years to repay \$65,000 in debt. Furthermore, Applicant did not initiate any effort to repay or resolve any of these debts, all of which are being addressed through recently obtained involuntary garnishments. Thus, no mitigation is established under AG ¶¶ 20(c) or (d). Finally, Applicant neither asserted nor provided evidence to support application of AG ¶ 20(e).

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The Government asserted that Applicant's statements and actions support concerns under AG ¶ 16(a):

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.

Applicant completed his SF 86 personnel security questionnaire in January 2008. On the two questions that asked whether he had experienced financial delinquencies he responded “No,” and did not report what he then knew to be substantial delinquent child support debt. He did this because he did not want to reveal this adverse information, either to his bosses or to the Government. This was a deliberate omission, concealment, and falsification of relevant facts from his SF 86, establishing security concerns under AG ¶ 16(a), as alleged in SOR ¶ 2.a.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(a), (c) and (f) are not supported by the evidence in this case. Applicant acknowledged the relevant facts concerning his financial history and present debts only in response to specific confrontation. His claim in response to the SOR that he thought the debts were not delinquent because he had begun repayment agreements is patently

false, since he completed the SF 86 in January 2008 and the repayments, through involuntary garnishment actions, did not begin until September and November 2008, respectively. Finally, the falsification occurred recently and in connection with seeking the clearance that is currently under adjudication, reflecting directly on his reliability and trustworthiness in security-related matters.

Applicant neither asserted nor offered evidence that he was advised to falsify his SF 86, or has taken any positive steps to lessen the likelihood of recurrence or reduce his vulnerability to exploitation and duress. Accordingly, no mitigation under AG ¶¶ 17(b), (d) or (e) was established. Finally, AG ¶ 17(g) relates to personal conduct concerns not alleged in this case.

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 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. Applicant's conduct of security concern involves more than ten years of failure to pay court ordered child support resulting in more than \$65,000 in delinquent debt. Even with ongoing garnishment at present rates, it will be many years before this debt is resolved so continuation and recurrence are likely. He did not initiate actions to repay either this debt or his several debts that arose from collecting more unemployment compensation than he was entitled to receive. Both are being recouped through creditor garnishment actions. He offered no evidence negating his ongoing potential for pressure, coercion or duress. His deliberate falsification of his security clearance application, by denying the existence of his delinquent child support debt, further demonstrates his susceptibility to conceal important security-related information that might entail personally detrimental consequences, and willingness to compromise his integrity.

On balance, Applicant presented insufficient evidence to mitigate the significant judgment, reliability, or trustworthiness security concerns arising from his history of financial irresponsibility, inability to pay his debts, and falsification of his SF 86. The record evidence leaves substantial doubt as to his present eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated security concerns related to his financial considerations 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge