



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



In the matter of:)
)
) ISCR Case No. 08-08808
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

August 12, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. Accordingly, his request for a security clearance is denied.

On April 25, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request (Item 5).

On March 17, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG). The SOR was issued pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.²

Applicant received the SOR on March 19, 2009. He submitted a signed, notarized Answer to the SOR, and requested a decision without a hearing. DOHA Department Counsel submitted a file of relevant materials (FORM),³ dated May 7, 2009, in support of the government's preliminary decision. A copy of the FORM, with the supporting government evidence, was forwarded to Applicant by letter dated July 29, 2009. Applicant was given 30 days from the date he received the FORM to file a response, but did not respond (Items 1, 3, 4; FORM).

In his Answer to the SOR, Applicant admitted each allegation under Guideline F, except allegation 1.a. Under Guideline E, he admitted allegations 2.a. through 2.d., with explanation. The case was assigned to me on August 6, 2009, for an administrative decision based on the record.

Procedural Matters

Applicant denied the allegation at SOR ¶1.a. In his FORM, Department Counsel withdrew a portion of the allegation in order to conform the allegation to the evidence. The withdrawn portion reads, "for the removal of a washer and dryer from the landlord's property." The revised allegation 1.a. now reads:

- a. You are indebted to [name] in the approximate amount of \$590.00 and a judgment has been (*sic*) entered against you in about August 2002. As of January 9, 2009, this debt had not been satisfied.

Among the government's exhibits are two sets of Interrogatories. The first, Item 6, is dated October 31, 2008. It includes a report of Applicant's Subject Interview of June 25, 2008, and a list of debts. It requests that Applicant verify if the report is accurate, and provide information and documentation as to his actions on each of the debts. Item 6 does not include a response, signature, or notarization from Applicant. Item 7 is the second Interrogatory. It does not show the date it was mailed to Applicant,

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) in support of the government's case.

but three pages are signed and dated by Applicant: page I-5 is dated January 4, 2009; pages I-11 and I-13 are dated November 21, 2008. Item 7 contains the same list of Applicant's debts, as well as hand-written notes at pages I-4, I-11 and I-12. However, while it does not include a copy of the report of Applicant's Subject Interview, it does include two pages on which Applicant responded that the report was accurate (pages I-4 and I-12).

Each of these Items is incomplete. Although Item 7 contains Applicant's checkmark indicating that the Subject Interview report is accurate, that Item does not contain a copy of the report. Item 6 contains the report, but no verification that Applicant adopts its contents. I find that these documents, as presented, are insufficient to show what documents Applicant received. I cannot determine whether Applicant, in fact, received, read, and adopted the Subject Interview report. Therefore, in this decision, I do not rely on either Item in making findings of fact or drawing conclusions.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant, 40 years old, has been a custodian for a defense contractor since 2007. He has also worked as a bartender since 1995. He married for the first time in 1994, and divorced in 1997. He remarried in 2001, and divorced in 2005. He has seven children, ranging in age from 2 years to 20 years old (Item 5).

Applicant's credit bureau reports show that Applicant's debts began to become delinquent in 2002. His credit bureau reports of May 2008 and January 2009 show three judgments, two of which were filed in 2002, and one in 2003. Other listed delinquencies include two medical debts, three telephone company debts, a utility company debt, a credit card debt, an automobile loan, and unpaid child support (Items 8 and 9). The SOR debts amount to \$34,550. Applicant admitted all the debts, except ¶1.a., which lists a \$590 debt and subsequent judgment related to rental property. Applicant did not explain the reason for his denial.

In his Answer to the SOR, Appellant wrote that he "took a step to file bankruptcy" and that he had begun working at a second job, both in an attempt to resolve his debts (Item 4). He provided no documentation to show that a bankruptcy petition has been filed or to support the fact that he might be working at a second job. The file also shows no indication that Applicant undertook any kind of consumer counseling.

When he completed his security clearance application in April 2008, Applicant did not disclose one of the two alleged judgments, one repossession, or any of his delinquent debts (Items 1, 4, and 5). In his Answer, he admitted to the falsification alleged at ¶¶ 2.a. through 2.d. of the SOR, but explained that he "misread the questions on the questionnaire and take full responsibilities for my actions." (Item 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the government’s case.

Because no one has a “right” to a security clearance, an Applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

⁴ Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

The evidence contained in the FORM raises two potentially applicable disqualifying conditions. AG ¶19(a) (*inability or unwillingness to satisfy debts*) applies. Applicant has allowed delinquencies to accrue and remain unresolved to the point where he carries a significant debt load of approximately \$34,000. AG ¶19(c) (*a history of not meeting financial obligations*) also applies because Applicant's debts, which started becoming delinquent around 2002, still appear in his credit bureau reports and remain unpaid as of the date of his Answer, showing a seven-year history of failing to meet financial obligations.

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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.

AG ¶ 20(a) cannot be applied. Applicant's debts did not occur in the distant past, because the debts are still delinquent. Moreover, his failure to make any attempt to resolve his financial situation casts doubt on his reliability. The record contains no indication that unforeseen circumstances delayed or prevented Applicant from dealing with his debts, which negates any mitigation under AG ¶ 20(b).

Applicant did not indicate in his Answer that he sought professional guidance or consumer counseling to assist him in resolving his delinquencies. He did note that he had taken “a step to file bankruptcy and try to resolve these (sic) financial situation.” Although bankruptcy would be a legitimate path to resolve his debts, Applicant provided no further information or documentation, and it cannot be determined whether he, in fact, has taken such steps. A stated intention or promise of future action is insufficient to show that an applicant will take that action, nor does it negate this Applicant's past record of failure to respond to his debts.⁸ Mitigation is not available under AG ¶ 20(c).

AG ¶ 20(d) is also unavailable, as Applicant has not paid or set up a payment plan for any debt. He admitted in his Answer that the debts alleged in the SOR were unpaid as of January 2009, and included no documentation to show that he had paid any since that date. As none of the mitigating conditions apply, I find against the Applicant on Guideline F.

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) (*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*) is relevant. When he completed his security clearance application in April 2008, Applicant failed to disclose a repossession, a judgment related to a motorcycle, or any of his debts that had been delinquent since 2002 (Item 5). Applicant admits the allegations of falsification, but explains in his Answer that he misunderstood the questions (Item 4). Applicant did disclose one judgment, alleged at ¶ 1.a., in the amount of \$590. However, he failed to disclose a much larger judgment for more than \$4,000, as well as a repossession involving a debt of approximately \$5,000, and 11 other debts, all of which total approximately \$34,000. His statement that he did not understand the questions relating to repossession and past-due debts is not credible, as he understood the question relating to unpaid judgments. Applicant's disclosure of a relatively small debt misrepresented the true extent of the debt load he carries. I conclude that the omission was intentional, and that AG ¶ 16(a) applies.

⁸ ISCR Case No. 98-0445 at 4 (App. Bd. Apr. 2, 1999). See *also*, ISCR Case No. 96-0544 at 5 (May 12, 1997).

Under Guideline E, two factors could potentially mitigate Applicant's conduct: AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17(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*). Neither condition applies. The record contains no evidence that Applicant attempted to inform the government of his true financial situation. In addition, Applicant's falsification cannot be considered insignificant under AG ¶ 17(c). Revealing one debt of approximately \$600, when his past-due debts actually amount to more than \$34,000, is a significant misrepresentation that cannot be considered minor. The government relies on information provided by Applicants, and deliberate falsification both undermines the security clearance process, and casts serious doubts on the Applicant's trustworthiness. I find against Applicant on Guideline E.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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 Applicant is 46 years old and presumed to be a mature, responsible adult.

Applicant is an adult 40 years of age, who is assumed to be mature and responsible. He has accrued a significant amount of debt since 2002, but during the past seven years, he has not taken steps to resolve it. Applicant stated that he had taken a step toward filing for bankruptcy, and had begun a second job. But without evidence to support these claims, they do little to assure that the debts will be resolved. In addition, Applicant's failure to disclose his debts on his security clearance application indicates a lack of trustworthiness that is incompatible with the high standards required of those who are granted access to classified information. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his trustworthiness and

reliability. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁹

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a: - 1.n.	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 2.a: - 2.d.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).