



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-08938

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

June 5, 2009

Decision

HOWE, Philip S., Administrative Judge:

On May 19, 2008, Applicant submitted his Security Clearance Application (SF 86). On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and 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 answered the SOR in writing on March 11, 2009, and requested his case be decided on the written record in lieu of a hearing.

On April 3, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant.

He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on April 17, 2009. Applicant filed a response to the FORM on May 13, 2009, within the 30 day time allowed that would have expired on May 17, 2009. I received the case assignment on May 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated March 11, 2009, Applicant admitted the factual allegations in ¶ 1 (Financial Considerations) of the SOR, with explanations. He denied the factual allegations in ¶ 2 (Personal Conduct) of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 52 years old, married with two children and one stepchild, and works for a defense contractor. Applicant worked for one company for 12 years into the 1990s until he was laid off when the factory closed. He found another job, and then was to be laid off unless he accepted another job at the same company for less income. He accepted that position. He was laid off in 2000 for seven months, and then returned to work until 2002 when he was laid off for another six months. Since late 2002, he has worked steadily without a lay off. His net monthly income at the present is \$2,328.98. (Items 3-7)

Applicant's wife developed a pituitary tumor requiring an operation in 1999 and radiation treatment in 2003. She is now on disability payments from Social Security. Applicant also provides financial support to the younger of his two daughters, who are 26 and 25 years old. (Items 3-5)

Applicant filed Chapter 7 bankruptcy in December 1998 and was discharged in April 1999. The amount of debts discharged in the bankruptcy is not disclosed. (Items 3-7)

Since April 2001, Applicant accumulated 13 delinquent debts totaling \$9,048. Eight of these debts are medical accounts. The other five debts are owed to various creditors. Applicant's Response to the FORM listed 10 payments to the same creditor, a collector listed in the SOR as being owed \$10. None of these payments are directly linked by Applicant to specific debts in the SOR. Three of the payments are \$9.96, \$8.07, and \$10.20, the amounts closest to the \$10 owed to that one collector. Three other debt payment sheets merely state the account is "Paid in Full" without a payment amount. The total amount paid as shown in Applicant's Response is \$240.63. But none of the account numbers listed by Applicant match the account numbers listed in the credit reports submitted by the Government. (Items 3-7, Response)

Applicant's delinquent debts are listed in Paragraph 1 of the SOR and are contained in the following subparagraphs:

- 1.b: Medical debt for \$115, unpaid;
- 1.c: Medical debt for \$41, unpaid;
- 1.d: Medical debt for \$10, possibly paid;
- 1.e: Medical debt for \$59, unpaid;
- 1.f: Medical debt for \$33, unpaid;
- 1.g: A collector for a loan company, \$32, unpaid, though Applicant claims he paid it at some time in the past;
- 1.h: Medical debt for an MRI for his wife, \$2,996, unpaid;
- 1.i: Medical debt for \$25, unpaid;
- 1.j: Apartment rent debt for two months, \$990, unpaid and Applicant disputes this debt because of water damage to his household goods in the apartment;
- 1.k: A bank debt for \$2,485 for the balance owed on a car he purchased for his daughter;
- 1.l: A collector for a bank credit card debt, \$1,560, unpaid and Applicant claims he has not had a credit card for six years;
- 1.m: A satellite television service, \$119, unpaid, and Applicant claims it was incurred immediately prior to his filing bankruptcy in 1998;
- 1.n: A medical debt for \$583, unpaid.

Applicant completed his SF-86 on May 19, 2008. He answered Question 28a (debts delinquent more than 180 days in the past seven years) and Question 28b (debts currently more than 90 days delinquent) with “no” responses. In fact, Applicant’s debts, listed in the SOR, met both criteria at the time he completed the form. He certified on the form his answers were true and correct. Applicant should have answered both questions with positive responses and listed the debts which were delinquent then. Applicant explains in his Answer that he knew the Government would check his credit report, and thought the questions referred to debts not listed in the credit report. (Items 3-7, Answer)

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 commonsense 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, and 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 two conditions that could raise security concerns under AG ¶19:

- (a) an inability or unwillingness to satisfy debts is potentially disqualifying; and,
- (c) a history of not meeting financial obligations.

Applicant accumulated 13 delinquent debts between 2000 and 2008 totaling \$9,048 after being discharged in Chapter 7 bankruptcy in 1999. Applicant has a net monthly income of \$2,328.98, but did not pay his delinquent obligations over the past six years. Six of the delinquent accounts are less than \$100, and two other debts are more than \$100 but less than \$200. Two other delinquent debts are more than \$200 but less than \$1,000. All of these debts could have been paid very easily by Applicant out of his net income. At the same time he is not paying these debts, he purchased a house in 2007. The evidence is sufficient to raise these potentially 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 they are as follows:

(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.

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's financial problems in 1998 and 1999 would qualify him for application of AG ¶ 20 (b) at that time. But he admits he has worked steadily since 2002, purchased a house in 2007, and has a net income of \$2,238.98 every month. He has not acted responsibly since 2002 by allowing these debts to become delinquent, especially those under \$100. Therefore, this mitigating condition does not apply under his present circumstances.

Applicant's Response to the FORM purports to show he is paying 10 delinquent debts. He paid \$240.63 on those debts, three of which did not show an amount paid on his Response documents. Applicant did not connect those payments to any specific debt listed in the SOR, except I could find one collector with a \$10 account which was the same collector listed in all of Applicant's Response payments. Therefore, only one \$10 debt payment could be confirmed, which was Subparagraph 1.d. The burden of proof and persuasion is on Applicant, and he should have clearly identified which payment applied to the specific debts listed in the SOR. AG ¶ 20 (d) is applicable to only one \$10 debt.

The remaining mitigating conditions do not apply under the facts. Therefore, I do not need to make specific statements about each of them.

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:

- (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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and,

(g) association with persons involved in criminal activity.

AG ¶ 16 (a) is the only disqualifying condition applicable. Applicant did not disclose his delinquent debts in answering Questions 28a and 28b on his SF-86. That form requires full disclosure by any applicant, even if the Government may have access to credit or other records to verify the disclosed information. Applicant's excuse for not answering the questions truthfully was that he knew the Government could get his credit records, and he assumed the questions referred to items not on the credit records. However, Applicant fails to explain how he knew what was or was not on his credit record, and he failed to use the "Additional Comments" section of the SF-86 to explain his debts or his rationale for not disclosing them. I conclude Applicant knew he had delinquent debts and chose not to disclose them as required by the SF-86. His reasons for not disclosing them, because he thought the questions on the SF-86 only applied to debts not listed on his credit report, is not persuasive. Therefore, it is logical to conclude he deliberately failed to disclose them to the Government.

AG ¶ 17 provides conditions that could mitigate 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.

Applicant did not take any action after completing his SF-86 and before being questioned by the Government investigator to correct this deliberate failure to disclose his delinquent debts. None of these mitigating conditions apply.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Filing Chapter 7 bankruptcy and then continuing to fail to pay his debts over the past decade is serious misconduct by Applicant. The majority of these debts was small, and could have been paid long ago. Applicant obviously ignored his financial obligations. There is a repeated failure to pay these debts from 2001 to the present. Applicant was a mature adult when he failed to pay his debts, and then deliberately failed to disclose them to the Government. He voluntarily made these decisions; no one coerced him to do them. There is no evidence of any rehabilitation. The likelihood of continuation or recurrence is shown by Applicant's futile attempt to show he paid some debts, but did not submit proof they were the debts of concern to the Government in the SOR, serving only to obfuscate the issue.

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

and personal conduct security concerns. I conclude the “whole person” concept against Applicant.

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
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e to 1.o	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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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.

PHILIP S. HOWE
Administrative Judge