



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



In the matter of:)
)
) ISCR Case No. 08-09045
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

February 18, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations concerns but has not mitigated Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E, Financial Considerations and Personal Conduct. The action was taken under Executive Order (EO) 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 on June 29, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 28, 2009, and reassigned to me on September 30, 2009. DOHA issued a notice of hearing on November 9, 2009, and the hearing was convened as scheduled on December 9, 2009. The government offered Exhibits (GE) 1 through 7. GE 1, 2, and 4 through 7 were received without objection. GE 3 was admitted for a limited purpose over Applicant's objection. Applicant testified on his own behalf and called one witness. He did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on December 23, 2009.

Procedural Rulings

On my own motion, I amended the SOR by adding an allegation under Guideline E, as follows:

2.c. You intentionally provided false testimony at your hearing on December 9, 2009, when you testified that your wife has not worked since 1999.

Department Counsel did not object to the amendment. Applicant's objection was overruled.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He is seeking to retain his security clearance. He has worked for his current employer since 1997. He is a high school graduate. He is married with two children, ages 20 and 17.¹

The SOR alleges 12 delinquent debts, with balances totaling in excess of \$79,000. Applicant denied all the debts alleged in the SOR, with explanations. All of the debts are listed on one or both of the credit reports obtained in April 2008 and January 2009, with the exception of the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.l. Those debts are not listed on any credit report in evidence. Those allegations were apparently based upon Applicant's response to interrogatories. The \$10,115 debt alleged in SOR ¶ 1.b is listed on Applicant's bankruptcy petition, as discussed below. The \$6,919 debt alleged in SOR ¶ 1.c is to the same credit card company as alleged in SOR ¶ 1.b. It is not specifically listed on Applicant's bankruptcy petition. The \$209 debt alleged in SOR ¶ 1.l is to the same bank as the debt alleged in SOR ¶ 1.k, which has a \$6,608 balance.²

Applicant and his wife filed Chapter 7 bankruptcy in May 2009. Schedule F listed 25 unsecured debts, with claims totaling \$108,325. There were 15 medical claims totaling \$37,451, including one claim for \$25,905. The remaining unsecured debts were to banks, credit cards, and collection companies for revolving credit purchases. The

¹ Tr. at 36-37, 42; GE 1.

² Applicant's response to SOR; GE 2-4, 7.

only secured claim was the \$45,600 mortgage on Applicant's home. The petition listed four vehicles, two were 1998 models, one was a 2001 model, and one was a 2002 model. All the vehicles are high mileage and are owned outright. The 2001 vehicle had 250,000 miles, and the 2002 vehicle had 183,000 miles. The petition also listed a 2003 all-terrain vehicle (ATV), four horses, eight dogs, and four cats. The ATV was valued at \$1,500, and the animals were also valued at \$1,500. Applicant's debts were discharged on August 31, 2009.³

Applicant attributed his financial problems to his wife's back injury in 1999. Except for about a 15-month period in 2007 to 2009, she has been out of work since the injury. She had six back operations and multiple medical procedures, resulting in large medical bills. She handled the family finances. She used credit cards to pay her medical bills, but was unable to pay everything. She is receiving Social Security disability. She worked on a ranch from about November 2007 to February 2009. She worked nights watching the horses. She would drive around the ranch, check on the horses, and water and feed them. She worked full-time for about six months, and part-time for the remaining nine months.⁴ She testified:

I got us caught up on bills mainly to pay a lot of those bills off like my car and different ones that were actually bills, that, you know, they could take - - they could take whatever we had away from us, not exactly get caught up on the credit card bills but to get caught up on the other bills.⁵

Applicant received financial counseling in conjunction with his bankruptcy. His wife stated that she is capable of returning to work if it becomes necessary. She stated that she does not require additional surgery. Both of their children have moved out of the home, which has eliminated some expenses. She still handles the family finances, but Applicant keeps himself informed of the status of their finances.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) on April 1, 2008. He answered "No" Questions 28a and 28b, which asked "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "Are you currently over 90 days delinquent on any debt(s)?" Applicant denied intentionally falsifying the SF 86. He stated that he did not know all the facts of his credit history because his wife handled the finances, and she did not tell him they had delinquent debts. His wife testified that he knew that they were struggling, but not to the extent that they were. She attempted to fix the problem on her own.⁷ After considering all the evidence, I find that

³ Tr. at 25-27; Applicant's response to SOR; GE 5, 6.

⁴ Tr. at 21-25, 52-53, 57, 61; Applicant's response to SOR.

⁵ Tr. at 53.

⁶ Tr. at 37-41, 53-60.

⁷ Tr. at 21-23, 32-36, 54; Applicant's response to SOR; GE 1.

there is insufficient evidence for a determination that Applicant intentionally falsified his SF 86.

Applicant testified with his wife out of the courtroom, because she might be called as a witness. He testified that his wife had not worked since she injured her back in 1999:

Q: (Department Counsel): Okay, So in '99 she was injured. How seriously was she injured? Did she have to miss work?

A: Yes, she missed work.

Q: How long did she miss work?

A: Oh, crud, for - - well, she hadn't been to work since.

Q: She's never returned to work?

A: No, sir.

Q: Okay.

A: She is permanently disabled.

Q: Okay. Is she - - she's permanently disabled. Is she collecting social security disability?

A: Yes, sir, at this time she is.⁸

Applicant's wife returned to the courtroom after he testified. He did not initially call her as a witness. After Department Counsel's closing statement, she interrupted and stated that she did not have a chance to say anything. Applicant then decided to call her as a witness, and I permitted her testimony over Department Counsel's objection. She testified about working at the ranch. Applicant testified again and denied intentionally providing false testimony. He stated that she was "baby-sitting horses," and he did not consider "driving around looking at horses" to be a job. When asked what he considered it, he stated: "A hobby. I don't like horses, you know."⁹ After considering all the evidence, I find that Applicant intentionally provided false testimony when he testified that his wife had not worked since 1999.

⁸ Tr. at 24.

⁹ Tr. at 50-64, 67.

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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 the 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 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 EO 10865 provides that adverse 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 Executive Order 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

Applicant's debts were discharged in bankruptcy on August 31, 2009. That is too recent to find AG ¶ 20(a) applicable.

Applicant's wife injured her back in 1999. She had six back surgeries and multiple hospital and doctor visits. She did not work again until 2007, and then she only worked full-time for six months and part-time for nine months. These qualify as conditions that were outside Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant should have known that his family's finances were suffering, but he chose to remain ignorant. I do not find that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling as part of his bankruptcy. His financial problems have been resolved through bankruptcy. AG ¶ 20(c) is applicable. His actions do not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁰ AG ¶ 20(d) is not applicable.

The debts alleged in SOR ¶¶ 1.b, 1.c, and 1.l are not listed on any credit report in evidence. The \$10,115 debt alleged in SOR ¶ 1.b is listed on Applicant's bankruptcy petition and in his response to interrogatories. AG ¶ 20(e) is not applicable to that debt. The debts alleged in SOR ¶¶ 1.c and 1.l appear either to be duplicates of other alleged debts, or they could have been accounts in Applicant's wife's name only. AG ¶ 20(e) is applicable to those debts.

¹⁰ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

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

Applicant submitted inaccurate information on his SF 86, but as discussed above, there is insufficient evidence for a determination that it was intentional. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

Applicant intentionally provided false testimony at his hearing, when he testified that his wife had not worked since 1999. AG ¶ 16(b) is applicable as a disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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; and

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

Applicant denied providing false testimony at his hearing. His denial was not credible. I find that no mitigating conditions are applicable to his false testimony.

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 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has resolved his financial problems through bankruptcy, but he provided false testimony at his hearing. I have serious doubts about his integrity, judgment, and honesty.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated Financial Considerations concerns but has not mitigated Personal Conduct security concerns.

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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	For Applicant
Subparagraph 2.c:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge