



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



In the matter of:

ISCR Case No. 08-09629

Applicant for Security Clearance

Appearances

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

March 26, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

On November 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 23, 2008, and requested a hearing before an administrative judge. The case was assigned to me on February 10, 2009. DOHA issued a notice of hearing on February 11, 2009. I convened the hearing as scheduled on March 5, 2009. The Government offered Exhibits (GE) 1 through 5.

Applicant did not object and they were admitted. The Government also offered Hearing Exhibit (HE) I as a demonstrative exhibit. There was no objection and it was considered. Applicant testified and offered Exhibits (AE) A through F. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on March 23, 2009.

Findings of Fact

Applicant admitted allegations 1.b, 1.c, 1.d, 1.g, 1.h, 1.j, 1.k, 2.b, and 2.c. He denied the remaining allegations and did not respond to 1.p. His admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 53-year old budget analyst who has worked for a federal contractor since August 2008. He has a college degree in business education and also earned an accounting certificate.¹

Applicant is married, but has been separated from his wife since July 2005. He has a ten-year-old son. He pays \$842 a month in child support. The child support order was not implemented until November 2005 and Applicant was required to pay back support from July 2005. Therefore, an additional \$100 for the arrearage was added to his monthly payment. At the time of the order, Applicant was earning approximately \$70,000 a year. In December 2005 Applicant lost his job and was employed as a "temporary employee" until August 2008. He would be employed in short term contracts and was only paid while under contract. When the contract expired he would not be paid and would have to wait to be assigned to another contract. His temporary employment status reduced his annual income. He did not have benefits, including health insurance, during the period of temporary employment. He could not pay all of his child support during this time and got further behind. When he was working full-time he paid the full amount of child support. He has experienced periods of unemployment. Applicant stated he has approximately \$1,800 remaining to pay in arrearages. He did not provide documentation to support this amount. He stated he has been saving his expendable income each month and hopes to pay \$1,000 toward this debt in the near future. The SOR 1.n. alleges his arrearages are \$4,000. The documentation that Applicant provided shows he has arrearages of approximately \$4,000.²

Applicant has a medical condition and the prescribed medication costs approximately \$300-\$400 a month. When he did not have health benefits he was required to pay this from his income. He estimated his out of pocket medical expenses during this period were approximately \$4,000. Since starting work with his new employer he has health insurance and his prescriptions are covered.³

¹ Tr. 29.

² Tr. 28, 41-54; AE D and F.

³ Tr. 35-41.

The debt in SOR 1.a is to a jewelry store (\$2,160). Applicant purchased a diamond bracelet in 2006 or 2007. He made a partial payment in cash and put the remaining amount on his credit card. He can not recall how much the original price was. He still has the bracelet. He made some payments and then stopped. He has not paid this debt.⁴

The debt in SOR 1.b is a medical debt (\$422). He stated in his answer to the SOR that he was working on paying it. It is owed to his doctor. He is trying to work out a payment schedule, but has not made any payments toward this debt.⁵

The debt in SOR 1.c is a medical debt (\$374). Applicant thought his mother paid this debt. It was incurred when he did not have health insurance. He found out his mother did not pay it. He has not paid this debt.⁶

The debt in SOR 1.d is a cell phone debt (\$279). Applicant terminated the contract, but believed he did not owe a termination fee. He spoke to the creditor and they were to credit him an amount. They did not credit an amount. He has not spoken to the creditor since before he received the SOR and has not followed-up on the debt.⁷

The debt in SOR 1.e is a medical account debt (\$197). Applicant stated he paid the debt, but did not provide proof of payment.⁸

The debt in SOR 1.f is a medical debt (\$151) that Applicant thought he had paid, but did not. He has not paid the debt.⁹

The debt in SOR 1.g is a credit card debt (\$4,868) that Applicant plans to pay in the future. Part of the amount of the debt was incurred by Applicant and part by his wife. The credit card is in Applicant's name. He could not recall when he stopped making payments on the debt, but remembered he had the credit card before he separated from his wife. He has not contacted the creditor recently.¹⁰

The debts in SOR 1.h, 1.i, 1.j, and 1.k (\$116, \$893, \$692, \$90) are all to a bank where Applicant used to have accounts. When he failed to make complete child support payments, his bank accounts were levied, thereby causing overdrafts on his savings

⁴ Tr. 55-57.

⁵ Tr. 57-58.

⁶ Tr. 58-59.

⁷ Tr. 59-61.

⁸ Tr. 61-64.

⁹ *Id.*

¹⁰ Tr. 64-67.

and checking accounts. The amounts reflect overdraft fees and overdrafts. He has not taken any action to resolve the accounts. He stated "I just don't know where to begin." He no longer has active accounts with this bank.¹¹

The debt in SOR 1.l is for medical services (\$50). Applicant stated he paid this debt and does not know why it is on his credit report. He tried to contact the creditor. He stated he learned the creditor went out of business.¹²

The debt in SOR 1.m is a judgment for medical services (\$169). Applicant does not remember what services were incurred. Applicant stated he attempted to contact the creditor, but because he could not find a copy of the bill he could not contact the creditor. He admitted he did not look in the telephone book, or on the internet, or review the credit report which provides a contact number. He stated he intends on contacting the creditor in the future.¹³

The debt in SOR 1.o (\$6,549) Applicant believes is the same debt as in 1.g. He did not provide any credible evidence or documentation to support his position. He never contacted the creditor to confirm the debt or see if it was a duplicate. He also did not contact the creditor in SOR 1.g.¹⁴

The debt in SOR 1.p is a student loan debt (\$3,704). He stopped making payments on his student loan sometime in 2006. He was offered a settlement by the loan company on February 12, 2009 to pay \$1,894 in 30 days to resolve the debt. Applicant stated he will pay that amount this week. He testified he would use the money he saved to pay the debt. When questioned about his statement that he was going to make a lump sum payment of \$1,000 toward his child support, he admitted he had not considered that payment.¹⁵

The debt in SOR 1.q is a credit card debt (\$14,000). He incurred this debt prior to separating from his wife. He stated he agreed to allow his wife to put some of her mother's medical debts on the credit card. He stopped making payments on the credit card around 2006. He can not recall when he last contacted the creditor. In his answer to the SOR he stated he would make arrangements to pay the debt. He has not taken any action on the debt.¹⁶

¹¹ Tr. 67-71.

¹² Tr. 71.

¹³ Tr. 71-74.

¹⁴ Tr. 75-78.

¹⁵ Tr. 78-81.

¹⁶ Tr. 85-91.

The debt in SOR 1.r is for a repossessed car (\$14,686) Applicant purchased in October 2005. He stopped making payments in January or February 2006. The loan was for five years. He was unfamiliar with how the financing worked and realized most of his monthly payments were applied to the interest and not principal of the debt. He returned the car to the dealer and was told he would be contacted when it was auctioned. He stated he has not heard from the creditor.¹⁷

Applicant has not had financial counseling recently. He and his wife attended some financial counseling in 2000 or 2001, but learned that the counselors were trying to sell them something.¹⁸

Applicant answered “no” on his security clearance application (SCA) to sections 27 and 28, which inquired if he had any judgments against him in the last 7 years that had not been paid; if in the past 7 years he had been over 180 days delinquent on any debt(s); and if he was currently over 90 days delinquent on any debt(s).

Applicant has more than \$53,000 in delinquent debts. Applicant testified he did not know he was 180 days or 90 days delinquent on his debts. Applicant explained when he completed the SCA he was embarrassed he had debts, but did not realize how old the debts were when he answered “no.” He stated he should have said “yes” and he never meant to mislead. He also failed to list he had a car repossessed. He stated the reason he did not list the repossession was because he failed to read the whole question.¹⁹

Applicant admitted he was contacted by collection companies about some of his debts. He told them he wanted to “make good on the debts.” He also received calls from collection companies after he was separated from his wife in approximately early 2006. He also received inquiries by telephone and by mail.²⁰

I find Applicant deliberately and intentionally failed to list his delinquent debts and judgment. He did not contact the investigator prior to his interview and divulge his financial delinquencies.

Applicant does not intend to file bankruptcy and wants to pay his delinquent debts. He stated he is applying for a security clearance not a credit card and he does not believe he is a security risk.²¹

¹⁷ Tr. 91-96.

¹⁸ Tr. 105.

¹⁹ Tr. 105.

²⁰ Tr. 96-99, 108-109.

²¹ Tr. 110-111.

A team member from Applicant's office who has worked with him for eleven months provided a statement that he is an essential member of their team. He has demonstrated the utmost professionalism and has repeatedly proved himself as a quality analyst. He is considered responsible and trustworthy.²²

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 common sense 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. . . ." 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

²² AE B. I have considered all of the documents provided by Applicant.

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Appellant has numerous delinquent debts that remain unpaid and unresolved. He has been aware of the debts and failed to contact some of the creditors. He failed to provide reliable proof of his assertions that he paid certain debts and owes less than alleged. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered:

- (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.

Appellant has many debts he has not resolved and remain unpaid. In some cases he has not contacted the creditor to attempt to find out the status of the debt or resolve it. I find mitigating condition (a) does not apply because Applicant has not provided sufficient evidence to lead me to believe the circumstances are unlikely to recur and do not cast doubt on his reliability, trustworthiness, and good judgment.

Applicant experienced periods of unemployment and underemployment. During these periods he did not qualify for health benefits which impacted his finances. I find mitigating condition (b) partially applies because these were conditions beyond Applicant's control. However, for the full application of (b) Applicant must have acted responsibly under the circumstances. I find he did not. Applicant provided little evidence to show he has contacted his creditors and attempted to resolve his delinquent debts. Applicant has not attended any meaningful financial counseling despite being aware of his financial problems. He has failed to initiate good-faith efforts to repay overdue creditors or otherwise resolve his debts. He disputes some debts, but has not provided any proof of his actions. Applicant claims he is \$1,800 in arrears on his child support, but the documentation he provided refutes his claim. I find mitigating conditions (c), (d) and (e) do not apply.

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 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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 was unemployed and underemployed for a period of time. He was aware he was not receiving health benefits. He had medical bills. He had difficulty paying his child support. He also admitted to receiving notices and phone calls from collection agencies about his delinquent debts. He admitted when he completed his SCA he was embarrassed about his financial delinquencies. I find Applicant intentionally and deliberately failed to divulge the required information on his SCA. I find disqualifying condition (a) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG 17:

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

(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; and

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

Applicant did not make an effort to correct the omissions and falsifications on his SCA before being confronted. His actions can not be considered minor because he failed to divulge information that was pertinent to his security clearance investigation thereby casting doubt on his reliability, trustworthiness and good judgment. No evidence was presented to confirm he has taken steps to reduce his vulnerability. I find none of the 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.

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 experienced periods of unemployment and underemployment. He was not receiving health benefits and incurred medical debts. Applicant intentionally did not acknowledge his financial problems on his SCA, despite being aware of them. He disputed certain debts, but failed to provide evidence to substantiate his dispute. He has failed to meet his burden of persuasion. 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 failed to mitigate the security concerns arising from 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
Subparagraphs 1.a-1.r:	Against Applicant
Paragraph, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge