



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



In the matter of:)	
)	
)	ISCR Case No. 08-09806
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

May 20, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

On December 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline 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 on January 23, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of

hearing on March 16, 2009, and the hearing was convened as scheduled on April 9, 2009. The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits (AE) A through E, which were received without objection. The record was held open until April 17, 2009, for Applicant to submit additional information. Applicant submitted seven pages of documents, which were marked AE F through K, and admitted without objection. Appellant requested an additional 30-day extension to submit information. Department Counsel did not object to an extension through May 8, 2009. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. I orally granted an extension to May 8, 2009. Applicant submitted an additional four pages of documents, which were marked AE L through O, and admitted without objection. Department Counsel's second memorandum is marked HE II. DOHA received the transcript of the hearing (Tr.) on April 17, 2009.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He has worked for his current employer since April 2008. He served on active duty in the U.S. Army from 1999 to 2005. He deployed to Iraq for about 14 months in 2004 and 2005. He received a General Under Honorable Conditions Discharge in 2005. He attended college, but did not obtain a degree. He was married from 2001 until his divorce in 2002. He married again in 2004, but is separated. He has two children, ages nine and one, and a seven-year-old stepchild. Appellant has custody of his two children. He also had a six-year-old child, but he and the mother relinquished their parental rights and the child was adopted by a member of the mother's family.¹

The SOR alleges 18 delinquent debts. In his answer to the SOR, Applicant admitted owing all the debts, with the exception of the debts alleged in SOR ¶¶ 1.d, 1.e, 1.h, and 1.i, which he denied. The 14 debts that Applicant admitted he owed total \$22,475.

Applicant had some financial issues while he was in the Army, but he attributed most of his problems to unemployment, under-employment, and the failure of his business after he was discharged from the Army. Applicant was discharged from the Army after he smoked marijuana and tested positive on a drug screening test.²

A state tax lien of \$1,234 was filed against Applicant in August 2007, as alleged in SOR ¶ 1.a. He admitted he owed the money. He stated it resulted from when he was

¹ Tr. at 21, 42-43, 73-76; GE 1.

² Tr. at 21-22, 46; GE 1. Applicant's marijuana use was not alleged as an allegation in the SOR and will not be used for disqualification purposes. It will be considered for the impact it had on his finances and in the application of mitigating conditions. Because Applicant listed the drug use on his Questionnaire for National Security Positions, it will also be considered as circumstantial evidence on whether he intentionally falsified the Questionnaire by omitting financial information.

self-employed and he went out of business because of lack of customers. He has not made any payments on this debt.³

Applicant paid the following debts: SOR ¶ 1.b, a \$345 debt to a collection company on behalf of a telephone services provider, was paid on April 16, 2009. SOR ¶¶ 1.c and 1.d, two debts totaling \$209 to a collection company on behalf of a department store, were paid on May 7, 2009. SOR ¶¶ 1.f and 1.g, Applicant paid \$512 on April 16, 2009 to a collection company on behalf of a telecommunications company. SOR ¶ 1.p, a \$229 debt to a video store was paid on April 16, 2009. Applicant disputed owing the \$54 debt for a returned check to a supermarket chain, as alleged in SOR ¶ 1.e. He stated that he has not lived in the geographic area where the chain is located, but his ex-wife lived in that area. He thought she could have taken one of his checks without his knowledge. He paid the debt anyway on May 7, 2009.⁴

Applicant admitted owing the delinquent debt of \$1,103 to a collection company on behalf of a cable television provider, as alleged in SOR ¶ 1.n. Applicant testified that this debt was for a cable box that was not returned when he moved. He stated his wife packed the box and it was placed in storage. After the hearing, Applicant submitted a receipt from the cable company dated April 16, 2009, showing that the issued equipment was returned and he had a zero balance.⁵

SOR ¶¶ 1.j and 1.k allege delinquent child support debts of \$9,620 and \$2,765. Applicant admitted that he was delinquent on the child support he owed for the six-year-old child that he eventually gave up for adoption. He stated that paternity was not determined until the child was about two years old, and then he was ordered to pay the arrears on the support owed since the child was born. He also indicated that he fell behind on the payments after he was discharged from the Army. His pay was garnished to pay the child support. His child support obligations ended when he relinquished his parental rights through adoption. His pay continues to be garnished about \$40 every two weeks to pay the arrears. He stated that his income tax refunds have also been seized to pay the arrears. He stated that the amount of the arrears is now about \$9,000. He did not submit any documentation to show the actual arrears.⁶

Applicant denied that he owed \$1,369 on a delinquent military exchange credit card account, as alleged in SOR ¶ 1.h. He admitted he had an exchange credit card, but thought he paid the debt. He thought his income tax refund may have been seized to pay the debt. He also denied owing the delinquent debt of \$2,817 to Defense Finance and Accounting Service (DFAS), as alleged in SOR ¶ 1.i. Both debts are listed on the credit reports of June 28, 2008 and December 1, 2008. The DFAS debt is listed as a "Government Overpayment." Applicant stated that he did not remember ever being

³ Tr. at 46-47; Applicant's response to SOR; GE 2, 3.

⁴ Tr. at 56-64; Applicant's response to SOR; GE 2, 3; AE B-D, G, H, J, K, M-O.

⁵ Tr. at 47-50; Applicant's response to SOR; GE 2, 3; AE I.

⁶ Tr. at 23-30, 72-73; Applicant's response to SOR; GE 2, 3; AE E.

overpaid by the Government. He did not submit any documentation about the debts. He stated that he had difficulty in contacting the correct individuals at the exchange and at DFAS. He works on a military installation, but he indicated that he was told by the personnel on the installation that they could not assist him because he was not in the military.⁷

Applicant admitted owing the remaining five delinquent debts which total \$6,624 and are alleged in SOR ¶¶ 1.l, 1.m, 1.o, 1.q, and 1.r. No payments have been made on any of these debts, but he stated that he intends to pay all his delinquent debts. He is focused on not accruing new delinquent debts and paying the ones he has one-by-one. He attempted to obtain a debt consolidation loan but he was told that his debts were not high enough to qualify for a loan. He has not received formal financial counseling, but his supervisor has assisted him in formulating a budget.⁸

Applicant submitted a Questionnaire for National Security Positions (SF 86), which he certified as true on May 30, 2008. He listed his marijuana use under the pertinent question. He answered “No” to Question 27c, which asked “In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debt(s)?” He also answered “No” to 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 stated that he did not understand the questions.⁹ After considering all the evidence, Applicant’s demeanor, and his communication skills, I find that he did not intentionally falsify his SF 86.

Applicant submitted a letter from his supervisor. The supervisor wrote that Applicant is a valued employee who is professional, exceptionally reliable, and maintains a high level of integrity. He places Applicant in a supervisory position when he is absent. Applicant is held in high regard at all levels of their organization.¹⁰

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

⁷ Tr. at 50-55; Applicant’s response to SOR; GE 2, 3.

⁸ Tr. at 23, 47-50, 70; Applicant’s response to SOR; GE 2, 3; AE I.

⁹ Tr. at 21-23, 69-70; Applicant’s response to SOR; GE 1.

¹⁰ AE A.

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 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 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 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* 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 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 of time. 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 still owes the largest debts alleged in the SOR. His financial issues are ongoing. AG ¶ 20(a) is not applicable. He attributes his financial problems to unemployment, under-employment, and the failure of his business after he was discharged from the Army. However, several of the debts were accrued before he was discharged. He was discharged because he smoked marijuana and was caught on a drug screening test. His discharge was not an event that was beyond his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant's marijuana use was not responsible conduct. He did not begin to act

responsibly toward his delinquent debts until recently. AG ¶ 20(b) is not applicable. Almost all the payments on his delinquent debts have been made within the last 40 days. Those payments constitute a good start on paying his debt. AG ¶ 20(d) is applicable as a good-faith effort to repay those creditors. The payments are insufficient to qualify as a good-faith effort to repay all his overdue creditors. AG ¶ 20(d) is not applicable to his other debts. He has not received formal financial counseling. Applicant's financial situation is headed in the right direction, but there are not yet clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) is not applicable.

Applicant denied owing four debts. He paid two of the debts, so they are no longer a concern. He denied owing DFAS and the military exchange. He did not submit documented proof to substantiate the basis of the dispute. His testimony on the debts is not persuasive. AG ¶ 20(e) provides minimal mitigation for those two debts.

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 mitigating condition is 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.

Applicant omitted some financial information from his Questionnaire for National Security Positions; however, as discussed above, it was not a deliberate omission. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a through 2.c are concluded for Applicant.

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. 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. I considered the positive aspects of Applicant's military service, including his service in Iraq. Some of his financial problems can be traced to unemployment, under-employment, and the failure of his business after he was discharged from the Army. However, those problems were of his own making. He is highly regarded by his employer and he has begun to behave responsibly by addressing his delinquent debts. However, he still has a large amount of delinquent debts. His payments are a good start, but are insufficient at this time to mitigate security concerns.

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 Personal Conduct security concerns, but has not mitigated the concerns raised under the Financial Considerations guideline.

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
Subparagraphs 1.b-1.g:	For Applicant
Subparagraphs 1.h-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q-1.r:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a-2.c: For 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge