



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



In the matter of:)
)
) ISCR Case No. 08-10491
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel
For Applicant: *Pro Se*

February 24, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On April 21, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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.

On August 17, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On September 30, 2009,

Department Counsel prepared a File of Relevant Material (FORM) containing seven Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on December 28, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted a statement that I marked as Applicant Exhibit (AE) A and admitted into the record without objection. On January 20, 2010, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations contained in Paragraphs 1.a, 1.b, and 1.c. He denied the allegations contained in Paragraphs 1.d, 1.e, and 2.a.

Applicant is 34 years old and married. He has two children, ages 10 and 13, from a former marriage. He was married to his first wife from July 1996 to October 2004. Since April 1999, he has worked for a defense contractor. When he began his employment, he worked in the mailroom; he now holds a position as a technical account manager. He has received awards and promotions over the past 11 years. He attended college between 1993 and 1997. (Item 1; AE A.)

In April 2008, Applicant completed an e-QIP. He answered “No” to questions 28(a) and 28(b), which asked whether he had been 180 days delinquent on any debts in the last 7 years, and whether he was currently over 90 days delinquent on any debts. (GE 1 at 33.) He did not list the five delinquents debts noted in the SOR, but included information about an outstanding credit card debt for \$5,000, incurred in August 2006. (*Id.* at 33). He answered “Yes” to question 27(b) that asked whether he had his wages garnished or property repossessed for any reason in the past 7 years. He disclosed a garnishment order for child support that was entered in September 2004. Under additional comments he wrote, “Not sure of the judgments at this time, but believe there were a couple after my divorce.” (*Id.* at 32, 33.)

In April 2009, Applicant completed a set of Interrogatories regarding delinquent debts listed on credit bureau reports, dated April 2008 and October 2008. He submitted civil pleadings that his lawyer filed relating to one of the listed creditors. He also submitted his budget, which recorded his net monthly salary as \$3,800 and his spouse’s as \$8,200, for a total net monthly income of \$12,000. Their monthly expenses are \$6,000. They make monthly payments of \$5,091 on financial obligations, including a mortgage and credit cards, leaving \$900 at the end of the month for other expenses. (Item 5.)

Based on credit bureau reports (CBR) dated April 2008 and July 2009, Paragraph 1 of the SOR alleged five delinquent debts, totaling \$30,598, which became delinquent between 2005 and 2006. (Items 6, 7.) The status of each debt is as follows:

1. The debt alleged in SOR ¶ 1.a for \$5,077 is a credit card debt. Applicant asserted that the debt has been resolved through a civil case, dismissing the

matter against him. According to the July 2009 CBR, the debt has been disputed.¹

2. The debt alleged in SOR ¶ 1.b for \$11,000 is owed to the same creditor as noted above. According to the July 2009 CBR, the debt has been disputed.
3. The debt alleged in SOR ¶ 1.c for \$1,478 is a credit card debt. Applicant admitted that it is his debt. (Item 4.) It is unresolved.
4. The debt alleged in SOR ¶ 1.d for \$1,837 is a credit card debt. Applicant asserted that the debt is his father's obligation. In his August 2009 answer, he stated that he intended to resolve it immediately. (Item 4.) It remains unresolved.
5. The debt alleged in SOR ¶ 1.e for \$4,106 is a credit card debt. Applicant asserted that the debt is his father's obligation. In his August 2009 answer, he stated that he intended to resolve it immediately. (Item 4.) It remains unresolved.

In his Answer to the SOR, Applicant attributed his delinquent debt to a period of time after his divorce when he was young and "made terrible financial decisions." (Item 4.) He has attempted to correct his mistakes since then. He no longer uses credit cards. (AE A.)

Applicant explained in his Answer that he made a "gross mistake" on the e-QIP by not disclosing the five debts. He denied that he intentionally failed to disclose the debts. (Item 4.) He attempted to complete it too quickly. He "assumed since the old credit cards were charge offs that they didn't apply in this section. It was purely an oversight." (AE A.) He knew the government would request a credit check. (*Id.*) He pointed out that he included information about a credit card in response to question 28 and made a note about potential outstanding judgments in response to question 27.

Other than his assertions, Applicant submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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

¹The first two SOR debts are owed to the same creditor. Applicant provided a Notice of Dismissal referencing Case No. 08-CVD-1677, and a Notice of Withdrawal of Motion to Compel referencing Case No. 08-CVD-988. (Item 4; 5.) The final outcome of these debts is unclear.

potentially disqualifying 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 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.

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 to obtain a favorable clearance decision." 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."

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.

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 two potentially disqualifying conditions raised by Applicant's financial delinquencies are AG ¶ 19(a) an "inability or unwillingness to satisfy debts;" and AG ¶ 19(c) "a history of not meeting financial obligations." Based on two CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing in 2005, and which he did not begin to address until 2009. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of those security concerns. The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's five financial delinquencies arose in 2005 and at least three of them remain unresolved to date. Because the problems are ongoing and not isolated, there is a likelihood that they will continue in the future, and do cast doubt about his judgment. Hence, this condition does not apply.

AG ¶ 20(b) states that it may be mitigating where "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." Applicant stated that some of his financial problems arose after he divorced in 2004. He also admitted that he made poor decisions related to his finances, and did not offer any evidence that he attempted to act responsibly while the debt was accruing or after it accrued. This guideline marginally applies.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant did not present any evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." He did not provide evidence that he paid, attempted to pay, or has a repayment plan for any debt. AG ¶ 20(d) does not apply.

Applicant provided evidence that he has legally disputed the debts in SOR ¶¶ 1.a and 1.b. That evidence triggers mitigation under AG ¶ 20(e), which applies when "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.” Although he asserted that the debts listed in SOR ¶¶ 1.d and 1.e are not his debts, he did not provide any evidence that he has disputed them or taken action to resolve them. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

The security concern pertaining 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.

The government alleged in SOR ¶ 2.a that Applicant falsified one question on the e-QIP; to wit, he failed to disclose five debts that were more than 90 and 180 days delinquent under question 28. The government contended that those omissions may raise a security concern and be disqualifying under 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.

Applicant denied that he intentionally omitted information about the delinquent debts. When a falsification allegation is controverted or denied, the government has the burden of proving it. An omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).)

Applicant disclosed a child support garnishment under question 27(b) and provided specific information about it. Although he answered “No” to questions 28(a) and (b), he provided information about an outstanding credit card debt under that section. He explained that his failure to disclose the five delinquent debts was a mistake and that he did not think that charged off debts were considered delinquent. Based on his explanations and the disclosure of adverse information under both question 27 and 28, he demonstrated his intent to be truthful and to not intentionally withhold information about the debts; hence, the government did not establish a disqualifying condition as to

SOR ¶ 2(a). The omission of the information may be negligent, but it was not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in his favor.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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. Applicant is 34 years old, married and has two children. He has successfully worked for his employer for 11 years, during which time he has received promotions and commendations. He candidly admitted that after his divorce in 2004, he mismanaged his finances, which lead to an accumulation of delinquent debt. He legally disputed approximately \$16,077 of the \$30,598 delinquent debt listed in the SOR, but has taken no action to resolve the remaining \$14,521, despite receiving the SOR in July 2009 and the FORM at the end of September 2009. Although he and his new wife have sufficient money to manage their expenses and debts, he failed to establish a track record of resolving delinquent debts and maintaining financial responsibility, so recurrence of these financial concerns may be likely. The record contains insufficient other evidence about his character, trustworthiness, or reliability to mitigate these concerns.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant mitigated the security concerns arising from his personal conduct, but did not mitigate all of the concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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.

SHARI DAM
Administrative Judge