



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



In the matter of:)	
)	
)	ISCR Case No. 08-11458
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

March 17, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant has a judgment and 11 charged-off accounts or accounts placed for collection, which totaled approximately \$26,000. He failed to document that the accounts are paid or that he established repayment plans. Additionally, he failed to list his 2000 felony conviction when he completed a Questionnaire for Sensitive Positions. Applicant has failed to rebut or mitigate the security concerns under financial considerations and personal conduct. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security*

Statement of Reasons (SOR) on June 5, 2010, detailing security concerns under financial considerations and personal conduct.

In an undated response, Applicant answered the SOR and requested a hearing. On August 12, 2010, I was assigned the case. On August 25, 2010, DOHA issued a Notice of Hearing for the hearing held on September 16, 2010.

The Government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence without objection. Applicant was given to October 1, 2010, to submit additional documentation. No documentation was received. On September 24, 2010, DOHA received the hearing transcript (Tr.).

Motion to Amend SOR

On August 2, 2010, before the hearing, Department Counsel moved to amend the SOR by amending SOR ¶ 2.a, alleging Applicant falsified his response to the question in section 23 of his Electronic Questionnaires for National Security Positions (e-QIP), dated August 19, 2008. The original SOR stated he had failed to list a felony arrest and conviction. The amended SOR provides additional information stating he deliberately failed to disclose that he had been arrested on or about December 18, 1999, and charged with Felony First Degree Forgery and Misdemeanor Taking. In his August 29, 2010 response to the proposed amendment, Applicant admitted the factual allegations. At the hearing he did not object to the amendment. (Tr. 16) The motion was granted.

Findings of Fact

In Applicant's Answer to the SOR, he admitted the factual allegation of the debt listed in SOR ¶ 1.a and to filing a Chapter 13 bankruptcy in 2000 as alleged in SOR ¶ 1.b. He admitted the factual allegation of SOR ¶ 2.a as listed in the Amended SOR. He denies the remaining factual allegations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 38-year-old computer information security manager who has worked for a defense contractor since November 2009, and is seeking to obtain a security clearance. (Tr. 46) Applicant received a letter of commendation for his duty performance from February 2008 through December 2008. The letter indicated his commitment was clearly demonstrated, his diligence, resourcefulness, and genuine passion for outstanding customer service was noted. (Ex. E)

In May 1993, while on active duty in the U.S. Navy, Applicant wrote three checks totaling over \$1,500 on a closed credit union account. (Ex. 4) The credit union informed

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

him his account had a negative balance and if he did not deposit sufficient funds his account would be closed. Funds were not supplied and the account was closed. He admitted writing one check after learning the account was closed. He told his commander he had not written the other checks. He told his commander his driver's license and some of his checks had been stolen. It was determined he wrote all of the checks. (Ex. 4) Applicant was taken to a special court-martial, convicted, and reduced in grade. In February 1994, Applicant was separated from the Navy with an "other than honorable." His DD Form 214, Certificate of Release or Discharge from Active Duty, lists the reason as "Misconduct—Absent Without Leave (30 Days or More)." (Ex. B) Applicant has asked the Navy to review his discharge. In September 2010, the discharge went before a Navy review board. (Tr. 38) Applicant has not received a decision from the review board.

On December 18, 1999, Applicant was arrested for forgery – first degree (a felony) and theft by taking. (Ex. 5) In July 2000, the matter was adjudicated in state court and he was convicted. Having been found guilty, he had to pay a \$300 fine and was sentenced to three years probation. (*Id.*) His company had a zero tolerance for felonies and he was immediately let go by his company. (Tr. 26)

In October 2000, Applicant filed for bankruptcy under Chapter 13, Wage Earner's Plan. The plan required \$400 monthly payments and was to last five years. (Tr. 26-28) However, after obtaining a new job, Applicant believed he was making enough money to pay his bills without the Chapter 13. He returned to the bankruptcy court and asked that the Chapter 13 be dismissed. (Tr. 27) He was with a company for nine months before moving from another state to take a job with a large energy company. (Tr. 28) In January 2001, when the company went bankrupt, his job ended. (Tr. 28) He returned to a previous employer and worked for them until June 2004, when he was again laid off. (Tr. 28, 29)

Applicant was employed by another employer until September 2008, when he moved to another state for one year to work for a previous employer. (Tr. 29) In 2009, he obtained a job with his present employer, which required him to move to his current location in another state. (Tr. 29) As of November 2009, Applicant's annual salary increased from \$72,000 to \$85,000. (Ex. D)

In August 2008, Applicant completed a Questionnaire for Sensitive Positions, a Standard Form (SF) 86. (Ex. 2) He answered "no" to question 23A which asked if he had been charged with or convicted of any felony offense even though he had a July 2000 felony conviction. In his response to the Amended SOR, he stated he did not know he was charged with a felony and was told all charges had been dropped and were not on his record. (Amended SOR Answer, Tr. 60)

At the hearing, Applicant gave a different reason for answering "no" to question 23A. He noted that a number of the questions on the SF 86 limit the scope of the question to seven years prior to the completion of the questionnaire. (Tr. 30) The question related to having been charged with or convicted of a felony offense is not so

limited in scope. Applicant asserted he had no intention to lie to the government, but thought the question was limited to the previous seven years and his 1999 felony arrest had occurred more than seven years before completing his 2008 e-QIP. (Tr. 30)

In 2007, Applicant incurred a \$4,943 account for schooling (SOR ¶ 1.a). He asserts he paid the debt, but it appeared on his August 2008 credit bureau report (CBR) (Ex. 3) and April 2010 CBR (Ex. 7). However, it does not appear on his April 2009 CBR (Ex. 4) or his September 2009 CBR (Ex. A). He asserted, but did not document, he made payments every two months on this debt. He asserted he made two payments of \$1,500 and one of \$1,900. (Tr. 33) Applicant was informed of the importance of providing documentation establishing that debts had been paid, were being paid, or were not his debts. (Tr. 37) Applicant asserted he would provide documents following the hearing, related to payment of this debt. (Tr. 37) No information was received.

In 2000, after losing his job, Applicant could not pay his rent and was evicted. A \$1,911 judgment was obtained against him for past-due rent. Applicant asserted he had paid this judgment and would attempt to get documents showing it has been paid. (Tr. 39) No documentation was received.

Applicant did not remember the \$400 debt (¶ 1.e), but believes he had paid it. (Tr. 39) He asserted the account for television service (¶ 1.f, \$128) was in his wife's name and has been paid. (Tr. 41) Applicant maintains utility service with the creditor listed in ¶ 1.g (\$495). (Tr. 42) Applicant does not believe the two bank collection account debts (¶ 1.i, \$813 and ¶ 1.f, \$740) are his as he was unfamiliar with the names of the banks. (Tr. 43)

Applicant owed for cable service. These debts are listed under three separate account numbers and are listed as three separate accounts (SOR ¶ 1.h, \$782; ¶ 1.j, \$920; and ¶ 1.l, \$1,058). (Tr. 44) Applicant asserts his cable service account has been paid. Another television service account (SOR (¶ 1.f, \$128) was also placed for collection.

In 2002 or 2003, Applicant purchased a 1996 Ford Explorer for \$20,000. (Tr. 35) After six or seven months he came to believe the vehicle was a "lemon" and hired an attorney to assist him with the purchase. (Tr. 34) The vehicle had engine problems, electrical problems, and gave appearances that it had been in a flood. (Tr. 35) Discussions were held between his attorney and the creditor's attorney. Following the advice of his counsel, Applicant voluntarily returned the vehicle to the creditor. (Tr. 36) This resulted in a \$13,834 debt (¶ 1.d).

Applicant and his wife attended a two-week debt management course. (Tr. 54) He learned of the importance of establishing a savings account, living within his means, and paying his debts. (Tr. 54) He currently has two credit cards which he is using to rebuild his credit. He pays off the balance "about every month." (Tr. 54)

As of April 2009, Applicant's current net monthly income was approximately \$4,000. His monthly expenses were approximately \$2,000 and payment of his monthly debts was approximately \$1,500. His monthly net remainder (monthly income less expenses and debt payment) was \$363. (Ex. 6) Although the personal financial statement lists no income for his spouse, she makes approximately \$50,000 per year as a librarian. (Tr. 46) Applicant and his wife have no children.

Applicant's September 2010 CBR lists no delinquent account or other derogatory information. (Ex. A) Applicant is current on his monthly \$170 student loan payments. (Tr. 45) He is current on the \$637 monthly payment on the 2006 Toyota Tundra and current on the \$700 monthly payment on the 2006 Toyota Sequoia. (Tr. 45) He is current on his \$1,600 monthly mortgage for a home purchased in 2005. The home was purchased for \$175,000, has a fair market value of \$210,000, and approximately \$150,000 is owed on the home. (Tr. 47)

A summary of Applicant's judgment, accounts charged off, and accounts placed for collection and their current status follows:

	Creditor	Amount	Current Status
a	Collection agency collecting for school debt received in 2007.	\$4,943	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. (Tr. 31) It appeared on his August 2008 CBR (Ex. 3) and April 2010 CBR (Ex. 7), but does not appear on his April 2009 CBR (Ex. 4) or his September 2009 CBR (Ex. A). (Tr. 31)
b	Chapter 13 Bankruptcy filed in October 2000.		Applicant was terminated from his job due to a felony arrest. He was unable to pay his debts and filed for bankruptcy protection.
c	Judgment filed in 2002 for unpaid rent.	\$1,911	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. (Tr. 39)
d	Collection agency collecting charged-off account.	\$13,834	Following his attorney's advice he returned the vehicle to the lender. (Tr. 35)
e	Collection agency collecting collecting a telephone account.	\$400	No documentation was received showing Applicant has paid this debt. He thinks he paid this debt, but does not remember what the debt was. (Tr. 39)
f	Collection agency collecting for television service.	\$128	No documentation was received showing Applicant has paid this debt. The cable account was in his wife's name. (Tr. 41)

	Creditor	Amount	Current Status
g	Collection agency collecting for a utility company.	\$495	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. He currently receives service from this company. (Tr. 42)
h	Collection agency collecting cable television service.	\$782	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. He currently receives service from this company. (Tr. 42) The same creditor is listed in SOR 1.j and SOR 1.l.
i	Bank account placed for collection.	\$813	Unpaid. Applicant has no idea as to the creditor's identity, but believes the debt is not his. (Tr. 43) No documentation showing payment or dispute of the account was provided.
j	Collection agency collecting for a cable television service.	\$920	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. (Tr. 42) Same creditor is listed in SOR 1.h and SOR 1.l.
k	Bank collection account.	\$740	Unpaid. He has no idea who the creditor identity. (Tr. 43)
l	Collection agency collecting for a cable television service.	\$1,058	No documentation was received showing Applicant has paid this debt. He asserts he has paid this debt. (Tr. 42) Same creditor is listed in SOR 1.h and SOR 1.j.
	Total debt listed in SOR	\$26,024	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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 to obtain 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 of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant has an unpaid judgment for rent and has ten collection or charged-off accounts, which totaled approximately \$26,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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.

The SOR past-due debts do not appear on Applicant's August 2010 CBR but do appear on his August 2008 CBR and March 2010 CBR. He asserts he paid the debts, but provided no documentation showing payments. He was specifically asked to document the status of the SOR accounts. No documentation was received.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debt. Because there is more than one delinquent debt, his financial problems are not isolated. There is no showing the delinquent accounts have been paid or resolved. Therefore, his debts are a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). His failure to show proof of payments of these debts casts doubt on his current reliability, trustworthiness, and good judgment.

Under AG ¶ 20(b), he receives partial mitigation because Applicant's financial problems were contributed to by his unemployment and having to relocate to new states in search of work. However, he has been employed at his current job since November 2009 and the debts remain unpaid.

Applicant and his wife attended a two-week debt management course where he learned the importance of establishing a savings account, living within his means, and paying his debts. He is current on his two credit cards, but there is no documentation showing he has paid any of the SOR debts. It is too early to conclude his financial problems are under control. I find the mitigating conditions listed in AG ¶ 20(c) and AG ¶ 20(d) do not apply.

Applicant has three accounts with the same cable company, asserts they are duplications of each other, and asserts he currently has an account with the same cable company which establishes he does not owe the three debts. The debts all have different account numbers and he lived in various states. He did not show he was current on his cable account. He failed to establish that all the accounts are the same obligation and that the obligations have been paid.

The mitigating conditions in AG ¶ 20(e) do not apply. Applicant has disputed a number of the obligations stating they have been paid or are not his debts. However, for AG ¶ 20(e) to apply, he must provide documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue, neither of which he has done.

Because Applicant was unemployed he filed for bankruptcy protection in 2000. I do not find against him because of this. I find for him as to SOR ¶ 1.b.

Personal Conduct

Adjudicative Guideline (AG) ¶ 15 articulates the security concerns relating 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 Personal Conduct Disqualifying Condition under AG ¶ 16 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.

In August 2008, when Applicant completed his SF 86, he failed to indicate he had a felony arrest in 1999, which resulted in a felony conviction in 2000. His failure to disclose the felony arrest and conviction demonstrates a lack of candor required of individuals seeking a security clearance. The Government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The Government relies on applicants to truthfully disclose adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent violations or other concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of sensitive information.

The event was of such significance that he was fired from his company because of its felonious nature. He went to court, paid a \$300 fine, and was placed on three years probation. He would have had to take actions in compliance with his probation. He first asserted he did not list it because he did not know it was a felony and was told the charge had been dropped. At hearing, he asserted he failed to list it because it occurred more than seven years before he completed the questionnaire. I am not persuaded by his reason for failing to reveal the felony.

None of the mitigating conditions related to personal conduct apply. Applicant did not make a prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted with the facts (AG ¶ 17(a)). The mitigating factors in AG ¶ 17(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," does not apply because there was no refusal, failure to cooperate, omission, or concealment caused by improper advice.

The offense Applicant failed to list was a felony. AG ¶ 17(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” does not apply. Applicant has not acknowledged the bad behavior nor obtained counseling. AG ¶ 17(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” does not apply.

AG ¶ 17(e) “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress” and AG ¶ 17(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,” do not apply. AG ¶ 17(f) “the information was unsubstantiated or from a source of questionable reliability” does not apply because the felony arrest and conviction was substantiated.

Applicant’s conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. I resolve Guideline E against 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 relevant 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. Applicant asserts that some of the debts have been paid and others of the debts are not his. However, he failed to document this. His mere assertion is insufficient evidence to find these obligations have

been paid. There is no evidence the delinquent accounts have been paid or are not owed. Additionally, he was not truthful when he completed his SF 86.

Overall, the record evidence leaves me with questions and doubts about 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.

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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c–1.l:	Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge