



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



In the matter of:)
)
) ISCR Case No. 08-11509
)
)
Applicant for Security Clearance)

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

MASON, Paul J., Administrative Judge:

Even though Applicant received a Chapter 7 bankruptcy discharge in January 2009, he still has two delinquent student loan accounts that have not been mitigated. The adverse personal conduct is mitigated by the passage of more than five years without the recurrence of acts of poor judgment. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified a Standard Form 86 (SCA, GE 1) on June 24, 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) on August 5, 2008. A summary of this interview appears at pages 209 through 219 of GE 3 (page numbers appear in the lower right corner of page) dated June 17, 2010. On page 102 of GE 3, Applicant acknowledged his agreement with the interview summary, and

indicated the summary could be used in a security clearance hearing to determine his security suitability. (*Id.* at 103)

On April 18, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized and submitted on May 10, 2010. DOHA issued a Notice of Hearing on July 1, 2011, for a hearing on July 20, 2011. The hearing was held as scheduled. At the hearing, eight exhibits (GE 1 through 8) were admitted in evidence in support of the Government's case. Applicant testified and offered one exhibit (AE A). All exhibits were admitted in evidence without objection. He was granted time after the hearing to submit additional evidence regarding his delinquent financial obligations. He submitted one exhibit (AE B), which was admitted into evidence without objection. DOHA received the transcript on August 4, 2011. The record closed on August 4, 2011.

Findings of Fact

The SOR lists six allegations under the financial considerations guideline. Applicant denied subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.e. He admitted subparagraph 1.f that he filed a Chapter 13 petition on May 9, 2008, and received a Chapter 7 discharge on January 12, 2009. Applicant admitted all allegations under the personal conduct guideline.

Applicant is 45 years old and has been married for about a year. He has one child from this marriage and two from a previous marriage. He served in the United States Navy from February 1998 until his honorable discharge in January 2000. In the same month, he was hired by his current employer as a cable installation technician, and has been working there since then. In February 2011, he accepted a lateral transfer for a job in the local area where he supervises projects. (Tr. 37-39) In 2004 and 2005, Applicant applied for and received student loans (subparagraphs 1.e and 1.f) for attending information technology training. He is two classes away from completing the training. (Tr. 42) Applicant has held a security clearance since 1998. (Tr. 37)

Financial Considerations

Applicant believes his financial problems were caused during his temporary work relocation to Florida for six months between February and July 2010. (Tr. 56) Before

Applicant left, he and his brother agreed to take care of Applicant's house in another location and pay the utilities during the temporary duty period in the local area. Applicant's brother breached the agreement by permitting guests in the house and failing to keep the house clean. Applicant returned to find the house dirty, and the utilities unpaid or shut off. (Tr. 56-58) While on temporary duty, Applicant occasionally called his brother and returned to the location where his brother was taking care of the house to renew his auto license. He realized his house was not being maintained, but did not have time to deal with the problems because of his temporary work assignment. (Tr. 58)

Applicant has never had financial counseling other than the counseling required as a condition precedent to filing bankruptcy in May 2008. (GE 3)

The credit bureau reports show his financial problems appeared between October 2004 and February 2008 when five debts listed in the SOR became delinquent. (GE 6-8) Ten additional unlisted debts that had become delinquent during the foregoing period were discharged under a Chapter 7 bankruptcy petition in January 2009. (SOR 1.f) AE B reflects that SOR 1.a, 1.b, and 1.c, were also discharged in the Chapter 7 bankruptcy.

SOR 1.d and 1.e are student loans Applicant received in 2004 to pay for the information technology training he received in 2004. He explained that he originally applied and received eight student loans. Some of the loans were held by private companies and others were managed by Student Loan Marketing Association (Sallie Mae). (Tr. 43-44) Applicant disregarded Sallie Mae's payment request notices because he mistakenly believed he had consolidated all the loans with another company. Applicant observed that the Sallie Mae and other loans were currently being processed by other companies. (Tr. 42-44) He stated he had bank statements to support his claim of making payments to Sallie Mae for three years. (AE 15) Applicant provided no documentary support to support his contention that all student loans were current. (Tr. 44)

Personal Conduct

Applicant explained that the four incidents cited in paragraph 2 of the SOR occurred during a troublesome part of his life that began in 1999 when his first wife left him after five months of marriage. His wife's departure caused him to leave the Navy. Applicant's association with the wrong people led to marijuana use in April 2004, his possession of marijuana charge and driving on a suspended license in August 2004. His marijuana use was brief in 2004. (Tr. 49) He has changed his lifestyle by no longer associating with the wrong people. Instead, he spends more time at home engaging in family activities like camping with his children. (Tr. 55)

In September 2004, Applicant got into an altercation with his girlfriend and hit her before immediately calling the police. (Tr. 18) In September 2005, he was convicted of

driving while under the influence (DUI) and driving with a suspended license. (Tr. 51-53) Applicant indicated he does not have a history of violence and has a clean record since September 2005. (Id.)

In October 1997, Applicant certified an SCA. (GE 4) On the last page of the exhibit, he noted that he had used marijuana three times and had no intention of using the drug in the future. On at least two occasions in 2004, Appellant used marijuana while holding a security clearance. He indicated his choice to resume marijuana use several years later in 2004 was not a good choice. (Tr. 53)

Character Evidence

Applicant provided no character evidence regarding his job performance or his lifestyle in the community where he lives.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

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.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses, and his answers to the SOR, the Government has presented sufficient information to establish the financial allegations in the SOR. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies to Applicant's inability to satisfy or address delinquent student loans under the first paragraph of the SOR. The accumulation of delinquent accounts between 2004 and 2008, culminated in the filing of a Chapter 13 petition in May 2008, a Chapter 7 discharge in January 2009, with two delinquent student loan accounts remaining, constitutes a history of not meeting financial obligations with the scope of AG ¶ 19(c) (*a history of not meeting financial obligations*).

Four mitigating conditions under AG ¶ 20 are potentially applicable. AG ¶ 20(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 reliability, trustworthiness, and good judgment*) does not apply. Though Applicant received the student loans in 2004, both accounts continued to be delinquent. Applicant's claim of payments to Sallie Mae and the successor collection agency is not credible because he did not produce supporting documentation. The failure to articulate a plan to resolve the student loan debt after receiving the loans in 2004 rules out the application of AG ¶ 20(a).

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) does not apply because there was no unforeseen event beyond his control and close in time to his financial problems. Applicant separated from his first wife in 1999. He did not begin accumulating delinquent debt until five years later in 2004. While he accumulated 15

delinquent accounts between 2004 and 2008, he was employed throughout the period. AG ¶ 20(b) does not apply.

Applicant received financial counseling in advance of filing his May 2008 Chapter 13 petition. Even though three of the delinquent accounts have been resolved through the Chapter 7 discharge in January 2009, more than two years have passed since the discharge and Appellant has not indicated what he intends to do about the two student loans. AG ¶ 20(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*) applies on a limited basis.

Though Applicant has not made a good-faith effort to repay creditors as set forth in AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), he has resolved the debts to three creditors through a Chapter 7 bankruptcy. Applicant receives limited mitigation under AG ¶ 20(d). Having weighed the negative evidence under AG ¶¶ 19(a) and 19(c) with the limited mitigating evidence under AG ¶¶ 20(c), and 20(d), the financial considerations guideline is resolved against Applicant.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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 disqualifying condition that may apply is AG ¶ 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information*). The record indicates that Applicant's 2004 drug use, the 2004 aggravated battery, and the 2005 alcohol-related traffic offenses, fall within the scope of the AG ¶ 16(c).

There are two mitigating conditions under AG ¶ 17 that may apply: AG ¶ 17(c) (*the offense was 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 AG ¶ 17(d) (*the*

individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur). I find the traffic offenses mitigated by Applicant's admission and the passage of more than five years. I accept Applicant's explanation that he realizes striking his former girlfriend was inexcusable. Applicant's choice to use marijuana again in 2004 after he stated his intention in 1997 not to use the drug again is extenuated by the brief nature of his use in 2004 and the passage of six years since Applicant's most recent use. Applicant's credible explanations for his misconduct between April 2004 and September 2005 support a finding in Applicant's favor under the personal conduct guideline.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the two guidelines. I have found against Applicant under the financial considerations guideline and for him under the personal conduct guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 45 years old. His background includes an honorable discharge from the Navy in 2000. Applicant began working for his employer as a technician and became a platform manager of the waterfront in February 2011.

While Applicant stated his financial problems surfaced while he was on temporary duty in 2010, the record reflects Appellant began to have financial problems in 2004 when his first account became delinquent. Because Applicant's first wife left him five years before his delinquent debts started to accumulate, it is unreasonable for him to blame her for his financial problems. Rather, his financial difficulties occurred because of his poor choices in managing the money he earned from his uninterrupted employment. His financial mismanagement of 15 accounts led to the Chapter 13 petition he filed in May 2008, which he converted to a Chapter 7 before he received a discharge in January 2009. More than two years have passed since his discharge, but he has taken no documented action to pay

down the student loan debt. Alternatively, he has not tried to place the loans in forbearance, to provide himself additional time to decide how he wants to resolve the debt. In sum, Applicant's successful Chapter 7 discharge in January 2009 is insufficient to find in his favor under the financial considerations guideline.

The personal conduct allegations have been mitigated by Applicant's credible explanations coupled with the passage of five years since the last adverse incident.

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 through 1.c:	For Applicant
Subparagraphs 1.d through 1.f:	Against Applicant
Paragraph 2 (Guideline E):	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge