



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



In the matter of:)	
)	
)	ISCR Case No. 09-00228
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

May 13, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant gave a false answer on a Questionnaire for National Security Positions. Applicant had four accounts placed for collection and three other delinquent debts, which totaled approximately \$19,000. Applicant has failed to rebut or mitigate the Government's security concerns under personal conduct and financial considerations. 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Statement of Reasons (SOR) on July 27, 2009, detailing security concerns under personal conduct and financial considerations.

On August 19, 2009, Applicant answered the SOR and requested a hearing. On October 13, 2009, I was assigned the case. On November 5, 2009, DOHA issued a notice of hearing for the hearing held on November 19, 2009. At the hearing, the Government offered Exhibits (Ex.) 1 through 9, which were admitted into evidence. Applicant testified on his own behalf. The record was kept open to allow Applicant to submit information related to the payment of his debts. No additional information was received. On November 30, 2009, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations, with explanations. 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 31-year-old cybersecurity manager of critical infrastructure protection for a government contractor where he has worked since June 2008, and he is seeking to obtain a security clearance. (Tr. 47) Applicant has previously held a clearance. He first obtained a clearance in 1999. (Answer to SOR)

In September 2006 and in July 2007, Applicant was interviewed about his finances and the debts now listed in the SOR. (Ex. 2) He was also asked about his misuse of a government credit card, which he admitted. (Tr. 30) In September 2006, Applicant used his government credit card to purchase an airline ticket for personal use. (Tr. 52) He was counseled on the proper use of a government credit card and his card was taken from him for three months. (Tr. 53) The card was returned when he had to make a government trip. Shortly after the card was returned to him, in December 2006 and January 2007, he misused his card for personal expenses. (Ex. 4, Tr. 54)

Applicant was again counseled about the proper use of his government credit card. (Tr. 31) Applicant was given the choice to resign or to be fired. (Tr. 59) Applicant chose to resign. The company security officer told him if he resigned he would never have to indicate he was fired from a job requiring a security clearance. (Answer to SOR)

In March 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) In response to section 26, Financial Record, he indicated he had used a credit card without authorization while working for a government agency. (Ex. 1) In response to section 13C, Employment Record, Applicant failed to indicate he had left a job by mutual agreement following charges or allegations of misconduct. (Ex. 1) Applicant acknowledged his answer to the question was dishonest. (Tr. 61)

In 1999, Applicant entered the military. Applicant acknowledges when he first entered the military, he was careless financially. (Tr. 32) While in the military, he received a letter of counseling related to his finances. He was in the military from 1999 to 2004. (Tr. 34) In April 2000, he married another military member he met when both were attending language school. (Tr. 35) They divorced in March 2001. (Ex. 1) In 2001, he purchased a motorcycle that was repossessed. (Tr. 68) While in the military, his military loan account was delinquent. (Tr. 69)

After leaving the military, Applicant went back to school. (Tr. 37) He incurred a \$7,350 debt (SOR ¶ 2. b) to the university. Applicant asserts that he has worked out a repayment arrangement with the university. (Tr. 37) He did not provide the terms of the arrangement or any documentation related to the agreement.

Applicant's annual income is over \$90,000. (Tr. 46) In September 2006, Applicant's gross monthly income was \$7,700 and his monthly net remainder (gross income less deductions and expenses) was \$2,650. (Ex. 2) As of March 2009, his monthly net remainder was \$3,300. Applicant asserts that over the last two years he has significantly improved his financial responsibility. (Tr. 32) At hearing, Applicant's monthly net remainder was \$950. (Tr. 71) He has \$5,000 in a savings account and \$27,000 in his 401(k) retirement plan. (Tr. 72) He contributes ten percent of his salary to his 401(k), which is matched by his employer. (Tr. 72) He is current on his monthly car payments.

In September 2008, Applicant purchased a home. Prior to obtaining a mortgage, he had to correct a number of financial delinquencies. (Tr. 45) He is current on his \$2,400 monthly mortgage payments.

Applicant asserts his "credit is nowhere near perfect," but he is current on his credit cards and mortgage. (Tr. 76) He manages his finances more thoroughly than before. (Tr. 76) He is motivated to stay on top of his finances. (Tr. 77) He is not receiving calls from creditors demanding payment. (Tr. 86)

A summary of Applicant's accounts, placed for collection and other unpaid obligations, and their current status follows:

SOR ¶ 2.b, a \$7,350 university debt placed for collection remains unpaid. (Ex.3, 6) In March 2009, he asserts he established a repayment plan. (Ex. 3) At the hearing, he said he had worked out a deal with the university, but provided no documentation as to the arrangement. (Tr. 37)

SOR ¶ 2.c, a \$52 medical bill placed for collection remains unpaid. (Ex. 3) Applicant has done nothing to satisfy the debt. (Tr. 39)

SOR ¶ 2.d, a \$340 cable account placed for collection remains unpaid. Applicant failed to return a cable box. (Ex. 2, 3, 6, 8) The cable company sold the account to a collection agency. (Tr. 62) Applicant asserts he paid

the bill in full in 2007, but provided no documentation. (Ex. 2) In March 2009, he indicated he had disputed the debt with the credit bureaus. (Ex. 3) Applicant currently has service with this provider. (Tr. 39, 63)

SOR ¶ 2.e, a \$50 copayment for medical care remains unpaid. (Ex. 7, 8) In July 2008, Applicant stated he would pay the debt if it was his. At the time of hearing, he was waiting for a response from the creditor. (Tr. 40)

SOR ¶ 2.f, a \$4,225 debt from a computer purchase, which was placed for collection, remains unpaid. (Ex. 7, 8) Applicant asserts he paid \$3,169 in August 2007, to satisfy this adverse account, but provided no documentation supporting his assertion. (Ex. 2, Ex 3 Applicant asserts his recent credit bureau reports (CBRs) show this debt has a zero balance.

SOR ¶ 2.g is an unpaid \$150 electrical utility bill. (Ex. 8, 9) Applicant asserts his recent CBRs show this debt has a zero balance, but provided no documentation supporting his assertion. (Ex. 3) Applicant currently receives electricity from the creditor. (Tr. 41)

SOR ¶ 2.h is a \$7,110 vehicle debt. Applicant cosigned with the individual who purchased the car from him. In 2002, the car was involuntarily repossessed. In 2003 or 2004, he learned of the repossession. (Tr. 67) Applicant has been unsuccessful in his attempts to locate the cosigner. (Ex. 7, 8, 9, Tr. 43) At some undisclosed date, Applicant asserts he paid \$4,500 to settle the debt, but provided no documentation supporting his assertion. (Ex. 3, Tr. 67) Applicant asserts his recent CBRs show this debt has a zero balance.

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 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

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 Mitigating 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 April 2009, when Applicant completed his e-QIP, he failed to indicate he had left a job by mutual agreement following charges or allegations of misconduct. In September 2006, Applicant misused his government credit card by purchasing an airline ticket for personal use. He was counseled about his misconduct and lost the use of his government credit card for three months. Shortly after the card was returned, he again misused the card by purchasing items for personal use. He was given the option to resign or to be fired. Applicant admits his answer on the e-QIP was dishonest. To Applicant's credit, in response to a financial question on the same e-QIP, he indicated he made unauthorized purchases with his government credit card.

AG ¶ 17 provides conditions that could potentially mitigate security concerns:

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

(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;

(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;

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(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.

None of the mitigating factors apply. There was no prompt good-faith effort to correct the falsification. AG ¶ 17(a) does not apply. Applicant was told that if he resigned he would not have to list the firing. He was never told he would not have to indicate he had been terminated by mutual agreement following misconduct. AG ¶ 17(b) does not apply. The offense was not minor and occurred only one year ago. AG ¶ 17(c) does not apply even though the falsification was limited to a single section of the e-QIP. There is no indication Applicant has obtained counseling to change the behavior or alleviate the stressors, circumstances, or factors that caused the untrustworthy, unreliable, or inappropriate behavior. AG ¶ 17(d) does not apply. There is no evidence of positive steps taken to reduce or eliminate vulnerability. AG ¶ 17(e) does not apply. AG ¶ 17(f) does not apply because the falsification was substantiated. Applicant admits his e-QIP answer was dishonest. AG ¶ 17(g) does not apply because association with persons involved in criminal activity was not an issue.

Applicant's failure to disclose his adverse employment history demonstrates a lack of candor required of public trust personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a security clearance decision. The Government relies on applicants to truthfully disclose that 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 security violations or other concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests.

Guideline F, Financial Considerations

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 had four accounts placed for collection and three other delinquent accounts, which total approximately \$19,000. Three of Applicant's debts were under \$200 each and remain unpaid. 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.

Applicant has failed to document payment of any of the delinquent obligations. Applicant meets none of the mitigating factors. His financial difficulties are both recent and multiple, and they occurred under circumstances that are likely to recur. (AG ¶ 20(a)) He failed to demonstrate that his debts were largely due to circumstances beyond his control, or that he has acted responsibly in addressing his debts. (AG ¶ 20(b)) Further, he has not sought credit counseling, or otherwise brought the problem under control as his circumstances permitted. (AG ¶ 20(c)) AG ¶ 20(d) does not apply

because there is no good-faith effort to repay the creditors or otherwise resolve the debts.

For AG ¶ 20(e) to apply there must be a reasonable basis to dispute the legitimacy of the past-due debt and documented proof to substantiate the basis of the dispute. Applicant asserted that he paid the three debts listed in SOR ¶¶ 1.f, 1.g, and 1.h, but he provided no documentation showing the debts have been paid. His failure to submit documentation supporting his claim of payment, such as court records, receipts, copies of canceled checks, or letters from creditors verifying the status of delinquent accounts, makes AG ¶ 20(e) inapplicable.

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 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. The debts remain unpaid. It is noted that two of the debts are approximately \$50 and one is \$150. Applicant was asked about his financial problems in September 2006. He was specifically asked about the \$150 utility bill and also other debts. In the three years since that interview, he has failed to pay the debts or to provide documentation showing payment. Approximately one year ago, Applicant was again questioned about his delinquent obligations in two written interrogatories. The obligations were not paid, nor was documentation provided showing they have been addressed. As to the personal conduct, Applicant admitted his answer on the e-QIP was dishonest.

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 has not mitigated 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, Personal Conduct: AGAINST APPLICANT

 Subparagraph 1.a —1.d: Against Applicant

Paragraph 2, Financial Considerations: AGAINST APPLICANT

 Subparagraph 2.a —2.h: Against 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.

CLAUDE R. HEINY II
Administrative Judge