



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



In the matter of:)
)
) ISCR Case No. 09-00776
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro se*

April 1, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations or Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 9, 2010, 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. DOHA acted under Executive Order (EO) 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 Department of Defense on September 1, 2006.

Applicant initially answered the SOR on May 25, 2010, but failed to address all the allegations. He submitted a second answer addressing all the SOR allegations on June 18, 2010. He also initially requested an administrative determination, but subsequently requested a hearing before an administrative judge. The case was

assigned to me on November 2, 2010. DOHA issued a notice of hearing on November 17, 2010, and the hearing was convened as scheduled on November 30, 2010. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through B that were admitted into evidence at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE C, which was admitted into evidence without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on December 8, 2010.

Procedural Ruling

Applicant was verbally notified by Department Counsel of the November 30, 2010, hearing date prior to the issuance of the written notice of hearing dated November 17, 2010. At hearing, I asked Applicant if he was ready to proceed and he stated that he was ready.¹ Applicant waived the 15-day notice requirement imposed by ¶ E3.1.8 of the Directive.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer for three years. He is an engineering technician. He also holds two part-time jobs. He has an associate's degree. He is single, never married and has no children.²

The SOR alleges 11 delinquent debts and falsification of his security clearance application. The debts were listed on credit reports obtained on November 12, 2009, and October 28, 2008. In his answer, Applicant admitted owing eight debts and denied three debts. He also denied making any knowingly false statements in his security clearance application.³

Applicant's financial difficulties began in 2003 when he was first laid off from his job. He was working for a contractor who lost the contract Applicant was working on which resulted in his layoff. During the years 2003 through 2008, Applicant was hired and laid off four additional times. Each layoff was caused by lack of work or loss of the contract by the contractor. It was during this time frame that Applicant accumulated the debts at issue. Since 2008 he has worked for his current employer with no further layoffs.⁴

¹ Tr. at 11.

² Tr. at 29-31.

³ GE 1-6.

⁴ Tr. at 33-38.

In September 2010, Applicant contacted a credit counseling service to assist him with paying his debts. Although he met with the service, prepared budget information, and talked about a payment plan, he did not hire the service. He stated that one of the obstacles to hiring the service was that he couldn't get a current credit report, which the service needed before it could assist him with his debts. The Government had no trouble obtaining his credit report. Evidently, he abandoned the idea of using a credit counseling service because his post-hearing submission included a copy of his January 2011, Chapter 7 bankruptcy petition filing. No further information was provided about the status of the bankruptcy case.⁵

The debt alleged in SOR ¶ 1.a is a judgment resulting from a repossessed automobile in the amount of \$3,693. Applicant acknowledges this debt. It remains unpaid and unresolved.⁶

The debt alleged in SOR ¶ 1.b is a judgment resulting from another repossessed automobile in the amount of \$3,727. Applicant acknowledges this debt. It remains unpaid and unresolved.⁷

The debt alleged in SOR ¶ 1.c is a judgment for \$5,950. Applicant acknowledges this debt. It remains unpaid and unresolved.⁸

The debt alleged in SOR ¶ 1.d is a medical collection debt for \$220. Applicant acknowledges this debt. It remains unpaid and unresolved.⁹

The debt alleged in SOR ¶ 1.e is a consumer collection debt for \$691. Applicant acknowledges this debt. It remains unpaid and unresolved.¹⁰

The debt alleged in SOR ¶ 1.f is a consumer collection debt for \$1,167. Applicant acknowledges this debt. It remains unpaid and unresolved.¹¹

The debt alleged in SOR ¶ 1.g is a past due consumer debt of \$90 on a balance of \$552. Applicant disputes this debt, but provided no documentation to support his dispute. It remains unpaid and unresolved.¹²

⁵ Tr. at 78, GE 4-5; AE B-C.

⁶ Tr. at 39-40; GE 4-5.

⁷ Tr. at 41; GE 4-5.

⁸ Tr. at 41-42; GE 4-5.

⁹ Tr. at 43-44; GE 4-5.

¹⁰ Tr. at 44; GE 4-5.

¹¹ Tr. at 45; GE 4-5.

¹² Tr. at 45-46; GE 4-5.

The debt alleged in SOR ¶ 1.h is a judgment for \$264. Applicant acknowledges this debt. It remains unpaid and unresolved.¹³

The debt alleged in SOR ¶ 1.i is a collection account for \$123. Applicant acknowledges this debt. It remains unpaid and unresolved.¹⁴

The debt alleged in SOR ¶ 1.j is a collection account for \$287. Applicant acknowledges this debt. It remains unpaid and unresolved.¹⁵

The debt alleged in SOR ¶ 1.k is a collection account for \$82. Applicant acknowledges this debt. It remains unpaid and unresolved.¹⁶

Applicant also presented evidence that he was paying on a non-SOR related student loan debt. Applicant's student loan document is titled, "US Department of Education Debt Collection Bill," and showed a total balance owed of \$18,217.¹⁷

The personal conduct concern arises because of answers Applicant provided to two sections on his security clearance application. The SOR allegations state that he falsified answers to his security clearance application (e-QIP) on October 18, 2008, by answering "no" to the questions concerning whether he had any unpaid judgments against him in the last seven years, and whether he had in the last seven years been over 180 days delinquent on any debts or whether he was currently 90 days delinquent on any debts. When asked directly about these answers, Applicant stated that he was aware of the judgments and credit report information, but it did not dawn on him to list that information. He further stated that he knew if he listed the information it might "mess up my chances" to get a job.¹⁸

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 that are to be used in evaluating an applicant's eligibility for access to classified information.

¹³ Tr. at 46; GE 4-5.

¹⁴ Tr. at 47-48; GE 4-5.

¹⁵ Tr. at 48-49; GE 4-5.

¹⁶ Tr. at 50-51; GE 4-5.

¹⁷ AE A.

¹⁸ Tr. at 53-54.

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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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's debts are recent, numerous, and there is no indication that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced some personal setbacks because of job layoffs from 2003 through 2008. However, he has been gainfully employed by his current employer for three years and works two part-time jobs. Despite his recent steady employment, he made no effort to address his past due obligations. While his periods of unemployment

were conditions outside his control, he failed to act responsibly under the circumstances when he failed to address his debts. AG ¶ 20(b) is not applicable.

The only evidence of financial counseling is Applicant's seeking assistance from a credit counseling service that he later abandoned. Instead he sought Chapter 7 bankruptcy relief. Seeking Chapter 7 bankruptcy relief is not a good-faith effort to repay his debts.¹⁹ AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant disputed the debt listed at SOR ¶ 1.g. The debt appears on his credit report and he failed to document the basis of his dispute. AG ¶ 20(e) is not applicable.

At this point, Applicant's finances remain a concern and the incomplete bankruptcy action provides no assistance to his cause.

GUIDELINE E, PERSONAL CONDUCT

AG ¶ 15 expresses the security concern for 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant's explanation for his false answers on his security clearance application is unpersuasive. He clearly was aware of his debts and judgments when he submitted

¹⁹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

his security clearance application and contemplated their effect on his job prospects prior to falsely answering the questions at issue. The questions on the application are unambiguous. I conclude from the evidence that Applicant deliberately provided false information concerning these questions. AG ¶ 16(a) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

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

(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.

The record is absent any evidence that Applicant made any efforts to correct his false answers before being interviewed by an investigator. AG ¶ 17(a) does not apply. Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline 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 Applicant's years of service to his employer. I also considered his periods of unemployment. Even though he recently filed for bankruptcy relief to address his debts, he has not shown a track record of financial stability. Additionally, he deliberately falsified his security clearance questionnaire. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

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 Financial Considerations security concerns.

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
Subparagraphs 1.a – 1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	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.

Robert E. Coacher
Administrative Judge