



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



In the matter of:)	
)	
)	ISCR Case No. 09-00829
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Pro Se

July 30, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP), on October 2, 2008. On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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 April 1, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on May 5, 2009. The FORM was forwarded to Applicant on May 6, 2009. Applicant received the FORM on May 12, 2009. He had 30 days from receipt of the FORM to submit any additional material. He did not respond. The FORM was forwarded to the hearing office on July 7, 2009, and assigned to me on July 9, 2009. Based upon a

review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated April 1, 2009, Applicant admitted all of the SOR allegations. (Item 3)

Applicant is a 57-year-old engineer employed with a Department of Defense contractor seeking to maintain a security clearance. He has been employed with the defense contractor since October 1987. He is widowed and has two adult children. (Item 4)

On October 2, 2008, Applicant completed an Electronic Questionnaires for Security Investigations Processing, (e-QIP). He answered "No" in response to Section 28.a "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "No" in response to Section 28.b "Are you currently 90 days delinquent on any debt(s)?" (Item 4)

Applicant's background investigation revealed the following delinquent accounts: a \$2,699 account placed for collection in November 2006 (SOR ¶ 1.a: Item 5 at 5, 7; Item 6 at 1); a \$1,304 credit card account that was charged off in November 2006 (SOR ¶ 1.b: Item 5 at 4; Item 6 at 2; Item 7 at 1); a \$4,735 credit card account that was charged off in November 2006 (SOR ¶ 1.c: Item 5 at 4; Item 6 at 2; Item 7 at 1); a \$3,288 credit card account placed for collection in November 2006 (SOR ¶ 1.d: Item 5 at 6; Item 6 at 2; Item 7 at 2); a \$7,451 credit card account placed for collection in November 2006 (SOR ¶ 1.e: Item 5 at 6; Item 6 at 2; Item 7 at 2); a \$4,753 delinquent account with a bank placed for collection in October 2006 (SOR ¶ 1.f: Item 5 at 7); and a \$4,221 delinquent account with a bank placed for collection in October 2006. (SOR ¶ 1.g: Item 5 at 7)

In his response to the SOR, Applicant stated that he requested paperwork to apply for a hardship withdrawal from his 401(k) savings plan. He did not meet any of the criteria for a hardship withdrawal. He then requested a loan from his 401(k) savings plan. He has a pre-existing loan taken out in March 2006 for a period of five years. He cannot modify the loan and cannot pay the loan off in one lump sum. The current balance is \$4,600. He claims he has no access to any other commercial or private source to resolve his debts. (Item 3)

Applicant admits that he deliberately omitted his delinquent debts in response to questions 28.a and 28.b on his e-QIP application. He claimed:

Like I told the investigator, [Investigator's Name], on October 30, 2008, I felt too embarrassed to acknowledge to anyone, family, friends or work, that I had incurred that much of a financial obligation and was not able to continue to make payments. (Item 3 at 1)

The record evidence contains no information about Applicant's current financial situation. There is no information in the record explaining the cause of Applicant's financial problems. No information was submitted regarding Applicant's work performance.

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 potentially disqualifying conditions 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.

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.

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.

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

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 guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has seven delinquent accounts, totaling approximately \$28,451. All of these debts have been delinquent since 2006.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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 current reliability, trustworthiness, or good judgment) is not applicable. Applicant has a history of financial irresponsibility. He did not explain what caused his financial problems. There is nothing in the record evidence indicating Applicant’s current financial status. His delinquent accounts remain unresolved.

Based on the record evidence, I conclude FC MC ¶ 20(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) does not apply. It appears that all of Applicant’s delinquent accounts became delinquent in 2006. However, Applicant did not explain what caused his financial problems. I cannot conclude that there were circumstances beyond Applicant’s control contributed to his financial problems.

FC MC ¶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) does not apply. There is no evidence that Applicant attended financial counseling. All of the debts remain delinquent. It is unlikely that his financial problems will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant attempted to obtain a hardship withdrawal from his 401(k). He did not qualify for a hardship withdrawal so he then attempted to obtain a loan against his 401(k). He already had borrowed against his 401(k) and did not qualify for an additional loan. Regardless of these efforts, Applicant claims that he cannot resolve these accounts. For this reason, FC MC ¶ 20(d) is given less weight.

Applicant's failure to honor his financial obligations remains a security concern. He has not mitigated the security concerns raised under financial considerations.

Personal Conduct

The security concern relating 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.

Personal conduct concerns are raised because Applicant deliberately omitted his delinquent debts that were over 180 days old in response to section 28.a and his delinquent debts that were currently 90 days old in response to section 28.b on his e-QIP application, dated October 2, 2008. Personal Conduct Disqualifying Condition ¶ 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) applies to this allegation. Applicant admits that he did not list his delinquent accounts because he was too embarrassed to admit that he had incurred that much debt.

None of the mitigating conditions apply under Guideline E. Guideline E is found 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 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. Applicant provided no information about his work performance. All seven debts alleged in the SOR remain unresolved. Applicant did not explain the cause of his financial problems. He claims he is unable to resolve his delinquent accounts. Applicant's deliberate falsification of his security clearance application by omitting his delinquent debts raise security concerns under personal conduct. Embarrassment does not excuse Applicant from providing truthful information on his security clearance application. Applicant failed to mitigate the security concerns arising under 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

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.

ERIN C. HOGAN
Administrative Judge