



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01296
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

June 29, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the Government's security concerns generated by his financial delinquencies and his omission of financial information from his security clearance application. Clearance is granted.

Statement of the Case

On October 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to 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 adjudicative guidelines (AG).

On October 28, 2009, Applicant answered the SOR, admitting the allegations in SOR Paragraph 1 and denying the allegations in SOR Paragraph 2. He requested a decision without a hearing. On November 9, 2009, Department Counsel prepared a File

of Relevant Material (FORM), and DOHA mailed it to Applicant. He received it on November 20, 2009, along with instructions to file any objections or supplementary information within 30 days. Applicant did not provide any additional information. The case was assigned to me on February 4, 2010.

Findings of Fact

Applicant is a 53-year-old married man with two adult children. In 1980, he earned a bachelor of science degree in electrical engineering. He has worked for the same employer, a defense contractor, since 1991. Currently, he is a senior quality analyst.

In 2005, Applicant and his wife purchased a home, but underestimated the true cost of owning a house in addition to their mortgage. Also, their car broke down at or about the time of the home purchase, requiring approximately \$2,000 of repairs. Consequently, they were unable to balance the car expenses and the home's operating costs. (Item 6 at 5) By August 2008, Applicant began falling behind on his mortgage payments. (Item 9 at 2) By the time Applicant completed his security clearance application in October 2008, he was approximately 60 days behind on his mortgage payments. (Item 10 at 8)

Between 2000 and 2005, Applicant cosigned two student loans for his daughter, and cosigned a car loan for his son. Also during that time, he opened two credit card accounts with his wife. Subsequently, his children defaulted on their loans, and his wife charged multiple expenses on the credit cards without his knowledge. (Item 10 at 4-6)

After discovering the charges his wife had accrued, and the loans on which his children had defaulted, Applicant began contacting creditors and arranging payment plans. By May 2009, he had satisfied the delinquent credit card accounts and his daughter's student loan accounts, totalling approximately \$11,500. (Item 7 at 8; Item 9 at 2) Those debts are not alleged in the SOR.

In 2004, Applicant cosigned a car loan for his son, as listed in SOR subparagraph 1.a. (Item 6 at 3) His son then "disappeared" for the next three years. (*Id.*) Applicant did not know the location of either his son or the car during this time. It is unknown from the record why Applicant's son lost contact with him. In 2007, Applicant located his son and discovered that he had stopped making car payments during the period when his whereabouts were unknown. Applicant did not know the exact date when Applicant had stopped making car payments.

Shortly after locating his son, Applicant arranged for the car's voluntary repossession. (Item 6 at 3) The SOR lists a deficiency of \$13,074. Applicant denies that there is any outstanding deficiency. In support of this contention, he references a conversation with a representative of the creditor, but does not provide any corroborating evidence. (Item 4 at 2)

Applicant's mortgage delinquency is alleged in SOR subparagraph 1.b. In August 2009, Applicant contacted the mortgagee and negotiated a loan modification. (Item 4 at 6) Under the terms of Applicant's modified home loan, his monthly payment decreased by \$60 monthly, and his delinquency was consolidated into the adjusted principal. He was to begin making payments per the new mortgage beginning October 2009. Applicant contends he paid the first mortgage payment, but did not provide any corroborating evidence. (Item 4 at 3)

Applicant maintains a budget. He earns \$91,000 per year. He has approximately \$489 of monthly, disposable income. Also, he has \$1,000 in savings, and \$500 invested in the stock market. (Item 7 at 4) He has not attended any financial counseling since experiencing his financial difficulties. (Item 6 at 5) However, he has removed his wife from his personal checking and savings accounts. (Item 4 at 2)

The Government contends Applicant intentionally omitted his mortgage delinquency in response to Section 28a of his security clearance application.¹ Also, the Government contends Applicant intentionally omitted the automobile deficiency and the non-alleged debts from his security clearance application in response to Section 28b.²

Applicant's mortgage was no more than 60 days behind when he completed the security clearance application. Department Counsel acknowledges that the Government has no evidence establishing that the non-alleged debts were his responsibility. (FORM at 7)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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

¹In the last 7 years, have you been over 180 days delinquent on any debt(s)?

²Are you currently over 90 days delinquent on any debt(s)?

applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of financial delinquencies triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions set forth in AG ¶ 20 are potentially applicable:

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;

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; and

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Nearly all of Applicant’s delinquent debt arose because his family members either failed to make payments on loans for which he had cosigned, or spent money on joint credit card accounts without his knowledge. These problems contributed to his trouble making his mortgage payments on time.

By May 2009, Applicant had satisfied approximately \$11,500 of delinquent debt. Three months later, he successfully negotiated a mortgage loan modification. It is no longer in delinquent status. Applicant’s contention that he owes no automobile deficiency as a result of the voluntary repossession of the car he cosigned for his son is not supported by corroborating documentary evidence. Nevertheless, I conclude this contention is credible in light of his substantiated efforts to satisfy his other delinquencies.

Although Applicant did not meet with a financial counselor after he began struggling with his debt, he maintains a budget and has ample income to satisfy his mortgage payments and prevent a recurrence of his financial problems. AG ¶¶ 20(b), 20(c), and 20(d) apply.

Personal Conduct

The security concern under this guideline is as follows:

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.

Applicant's response to Section 28 of his security clearance application raises the issue of whether AG ¶ 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.

The Government alleges Applicant deliberately falsified his security clearance application by omitting his delinquent mortgage payments, four non-alleged delinquencies, and the deficiency from a repossessed automobile. Applicant was only 60 days behind on his mortgage payments when he completed the security clearance application, and the Government presented no evidence that his mortgage payments had ever been more than 180 days late. Consequently, Applicant did not falsify Section 28 by omitting his mortgage delinquency.

Department Counsel acknowledged the Government had no evidence refuting Applicant's contention that the non-alleged debts were not his responsibility. I conclude Applicant's omission of these non-alleged debts does not constitute falsification.

Creditors typically notify cosigners when the primary obligee defaults on loan payments. In this case, however, Applicant relocated at or about the same time that his son disappeared and stopped making car payments. This calls into question whether Applicant received notice of his son's default from the creditor. Under these circumstances, Applicant's contention that he did not know when his son stopped making car payments is credible. Consequently, Applicant's omission of this debt from Section 28a of the security clearance application requiring him to disclose whether he had been more than 180 days late on a debt in the past seven years does not constitute a falsification.

I conclude that none of the disqualifying conditions apply, and Applicant did not intentionally falsify his security clearance application. There are no Personal Conduct security concerns.

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.

Applicant's financial problems stemmed mainly from delinquencies accrued by family members on accounts that were either jointly in his name, or for which he had cosigned. His mortgage payments fell behind because he underestimated the actual costs of owning a home. Applicant has taken multiple steps to rehabilitate his finances, including obtaining a loan modification to reduce his mortgage and satisfying approximately \$11,500 of debt that his family members accrued. Given Applicant's stable income, I conclude the possibility of recurrence of financial problems is minimal.

The circumstances under which Applicant discovered that the car loan he cosigned for his son had become delinquent were highly unusual. Consequently, his contention that he did not know exactly when the car payments became delinquent was plausible. In assessing Applicant's credibility, I also considered his history of job stability, the circumstances beyond his control that led to his financial problems, and the responsible manner in which he satisfied debts accrued by family members in his name, once he discovered them. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge