



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



In the matter of:)	
)	
)	ISCR Case No. 09-01719
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

July 29, 2010

Decision

COACHER, Robert E., Administrative Judge:

The Government failed to establish deliberate falsifications of a security clearance application by the Applicant under Guideline E, Personal Conduct. However, Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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).

Applicant answered the SOR, initially on February 1, 2010, followed by a March 2, 2010 supplemental answer. He also requested an administrative determination, but

the Department Counsel requested a hearing. The case was assigned to me on April 22, 2010. DOHA issued a notice of hearing on April 23, 2010, and the hearing was convened as scheduled on May 27, 2010. The Government offered Exhibits (GE) 1 through 6, which were received without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called two witnesses, and submitted Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE F and G and admitted without objection. Department Counsel's post-hearing memorandum is marked HE II. DOHA received the hearing transcript (Tr.) on June 9, 2010.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since January 2005. In 1999, he earned a bachelor's degree in computer science. He is single and has no children. He currently earns approximately \$85,000 per year. He currently holds a security clearance¹

The SOR alleges two delinquent debts including a judgment. The debts were listed on credit reports obtained on October 23, 2008 and December 5, 2009. Applicant admitted owing the debts alleged in SOR.²

Applicant's financial problems arose when he bought a home in May 2007. His mortgage was approximately \$328,000 after making a \$2,000 down payment to buy the house. This was a 40-year mortgage at a 6.75% fixed interest rate. His original monthly payments were about \$2,500 per month. In May 2008, Applicant was struggling to make his mortgage payments. He became over extended on his credit card debt and his mortgage payments increased by approximately \$250 per month starting in July 2008. Applicant asked the lender why his payments increased and was told it was because of an escrow adjustment. Sometime during the spring of 2008, Applicant began skipping mortgage payments about every other month. In July 2008, Applicant applied with a nonprofit corporation for assistance in seeking a loan modification from his lender. The last update from the nonprofit corporation (June 22, 2010) shows that it is still negotiating with the Applicant's lender over a loan modification. The last mortgage payment he made was in April 2009. He testified he stopped because he was told by the lender not to make any further payments while he was in the process of negotiating a loan modification. He offered no documents from the lender supporting this assertion. He currently owes over \$40,000 on missed mortgage payments on the debt listed at SOR ¶ 1.a.³

¹ Tr. at 45-47, 52.

² Applicant's Answer to SOR (AA).

³ AA; Tr. at 57-61, 63-70; AE B; GE 6.

Applicant has been employed in the same position since he bought his home. He has not suffered any diminution of pay since he bought his home. Additionally, he did not take on any other major debt obligations since he bought his home. Rather than saving the money that was supposed to go to his mortgage payments, Applicant paid the credit card judgment (SOR ¶ 1.b) and two other debts not listed in the SOR. If Applicant's loan modification is not approved he will have to give up the house, possibly through a short sale. His personal financial statement indicates that he has a monthly deficit of approximately \$500 per month.⁴

Applicant submitted an Electronic Questionnaire for National Security Position (e-QIP) on October 7, 2008. He answered "No" to Sections 28 a. and 28 b., which asked, respectively, in the last 7 years have you been over 180 days delinquent on any debt or currently 90 days delinquent on any debt? Applicant fully discussed his finances and delinquent debts when he was interviewed for his background investigation in November 2008. He responded truthfully to DOHA interrogatories in April 2009 and August 2009. He was open and candid about his finances at his hearing. Applicant denied intending to mislead the government about his finances. He credibly testified that he did not know that his mortgage was either 180 days or 90 days overdue. Because he was continuously attempting to catch up with his delinquent mortgage payments, it was unclear in his mind if he had ever been 180 days or 90 days delinquent on his mortgage.⁵ After considering all the evidence, I find that Applicant did not intentionally falsify his e-QIP.

Applicant did not receive financial counseling other than his dealings with the nonprofit corporation assisting with his loan modification. He also sought a loan consolidation from his credit union. The credit union turned him down.⁶

Applicant had two coworkers testify and they expressed favorable opinions about Applicant's professionalism, honesty, trustworthiness, and loyalty. They were both aware of Applicant's financial problems. Additionally, a character letter from a friend, who has known Applicant since 1999, describes him as "an honorable and trustworthy citizen".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 that are to be used in evaluating an applicant's eligibility for access to classified information.

⁴ Tr. at 95, 100-105; GE 4.

⁵ Tr. at 78-80, GE 1, 3-5.

⁶ Tr. at 61-62.

⁷ Tr. at 111-114, 118-122; AE E.

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 delinquent debts and a judgment 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 still owes \$40,000 of missed monthly payments on his mortgage, with no progress on a loan modification plan. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

There is nothing about Applicant's financial condition that was caused by events beyond his control. He decided to buy a home in 2007 and had a good paying job to support that decision. He still has that job and no unexpected expenses, such as major

medical bills, etc., arose to cause him financial distress. His mortgage payments did rise by \$250 per month caused by escrow adjustments, but this type of increase is not uncommon. I find there were no conditions that were outside his control. AG ¶ 20(b) is not applicable.

Although Applicant is attempting to have his mortgage loan modified, there is no certainty that it will be modified. He has not sought out financial counseling aside from enrolling in the modification program. His finances are not being resolved and are not under control. His pay off of the judgment listed at SOR ¶ 1.b is insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his debts. Likewise, merely enrolling into a loan modification program does not amount to a good faith effort to repay the loan under these circumstances.⁸ AG ¶¶ 20(c) and 20(d) are not applicable to the debt listed at SOR ¶ 1.a. Applicant does not dispute the debts. AG ¶ 20(e) is not applicable.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

Guideline E, Personal Conduct

The trustworthiness 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 [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [public trust position] process or any other failure to cooperate with the [public trust position] process.

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

⁸ 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)).

(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.

Applicant submitted inaccurate information on his e-QIP, but as discussed above, it was not an intentional falsification. AG ¶ 16(a) is not applicable.

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 in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. I also found Applicant to be honest and candid about his finances. Appellant's mortgage delinquency remains a concern. Although he is seeking a loan modification, that process has been ongoing since July 2008, with no outcome and a positive result is speculative at this point. Even if the loan is somewhat modified, according to Applicant's current income to expense worksheet, he still could not afford the payments. He has no contingency plans if the modification does not go through.

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 did mitigate the Personal Conduct concerns, but did not mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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