



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-02905
)	
Applicant for Security Clearance)	

Appearances

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

April 13, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken 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 on November 17, 2009 and December 10, 2009, and requested a hearing before an administrative judge. The case was assigned to me on January 14, 2010. DOHA issued a notice of hearing on January 22, 2010, and the hearing was convened as scheduled on February 23, 2010. The Government offered

Exhibits (GE) 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE C and D and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on March 2, 2010.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since November 2008. He is seeking to obtain a security clearance. Applicant served on active duty in the U.S. Navy from 1994 to 1998, and has served in the Navy Reserve since 1998. He has an associate's degree, which he earned in 2005. He has never been married and has no children.¹

The SOR alleges five delinquent debts, with balances totaling about \$15,435. Applicant admitted owing all the debts alleged in the SOR.

Applicant attributed his financial difficulties on poor personal choices. He wrote in response to DOHA interrogatories:

I overspent on things that I wanted such [as] clothing, travel, restaurants, and movies. It was easier to charge my credit cards instead [of using] my own money. Being immature, irresponsible and ignorant and not being able to plan my finance[s] correctly caused me to get in so much debt with my creditors.²

Applicant was unemployed from about August 2008 until he started his current job in November 2008. He collected unemployment benefits during that period. Other than that period of unemployment, he has been steadily employed since at least 1999.³

Applicant contracted with a debt management company in November 2005, to assist in resolving his debts. Applicant and the company approximated his debt at that time at \$9,215. He agreed to pay the company \$1,382 in service fees through payments of \$140 for three months, followed by 14 monthly payments of \$68. In April 2007, after the service fees were paid, Applicant was supposed to start making monthly deposits of at least \$140 into his bank account, which would be used to settle his debts.⁴

Applicant established that he has settled one debt since he contracted with the debt management company. In August 2009, he reached an agreement to settle the

¹ Tr. at 22-24; GE 1.

² GE 3.

³ Tr. at 16-17, 24-27; GE 1, 3.

⁴ Tr. at 17, 27-30; GE 3; AE C, D.

debt alleged in SOR ¶ 1.c. The balance of the debt at that time was \$2,208. He made six monthly payments of \$184 to settle the debt for \$1,104.⁵

Applicant stated the debt management company is now negotiating a settlement with another creditor. He has been saving \$25 each week to be used to settle his debts. He has about \$600 in an account to be used for that purpose. Applicant has about \$51,000 in student loans that were deferred and will soon have to be addressed. He stated he is currently paying \$125 each month for his student loans, which is applied toward the interest. He gives his parents about \$200 to \$300 a month. He stated they do not need the money to live on; he gives it to them because it is part of his culture to help his family. He was paying into a timeshare condominium owned by his family. In his personal financial statement, he listed his monthly payment to the timeshare as \$520. He testified that he did not actually have to pay the full \$520, as that figure represented the total monthly payment that was split between family members. He stated the timeshare is now paid off. He has not received financial counseling.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) on November 25, 2008. He answered “No” to Questions 28a and 28b, which asked “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “Are you currently over 90 days delinquent on any debt(s)?” Applicant denied intentionally falsifying the SF 86. He stated that he misunderstood the questions and he thought that his debts were not delinquent because he was working with a debt management company. I did not find Applicant’s explanations to be credible. He admitted that several creditors told him they would not work with the debt management company. No payments were made to any of the creditors and there were no settlement agreements in place when Applicant submitted the SF 86.⁷ After considering all the evidence, I find that Applicant intentionally falsified his SF 86.

Applicant was questioned about his finances for his background investigation on January 16, 2009. He admitted to his delinquent debts and described how he got into financial difficulties.⁸

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

⁵ Tr. at 31; Applicant’s response to SOR; AE A, B.

⁶ Tr. at 30-45; GE 2; AE C.

⁷ Tr. at 16, 29-32, 48-50; Applicant’s response to SOR; GE 1, 3.

⁸ GE 3.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 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 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 pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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

Applicant still owes four of the debts alleged in the SOR. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant admitted that his financial problems resulted from his immaturity and irresponsibility. He was unemployed for about four months before he accepted his current position in November 2008. He received unemployment benefits, and his debts were already delinquent. AG ¶ 20(b) is not applicable.

Applicant has not received financial counseling. Since he contracted with the debt management company in 2005, he has settled one debt for \$1,104. His efforts at paying his delinquent debts are not yet sufficient to qualify as a good-faith effort to pay

or resolve his debts. AG ¶ 20(d) is not applicable. In addition to his delinquent debts, he has about \$51,000 in student loans that will soon have to be addressed. He has not established clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) is not applicable.

Guideline E, 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.

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, 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 intentionally falsified his SF 86 in November 2008, when he failed to divulge his delinquent debts. AG ¶ 16(a) is applicable as a disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

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

Applicant discussed his finances and delinquent debts when he was interviewed for his background investigation in January 2009. That does not constitute a prompt, good-faith effort to correct the falsification before being confronted with the facts. While he receives credit for discussing the information with the investigator, it is insufficient to establish a mitigating condition. I find that no mitigating conditions are 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and 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 service to this country in the U.S. Navy and Navy Reserve. However, his finances are not in order, and he intentionally provided false information on his SF 86.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated Financial Considerations and Personal Conduct 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against 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.

Edward W. Loughran
Administrative Judge