



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



In the matter of:)
)
) ISCR Case No. 09-04815
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

February 18, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On October 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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.

Applicant answered the SOR in writing on November 5, 2009, and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2009. DOHA issued a Notice of Hearing on December 7, 2009, and the hearing was scheduled for December 21, 2009. Due to a snow storm the federal government was

closed on that day and the case was postponed. A new Notice of Hearing was issued on December 29, 2009, and I convened the hearing as scheduled on January 12, 2010. The government offered Government Exhibits (GE) 1 through 5. Applicant did not object and they were admitted. Applicant testified and offered Applicant Exhibits (AE) A through M, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 19, 2010.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.a, 1.b, 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, and 2.a. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old. He has never been married and has no children. He served in the Navy from October 1981 until he retired in January 2004, in the pay grade of E-8. He has a bachelor's degree and a master's degree. From the date of his retirement until September 2004, he was unemployed. He worked from September 2004 until June 2005. He was again unemployed until May 2007, when he began working with his current employer, a defense contractor. He worked first as a subcontractor, and then in January 2009, as a full-time employee for the company.¹

Applicant and his girlfriend lived together from 2000 until their relationship ended in 2004. During this period they shared their living expenses. They became engaged in 2003. They accumulated debt jointly, but only Applicant's name was listed as the responsible party. Applicant co-signed for her on a \$50,000 car loan because she had a prior bankruptcy and difficulty obtaining a loan. She paid her car loan. Their combined annual income towards the later years they were together was approximately \$200,000. Applicant admitted they lived beyond their means, making lavish expenditures, and only paid the minimum payments due on their credit card debts. They bought a house together in 2001, for \$280,000, and sold it in 2003, for a small profit. They used credit cards to finance the furnishing of the house. When they ended their relationship in 2004, Applicant estimated he had approximately \$150,000 in debts. His ex-fiancée helped pay some of the debts, but then stopped when Applicant became unemployed. Applicant accumulated numerous delinquent debts. He attributes their delinquency to his periods of unemployment.²

Applicant was unaware that the debt listed in SOR ¶1.a. (\$3,566) was a judgment. He was, however, aware he owed a debt to the creditor. The account was opened in 2002, and became delinquent in 2005, when Applicant lost his job. He does not remember the nature of the account. He did not make any payments on the debt

¹ Tr. 60-69.

² Tr. 28-30, 107-115.

from 2005, until he contacted the attorney handling the debt and settled the account for \$3,000 on December 29, 2009.³

The debt in SOR ¶1.b (\$4,241) was for a broken lease when Applicant lost his job and had to move because he could not afford to pay for his apartment. He owed two months' rent. He stopped paying the debt in July 2005. He settled the debt in November 2009 for \$2,121.⁴

The debts in SOR ¶¶1.c (\$265), 1.d (\$139), and 1.e (\$249), are all for cable services. Applicant acknowledged the debts have been owed since 2005. He paid the debts in ¶¶1.c and 1.e in November 2009.⁵ He stated he paid the debt in ¶1.d with his credit card by telephone in December 2009, but did not have a receipt.⁶

The debt in SOR ¶1.f (\$2,624) is to a collection company for a line of credit Applicant obtained in 2004. He settled and paid the debt (\$1,600) on December 11, 2009.⁷

The debt in SOR ¶1.g (\$190) is a duplicate of ¶1.i. This is a collection account on a telephone debt. Appellant paid the debt in December 2009.⁸

The debt in SOR ¶1.h (\$45,096) is for a loan Applicant obtained when he consolidated two credit card debts in 2002. He defaulted on the loan in 2005, and began repaying it in November 2009. He has made three monthly payments of \$500.⁹ The balances of the two credit cards were paid off by the loan. Applicant kept the credit cards and continued to use them. He accumulated new balances on the two cards and owes \$15,747 and \$6,305 on them. He makes payments of \$400 and \$200 respectively on each card. They are not delinquent and the accounts are no longer open.¹⁰

The debt in SOR ¶1.i (\$20,150) is for a vehicle loan Applicant obtained in 2002. The original car loan was for \$45,000. Applicant made payments on the loan until he

³ Tr. 24-30; AE A.

⁴ Tr. 30-32; AE B.

⁵ Tr. 32-39; AE C, D.

⁶ Tr. 32-37.

⁷ Tr. 39-40; AE E.

⁸ Tr. 40-41, 56; AE F, G.

⁹ Tr. 41-45; AE H, K.

¹⁰ Tr. 87-101; AE M.

defaulted in 2006, and his car was repossessed. In November 2009, he began making payments of \$250, and has made three payments.¹¹

The debt in SOR ¶1.j (\$6,500) is a credit card account. Applicant defaulted on the original debt in 2005, and began paying \$250 a month in 2006. Applicant has made regular payments on the account and has a remaining balance owed of \$245. He anticipates paying the balance in the next month.¹²

Applicant stated he is unfamiliar with the debts in SOR ¶¶1.k (\$230) and 1.m (\$312). The government provided a credit report with a phone number and mailing address for the creditors. He did not contact the creditors to verify the debts. The debts are no longer listed on his credit report.¹³

Applicant receives a monthly retirement pay from the Navy of approximately \$1,950.¹⁴ Since becoming a full-time employee in January 2009, he earns an annual salary of \$99,000. He estimated his net monthly pay was about \$5,400. His combined retirement pay and net monthly pay is \$7,350. He believes he was earning approximately \$70,000, when he first began work with his current employer. Applicant provided a rough estimate of his monthly expenses and they totaled about \$5,030. Since November 2009, prior to him beginning making monthly payments on his two loan repayment plans (\$500 and \$250), he had approximately \$3,070 in excess income at the end of each month. Since November 2009, when he began making payments on his two delinquent loans, his excess income has been about \$2,320. Applicant estimated he has \$2,500 in his savings account and \$500 in his checking account. Applicant does not know where he spent his excess income.¹⁵

Applicant has not received any financial counseling. He did consult with an attorney in 2005 about his delinquent debts and was advised to file bankruptcy. He chose not to take the advice.¹⁶

Applicant had no explanation for why he waited two and a half years after he began his employment before he began making payments on the delinquent debts listed in the SOR. He acknowledged he was aware he had delinquent debts. He also acknowledged his delinquent debts were brought to his attention by an Office of

¹¹ Tr. 45-49; AE I and J.

¹² Tr. 49-51; AE L.

¹³ Tr. 51-59; GE 3 page 16; GE 4 page 7; AE M.

¹⁴ This is his net pay after taxes and an allotment for his dental insurance. His annual pension is \$23,400.

¹⁵ Tr. 70-86, 100-103.

¹⁶ Tr. 85-86.

Personnel Management Investigator during his interview in May 2009, but he did not take any action until November 2009.¹⁷

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 27, 2009. In section 26 it asked Applicant if in the last seven years he had a judgment entered against him; if he had defaulted on any type of loan; if he had any bills or debts in collection; any credit cards charged off or canceled for failing to pay as agreed; and if he had any debts over 180 days delinquent or more than 90 days past due? Applicant answered “no” to all of the questions.¹⁸ Applicant stated in his answer to the SOR the following:

I admit to not being forthright about my past credit history/issues. However, I did not recall or was aware the credit history questions spanned 7 years. Additionally, I was unaware of the judgment that was levied against me until 05/2009. I sincerely apologize for this oversight and in no way was I trying to mislead or deceive.¹⁹

At his hearing, Applicant admitted he was not honest when he answered the questions about his financial delinquencies. He admitted he was aware of his many delinquent debts. He was specifically aware of the debts he owed in SOR ¶¶1.h and 1.i (totaling approximately \$65,000). He explained the reason he was not truthful was because he did not want his past credit history to affect his ability to obtain a security clearance.²⁰

I find Applicant was aware he owed many creditors and had many delinquent debts. Although he may not have been aware that one of the delinquent debts resulted in a judgment, he was aware that he defaulted on the specific debt. I did not find Applicant’s explanation regarding the questions spanning seven years to have impacted his obligation to provide an accurate reporting of his delinquent debts. I find Applicant intentionally and deliberately failed to disclose information as required on his e-QIP.

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.

¹⁷ Tr. 86-87, 100-107, 115, 120-121.

¹⁸ Tr. 116-121.

¹⁹ Answer to SOR.

²⁰ Tr. 115.

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

Directive ¶ E3.1.14 requires the government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 conditions that could raise security concerns. I have considered all of them and especially considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant owes a large amount of delinquent consumer debt. He admitted he spent beyond his means and made minimum payments on his debts until he stopped paying them after he lost his job. Despite being employed with a substantial salary since 2007, he did not take any action to repay his delinquent debts until after he received the SOR. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 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;
- (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 individual 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's behavior is recent because he has not completely resolved his delinquent debts. He did not provide a credible explanation regarding his lack of effort to resolve his delinquent debts prior to receiving the SOR, despite having ample resources to do so. I cannot find that his financial problems are unlikely to recur. Despite having considerable expendable income each month, he does not know how he spends it. In addition, his lack of attention to addressing his debts until very recently casts doubt on his reliability, trustworthiness, and good judgment. I find mitigating condition (a) does not apply.

Applicant had periods of unemployment that were beyond his control. He and his fiancée broke up and she reneged on paying her share of some joint debts. However, Applicant also admitted that he lived beyond his means. In addition, when Applicant was employed he did not act responsibly in addressing his delinquent debts. I find mitigating condition (b) only partially applies.

Applicant was counseled regarding filing bankruptcy. He did not provide any evidence that he received financial counseling to learn how to better handle his finances. He did provide evidence that he settled some of his debts. He continues to have a large amount of delinquent debt that he has only recently begun to make payments on. Despite receiving a pension, a substantial salary, and having considerable expendable income at the end of each month, Applicant does not know where he spends his money. He has minimal amounts in savings and checking. Most of his debts have been delinquent since 2005. Except for one delinquent debt that he began repaying in 2006, the others were not addressed until after he received the SOR and days before his hearing. Although he has settled some of his debts and he has recently begun to make payments on others, I cannot find, at this juncture, that the problem is being resolved or is under control. I cannot find that Applicant initiated a good-faith effort to repay his overdue creditors because he had the income to address his debts for more than two years and did not do so until after he received the SOR. I find mitigating conditions (c) and (d) do not apply.

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 16 and especially considered the following:

(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; and

When completing his e-Qip, Applicant intentionally failed to list that he had delinquent debts. He was aware of his financial problems but did not want to list them because he believed it would impact his ability to obtain a security clearance. I find the above disqualifying condition applies.

The guideline notes several conditions that could mitigate security concerns. I have considered all of them 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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

There is no evidence Applicant made a prompt, good-faith effort to correct the omissions to his e-Qip. In his answer to the SOR, he claimed his omission was an oversight because he was unaware the period of time spanned seven years. At his hearing, he admitted he was not honest because he was concerned his financial situation would impact his ability to obtain a security clearance. I find mitigating condition (a) does not apply. Applicant did not promptly correct his omission. I find mitigating condition (c) does not apply because his failure to be honest is not minor and it casts doubts on his reliability, trustworthiness, and good judgment. I have considered the remaining mitigating conditions and find they do 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 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the facts in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is a military veteran with 22 years of active duty service. He was unemployed for two periods of time. These periods of unemployment affected his finances. He and his fiancée lived beyond their means and accumulated a large amount of consumer debt. Applicant made minimal payments on the debts. When they broke up she helped pay the joint debts for a period and then stopped. He stopped making payments when he became unemployed in 2005. Applicant resumed employment in May 2007, but addressed only one debt. In November 2009, after receiving the SOR, Applicant began settling some of his debts and made payments on others. I am troubled by his lack of action in addressing his debts until his security clearance became an issue. He does not know where he spends his money each month. He does not have a clear grasp on how to handle his finances. I am not convinced that Applicant has made permanent changes regarding his finances. He does not have a sufficient track record to conclude otherwise.

Applicant was well aware of his delinquent debts when he completed his e-Qip. He was also aware that he was required to tell the truth. Instead he chose to be untruthful by not divulging his financial delinquencies. He is at a stage in his life, after serving in the military for 22 years, to know the importance of being honest. 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 failed to mitigate the security concerns arising under the Guidelines for 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
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-m:	For 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge