



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



In the matter of:)
)
) ISCR Case No. 09-05225
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

January 25, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant committed an armed robbery in 1994 when he was 17 years old. He completed all conditions of his sentence in 1997. Unemployment and underemployment were major reasons why he accumulated delinquent debts between 2000 and 2008. During the period, Applicant committed several criminal and traffic offenses. Though he told the Government in June 2009 that he planned to talk to a financial advisor about his delinquent debts, he has done nothing to address his debts, even though he has had the discretionary funds available in the last year to eliminate some of the smaller debts listed in the Statement of Reasons. Eligibility for access to classified information is denied.

Statement of the Case

Applicant certified his Standard Form 86 (SCA, GE 1) on April 5, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on May 19, 2009, and June 22, 2009. Summaries of these interviews appear in his interrogatory answers (GE 3) dated January 17, 2010. Applicant agreed with the investigator's summaries and agreed that the summaries could be used at a hearing to determine his security suitability. (*Id.* at 83)

On May 10, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on June 7, 2010. DOHA issued a Notice of Hearing on September 14, 2010, for a hearing on October 5, 2010. The hearing was held as scheduled. At the hearing, seven exhibits (GE 1 through 7) were admitted in evidence in support of the Government's case. Applicant testified and supplied one exhibit (AE A) that I admitted into evidence without objection. He was granted until October 20, 2010, to submit additional evidence regarding his delinquent financial obligations. He furnished a character statement (AE B) from his supervisor. The exhibit was admitted in evidence without objection. DOHA received the transcript (Tr.) on October 15, 2010. The record closed on October 20, 2010.

Findings of Fact

Paragraph 1 of the SOR contains ten allegations under Guideline F (financial considerations). These allegations represent a delinquent deficiency balance for a car sold at auction, a car lien, one student loan, an overdrawn checking account, and an outstanding balance for unpaid rent. Paragraph 2 includes eight allegations under Guideline E (personal conduct). The listed events are alleged to show acts of poor judgment in Applicant's lifetime that may be relevant under the whole-person concept. Applicant denied subparagraphs 1.b and 1.j because he did not recognize the accounts. He denied subparagraphs 2.g and 2.h claiming that he did not intentionally omit information from the security forms. He admitted the remaining allegations.

Applicant is 33 years old, married, with one child, 13 years old. (Tr. 28) He has been employed as a welder for a defense contractor since May 2007.

Financial Considerations

In August 1994, at the age of 17, Applicant was socializing with two friends. They decided to rob a convenience store. After the robbery, Applicant was stopped by the police while driving. He was arrested for robbery with a deadly weapon. He pled guilty and was sentenced to three years in prison. The prison sentence was suspended on condition Applicant complete 18 months of boot camp and 18 months of work release. He completed all conditions of his sentence. Applicant did not know why he committed the crime, but admitted it was a poor choice. (Tr. 25; GE 3 at 90)

After Applicant completed his sentence for the robbery offense in 1997, he encountered underemployment and unemployment problems that created financial problems when he could not pay his debts. He did not understand the importance of good credit. (*Id.* at 87) Applicant believes that after being hired by his current employer in May 2007, he has turned his life around. (Tr. 26)

Paragraph 1 of the SOR identifies ten delinquent debts. Applicant has not taken any action to contact the creditors or repay the debts. (Tr. 49) When asked whether he had debt or credit counseling, Applicant replied:

We (wife) talked about it. Like now, there are some things we can do ourselves, you know, as far as getting a secure credit card or get another card and paying it on time. Doing stuff that I'm doing now. Trying to get credit card offers and little things I can do to start working on my credit. But to go back six years ago to pay something, I mean I don't think that will help my credit. I wouldn't raise my Beacon score. (Tr. 49-50)

Applicant told the investigator in May 2009 that his wages were garnished for repayment of the student loan. (SOR 1.h; GE 3 at 87) After the garnishment was removed, he claims he voluntarily paid the loan company for an unknown period of time. However, Applicant provided no documentary proof that he made payments. SOR 1.c refers to Applicant's vehicle that was involved in the accident when he was charged with driving while under the influence of alcohol (DUI) in January 2006. SOR 1.d identifies a pickup truck that was repossessed in 2000 after the transmission broke and Applicant lost his job. (GE 5)

Applicant denied SOR 1.j in his answer to the SOR. At the hearing, I questioned him about the address and zip code appearing in the one-page exhibit (GE 5). He acknowledged that he once lived at the address located in the same zip code. Because the exhibit also contains Applicant's social security number, his address where he once lived, and the corresponding zip code where the address is located, I find this judgment is

Applicant's responsibility. SOR 1.b is resolved in Applicant's favor because there is no independent evidence verifying the medical debt (SOR 1.b) is Applicant's responsibility.

Applicant still owes nine creditors a total of \$55,847. These debts became delinquent between 2002 and December 2008. (GE 6, 7)

Applicant estimates he currently earns about \$140,000 a year and his wife earns about \$1,860 a month. (Tr. 34) At the end of every month, Applicant estimates he has approximately \$2,000 in discretionary funds after he pays the bills. He has not paid any of the smaller delinquent accounts in the SOR because he provides \$800 to his mother for her monthly expenses, or he provides money to his wife's side of the family. (Tr. 62)

Personal Conduct

SOR 2.a: Applicant committed armed robbery in August 1994.

SOR 2.b: In January 2003, Applicant wrote two worthless checks. His explanation was that he was not keeping very good records of his checking account. He was fined \$100, and still owes \$100 of the fine.

SOR 2.c: In June 2003, Applicant pled guilty to giving a false name or identification.

SOR 2.d: On November 11, 2005, Applicant was pulled over for speeding. He had been drinking and threw the remaining beer bottles into the rear seat of his car. The arresting officer smelled alcohol on Applicant's breath and gave him a ticket for having an open container in his possession. After finding a small amount of marijuana during a search of Applicant's car, the arresting officer also charged him with possession of marijuana. He was found guilty of the open container charge. The possession of marijuana charge was dismissed. (GE 3 at 91)

SOR 2.e: On January 29, 2006, Applicant had consumed a few drinks, and decided to pick up some groceries. He also used some marijuana. (Tr. 51) He fell asleep while driving and crashed his car. Applicant was placed on probation for a year and his license was suspended for six months. He was fined \$1,500 and ordered to complete community service.

SOR 2.f: In October 2006, Applicant was charged with no valid driver's license. The charge constituted a probation violation referred to in SOR 2.e. The details of the offense can be found in GE 4, which contains the documentation for the listed traffic offenses.

SOR 2.g: In the Police Record module of his April 2009 security form, Applicant correctly answered Section 22.b by admitting he had been arrested by a police officer in

the last 7 years. However, he incorrectly answered Section 22e. by denying he had ever been charged with any offense relating to alcohol or drugs. He was charged in November 2005 with possession of marijuana. He was charged in January 2006 with DUI. Applicant testified he did not disclose the marijuana charge because the charge was dismissed. (Tr. 24, 53) He claimed he did not disclose the alcohol offense because he had never filled out a security form before. (Tr. 26) Later in his testimony, Applicant indicated he had no excuse for not disclosing his January 2006 DUI in response to Section 22e. (Tr. 57)

SOR 2.h: In response to Section 23a. (illegal drug use in the last 7 years) and 23c. (Illegal possession, purchase, transfer of a controlled substance) of the Illegal Use of Drugs or Drug Activity module of Applicant's April 2009 security form, he answered "no." Applicant recalled using marijuana about 50 times and stopped using the drug in January 2006 when he was arrested for DUI. (Tr. 51) Applicant did not know why he responded "no" to the drug use questions, but believed a positive answer would have a negative impact on his employment. (Tr. 53)

Character Evidence

AE A is a description of a project Applicant was assigned in June 2010. The exhibit explains the overview, mission and time lines for completion of certain parts of the project. (*Id.*)

AE B is a character statement from the field service manager evaluating Applicant's job performance. The manager has known Applicant for almost four years. He believes Applicant always performs at his best and provides valuable services to the program. (AE B)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 for obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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 SOR lists nine accounts that became delinquent between 2002 and December 2008. Applicant has demonstrated by his inaction that he is unwilling to repay them. He has demonstrated by his testimony that he has no intention of repaying or resolving them because they will not improve his credit rating. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*), apply.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness: 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*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); AG ¶ 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 AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

While several of the delinquent accounts are dated, others became delinquent less than three years ago. All of them remain unpaid. The nine accounts reached delinquent status under circumstances that are likely to recur as long as Applicant takes no corrective action. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), an applicant is expected to prove that the conditions resulting in his financial problems were beyond his control. He is also expected to show that he acted responsibly under the circumstances. Applicant's unemployment in 2000 entitles him to mitigation. However, other than the student loan account which resulted in Applicant's wages being garnished in 2001, he has never addressed the other listed delinquent debts at any time. AG ¶ 20(b) does not apply.

When asked whether he had ever received debt or credit card counseling, Applicant testified he uses cash to make purchases or he uses secured credit cards. He knows by using these secured credit cards, he will have a higher interest rate than with a regular credit card. Given Applicant's lack of understanding of the potential value of debt counseling, there is no evidence to support the application of AG ¶ 20(c). AG ¶ 20(d) is not available either as Applicant has not satisfied or settled any of the debts. A complete review of the record supports a finding against Applicant under the financial guideline.

Personal Conduct

Paragraph 15 of the AG sets forth the security concern for personal conduct:

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 personal conduct has two disqualifying conditions under AG ¶ 16 that may be applicable to this case: AG ¶ 16 (a) (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*); and AG ¶ 16.d. (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of government or other employer's time or resources*).

Sixteen years have passed since Applicant committed the armed robbery. The 1994 offense may not have been sufficient by itself for an adverse determination, but when combined with the other more recent offenses cited under paragraph 2 of the SOR, specifically the deliberate omission of information in April 2009, a pattern of conduct is established that supports a whole-person assessment of questionable judgment by Applicant. AG ¶ 16(d) applies.

Regarding the deliberate omission of information set forth in SOR 2.g and 2.h, Applicant's explanations for his denials are not credible. While his drug use explanation that the charges were dismissed could be reasonable under question 22 of the security form, it is not reasonable under question 23 of the form, which is directed at information of drug use. I find the primary reason Applicant omitted the alcohol and drug information from his security form is that he was concerned about the negative impact the information would have on his employment. The fact that Applicant provided the same responses in a security form two months earlier supports my finding that Applicant deliberately omitted the information. His later disclosure of his drug use in an interview with a government investigator does not excuse the earlier deliberately omitted information. AG ¶ 16(a) applies.

The personal conduct guideline lists one mitigating condition under AG ¶ 17 that may apply to the circumstances: AG ¶ 17(c) (*the offense was 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*). A significant amount of time has passed since Applicant's 1994 criminal offense. However, in 2003, Applicant was charged with issuing worthless checks. Later in 2003, he was found guilty of giving false information. In 2006, Applicant pled guilty to DUI and several types of traffic offenses. In April 2009, Applicant attempted to conceal his alcohol and drug use from his security forms. AG ¶ 17(c) is inapplicable because the offenses were not minor. Some of the offenses were frequent and recent, and demonstrate Applicant's inability or unwillingness to follow the rules. The personal conduct guideline is resolved against Applicant.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

When Applicant was 17 years old, he used a gun to rob a convenience store. He was apprehended and completed all conditions of his sentence. In 2002, Applicant began to incur delinquent debt. In 2003, he wrote several worthless checks. Between 2005 and October 2006, Applicant committed several traffic offenses and a DUI. By December 2008, Applicant had accumulated \$55,847 in delinquent debt. In April 2009, Applicant deliberately omitted material information about his drug and alcohol use.

Applicant's favorable job performance evidence for almost four years weighs in his favor. However, the job performance does not explain why Applicant has made no effort to repay his debts over the years, particularly since he began working for his current employer in May 2007, and has a current salary of approximately \$140,000. Applicant's claim of helping other members of his family or his wife's family has been evaluated, but does not relieve Applicant of paying his bills which he created. The fact that Applicant interprets financial counseling as an opportunity to obtain secured credit cards indicates that his financial difficulties are likely to continue until he learns through financial counseling about other methods of delinquent debt relief. See, AG ¶ 2(a)(1) through AG ¶ 2(a)(9). Overall, Applicant has not mitigated the security concerns raised under the financial and personal conduct guidelines.

Formal Findings

Paragraph 1 (Guideline F): AGAINST APPLICANT

Subparagraph 1.a	Against Applicant
Subparagraph 1.b	For Applicant
Subparagraph 1.c through 1.j	Against Applicant

Paragraph 2 (Guideline E): AGAINST APPLICANT

Subparagraph 2.a through 2.h	Against Applicant
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Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge