



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



In the matter of:)	
)	
)	ISCR Case No. 09-05531
)	
)	
Applicant for Security Clearance)	

Appearances

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

July 6, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On February 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on April 19, 2011. A notice of hearing was issued on April 20, 2011, and the case was heard on May 20, 2011. Department Counsel offered seven exhibits (GE) 1-7, which were admitted without objection. Applicant testified and submitted seven exhibits (AE) A-G at the hearing, which were admitted without objection. DOHA received the hearing transcript on May 27, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted some debts and denied others with explanation under Guideline F (Financial Considerations). He admitted the three allegations under Guideline E (Personal Conduct).

Applicant is 27 years old. He is sponsored for a security clearance by a defense contractor who recently offered him a position.¹ He graduated from high school in May 2001, and attended college from 2001 until 2002. He did not obtain a degree. Applicant is single with no children. (GE 1)

Applicant worked as a system analyst for a defense contractor from August 2004 until March 2010. Prior to that, he held various full-time positions. In March 2010, Applicant became unemployed due to lack of a security clearance. (Tr. 30) He receives monthly unemployment benefits of approximately \$1,500 a month. (AE F) At the time of the hearing, he was still unemployed. He has no credit cards. Applicant has no savings account. (Tr. 43).

Prior to his unemployment in March 2010, Applicant's net monthly income was approximately \$3,400. After monthly expenses and a student loan payment of \$145, he had a net remainder of \$1,320. At that time, he also had some accounts in collection. (GE 5) His student loans are now in deferment due to unemployment. (Tr. 35)

The SOR lists seven delinquent accounts, including a 2007 judgment, totaling in excess of \$12,000. Applicant admitted the debts after learning that the credit reports confirm them. (GE 3-6) He noted that he originally denied some of the debts because he did not know they were on his credit report.

Applicant disputes the accounts listed in SOR ¶ 1a. (\$1,533) and ¶ 1.b. (\$1,152) Although, he did not contest the accounts when he answered DOHA interrogatories, he now disputes them. He has not presented any documentation that indicated he formally disputed these debts. (Tr. 46)

Applicant has a settlement arrangement for the debt of \$723 in SOR ¶ 1.c. He claims he made the first payment of \$145 in January 2011. (AE A) However, he made a partial payment in February due to his continued unemployment. (Tr. 38) Applicant also has a settlement agreement for the debt in SOR ¶ 1.d. He claims he made an initial payment of \$358. (AE B) Applicant did not provide documentation to show the payments were made.

Applicant presented a letter concerning the judgment of \$7,545, claiming identity theft. (AE C) He later stated that he believes he paid the judgment in SOR 1.e, but did not provide proof. Finally, he disputed the 2007 judgment (SOR 1.e) in the amount of

¹Applicant's employment offer is contingent on a security clearance. His new position will pay approximately \$99,000 per annum.

\$7,545. He provided documentation of the dispute, but after an investigation, the debt remains on his credit report. (Tr. 47)

The debt of \$185 for a collection account listed in SOR ¶ 1.f is not paid. Applicant does not believe the account is his, or in the alternative, that it has been paid because it is not listed on his latest credit report. He also denies the account for \$266 listed in SOR ¶ 1.g. for the same reasons. (Tr. 50)

Applicant has not obtained financial counseling or obtained a debt consolidation plan. He is consulting with his sister, who is a realtor. She is helping him understand his credit reports. (Tr. 61) Applicant now relies on the fact that some of the accounts are not listed on his credit report as a basis for not owing the debt.

At the hearing, Applicant noted that he has other accounts in collection. He noted them on his latest security clearance application. He also acknowledged that he has not filed his taxes for 2009 and 2010. (Tr. 53) He offered no explanation for his delinquent debts.

When Applicant completed his security clearance application in March 2009, he did not disclose his July 2007 Driving While Impaired/ Driving While under the Influence arrest and charge in response to section 22:Police Record. (GE 7) He also omitted his use of marijuana from 2002 until 2004 in response to section 23. Applicant answered "No" to section 26(e): Financial Record concerning any judgments entered against him. He admitted that he deliberately falsified his application. (Answer to SOR)

At the hearing, Applicant acknowledged his July 2007 DWI. (AE G) He stated that the reason he did not list the charge was due to advice from his Security Officer. Applicant claimed that his security officer told him to put down the same information that Applicant had from his 2005 security clearance application.(Tr. 63) Applicant also stated that he was told his "fingerprints were lost" and that he had to fill out his 2009 SF86 the exact same way as his 2005 SF86. (Tr. 64). In response to the OPM interviewer, Applicant stated that he did not list the July 2007 DWI because his lawyer said it would be expunged. (Tr. 65; GE 2)

Applicant did not disclose his marijuana use on his March 2009 SF86, but during an April interview with OPM, he noted that he had used marijuana from 2002 until 2004. (GE 2) At the hearing, Applicant stated that he knew he did not list the marijuana use and also did not disclose it in the 2005 application. His reasoning was that he was not clear on the actual dates. When he completed his August 2010 SF86, he again omitted any information about illegal use of drugs (marijuana) in response to section 23. (AE E)

Applicant answered "No" to section 26 concerning judgments on his March 2009 security clearance application. At the hearing, when questioned about this response, he explained that he did not list it because he did not know about it. (Tr. 73) This is not credible in light of his answer to the SOR that he had an account with the creditor which obtained an eventual judgment.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁵ "The clearly consistent standard indicates that security clearance

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts, including a 2007 judgment, that are unresolved in an amount of approximately \$12,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s debts are recent and ongoing. He has a 2007 judgment that has not been resolved. Consequently, Financial Considerations Mitigating Condition (FCMC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted, Applicant has been unemployed since March 2010. His only income is unemployment benefits of \$1,500 a month. The unemployment may have exacerbated Applicant’s ability to meet his obligations during this period. However, he had some collection accounts prior to his unemployment. There is no evidence that he acted reasonably under the circumstances. He allowed the delinquent debts to remain

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

unpaid. There is no record of any attempts to resolve his debt until after he received the SOR. He receives partial credit under this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. He asserts that he has a settlement arrangement for two accounts. He has not submitted proof that he has made any payments. He claims he does not owe several accounts, but he did not present any documentation to confirm this assertion. His failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying condition exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities." Under AG ¶ 16(b) a disqualifying condition exists when "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Applicant's admissions are sufficient to raise the disqualifying conditions. He deliberately misled the government by not including any information about his July 2007 arrest and charge for DUI on his March 2009 security clearance application. He also did not disclose his marijuana use from 2002 until 2004 on that application or on the 2005 security clearance application. However, he discussed the marijuana use in his interview with OPM in 2009. He also did not list his 2007 judgment. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, truthfulness, and willingness to comply with the law.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. The intentional omissions occurred in 2009, and are too recent and serious to be mitigated by the passage of time. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof to mitigate the personal conduct concern.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 27 years old. He was employed with a defense contractor for many years. He is now unemployed and unable to pay his debts. However, he had prior delinquent debts and sufficient income to pay his debts, but he did not.

Applicant has been on notice since the SOR, yet he is just starting to address his delinquent debts. He has a history of behavior that involves dishonesty. Applicant shows a lack of candor and questionable judgment. I have doubts about his reliability.

Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. He failed to offer evidence of financial counseling. He failed to provide documentation regarding a consistent payment plan for all his debts. He admitted that he intentionally falsified his March 2009 security clearance application. I have doubts given the record. Accordingly, Applicant has not mitigated the security concerns. Clearance is denied.

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- 1g:	Against Applicant

Paragraph 2., Guideline E: AGAINST APPLICANT

Subparagraphs 2.a through 2.c: 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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge