



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-05854
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

August 16, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On March 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. 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) effective for cases after September 1, 2006.

Applicant answered the SOR on April 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 3, 2010. DOHA issued a notice of hearing on June 7, 2010, and the hearing was convened as scheduled on July

21, 2010. The Government offered Exhibits (GE) 1 through 17, which were admitted without objection. The Applicant offered Exhibits (AE) A through P, which were admitted, and testified on his own behalf. The record was held open for Applicant to submit additional information. On July 30, 2010, Applicant submitted AE Q through AE HH, all of which were admitted without any stated objection. On August 12, 2010, Applicant submitted AE II and JJ, which were admitted without objection, although they were received after the record closed on July 30, 2010. DOHA received the transcript of the hearing (Tr.) on August 5, 2010.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He is also a member of the Coast Guard Auxiliary, which he joined a few months prior to the hearing. He has been divorced three times and is currently engaged. He has four adult children. He currently has no dependents. (AE A; Tr. 5, 82-83.)

Applicant has experienced numerous periods of unemployment. He began his career in 1978. He worked steadily until 1983 or 1984, when he was laid off. Applicant was unemployed until approximately 1985 or 1986. He supported himself during this time by teaching martial arts. He was then rehired in his profession and employed until 1990. In 1990, he was laid off again. He found new employment in 1992 and was employed through 1994. From 1994 through 2001, Applicant built his own construction business, which failed in 2001. He became a government contractor in 2001 and worked through 2005, when he took a leave of absence to care for his ailing father. He was hired into his current position in 2007. In 2008, Applicant formed a limited liability company to instruct in the martial arts. Applicant was laid off of work for six months during 2009. He totals his loss of income in 2009, during this six month period lay-off, to be approximately \$46,000. (GE 9; AE A; AE B; AE D; Tr. 47-49, 71-81.)

Financial Considerations

Applicant suffered financial problems beginning prior to 1987 and extending through the present time. He discharged debt through a 1987 Chapter 7 bankruptcy. Currently, the SOR alleges that Applicant has \$28,600 in debt, owed to eight creditors, in addition to the bankruptcy and failure to file his state income taxes.¹ The Government concerns are as follows:

Allegation 1.a. alleges that Applicant filed Chapter 7 bankruptcy in January 1987. Applicant admits this allegation. He filed bankruptcy after being laid-off from his employer. It is noteworthy that Applicant's bankruptcy filing discloses that Applicant owed the IRS approximately \$3,605 for tax year 1983 and he owed state taxes in the amount of \$1,792 for tax year 1984. (GE 1; AE Q.)

Allegation 1.b. alleges that Applicant is indebted on a state tax lien filed against him in 2004, in the approximate amount of \$1,192. Applicant is indebted to the state in

¹ The SOR alleges nine debts, however 1.g. is a duplicate of 1.d.

the approximate total amount of \$11,365 for tax year 1990. Applicant hired an accountant in June 2010 to assist him with his state tax delinquencies. In July 2010, an Order to Withhold Taxes in the amount of \$450.00 per pay period was sent to the Applicant's employer. It is listed on Applicant's July 30, 2010 pay statement as a state tax levy. (GE 5; GE 8; GE 10; GE 12; GE 14; AE E; AE R; AE AA; Tr. 84.)

Allegation 1.c. alleges that Applicant is indebted to a creditor for the approximate amount of \$361. This debt was incurred as a result of Applicant's care for his ailing father. Applicant satisfied this debt in full on June 23, 2010, as evidenced by a receipt from this creditor. (GE 11; AE G; AE N; AE S; Tr. 84-86.)

Allegations 1.d. and 1.g. allege that Applicant is indebted on a judgment against him for the approximate amount of \$5,018 to a surety company. Applicant provided a letter from the creditor that established these are the same debt, although the creditor's name appears to be different on the credit report entries. Applicant contracted this company to provide bonds for his construction company. In Applicant's July 2003 signed statement to the Defense Security Service, he indicated he intended to negotiate a settlement with this surety company. He failed to follow up with this creditor, as this debt continued to appear on his credit reports dated May 2008. Applicant claims in his July 30, 2010, submission that "I was not aware of this debt prior to the beginning of my security clearance investigation process." He indicated he is now investigating the debt and has the funds to pay the debt, should it be determined he owes the debt. (GE 3; GE 4; GE 6; GE 10; GE 11; GE 12; AE W; AE II; Tr. 86, 89.)

Allegation 1.e. alleges that Applicant is indebted on a medical account for the approximate amount of \$280. Applicant satisfied this debt in full in September 2005, as evidenced by a letter from this creditor. (GE 10; GE 11; AE H; AE X; tr. 87.)

Allegation 1.f. alleges that Applicant is indebted on a utility bill for the approximate amount of \$194. Applicant satisfied this debt in full in March 2010, as evidenced by a letter from this creditor. (GE 10; GE 11; GE 12; AE J; Tr. 88-89.)

Allegation 1.h. alleges that Applicant is indebted on a medical account for the approximate amount of \$55. Applicant satisfied this debt in full in April 2010, as evidenced by a letter from this creditor. (GE 10; GE 11; AE I; Tr. 88.)

Allegation 1.i. alleges that Applicant is indebted on a collections account for the approximate amount of \$7,500. This debt is for a second surety company that posted a bond for Applicant's construction business. Applicant was clearly aware of this debt when he wrote his July 2003 signed statement to the Defense Security Service, however, to date, he has taken little action to satisfy this account. (GE 6; GE 10; GE 11; AE Y; AE JJ; Tr. 89-90.)

Allegation 1.j. alleges that Applicant is indebted on a Federal tax debt for the approximate amount of \$14,000. The total amount alleged, \$14,000, comes from Applicant's July 2003 signed statement to the Defense Security Service in which he indicated "I believe that the amount I owe is in the neighborhood of \$14,000 . . ." when

discussing his debt to the IRS. He further indicated that his accountant was in the process of reaching a settlement with the IRS at that time. A statement from the IRS dated August 2003 indicated Applicant owed \$26,480 for tax year 1989 and \$16,708 for tax year 1990. Together, the Credit Reports from November 2001 and May 2008 shows that a Federal tax lien of \$18,556 against the Applicant was paid and released on November 2003. Applicant now indicates that "I apparently, and mistakenly confused owing monies to the IRS with monies I may have owed to the [state]." Applicant and his accountant visited the IRS on July 27, 2010, to investigate this debt. Applicant avers that the IRS informed him he did not owe any monies, and provided him documentation that shows he would have been due a refund for tax year 2000, the only year he had not filed for, had he actually filed his tax return. Applicant provided proof that he has since filed his 2000 individual income tax return. Documentation from the IRS supports Applicant's contention that he would have received a \$1,000 refund, had he filed in a timely manner. (GE 2; GE 5; GE 7; GE 10; AE M; AE Z; Tr. 90-92.)

Allegations 1.k. through 1.n allege that Applicant failed to file his state income tax returns for 1998, 1999, 2000, and 2001. Documentation from the state indicates that as of August 2003, Applicant had failed to file state personal income tax returns for tax years 1990, 1992, 1998, 1999, 2000, and 2001. Applicant has indicated his intent to file tax returns for the listed years, but has failed to provide proof of any actions to file these state returns. (GE 8; AE AA; Tr. 92-96, 114-119.)

Applicant attended three financial counseling sessions offered through his church. (Tr. 124-271.)

Personal Conduct

Applicant completed an Electronic Questionnaire for Investigations Processing (EQIP) on April 8, 2008. On this form, he was asked in Section 27 "c. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" and "d. In the last seven years, have you had any judgments against you that have not been paid?" Applicant answered both of these questions "No." He was also asked, in Section 28, "a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "b. Are you currently over 90 days delinquent on any debt(s)?" Applicant answered each of these questions "No," as well. (GE 9.)

In answering "No" to these questions, he omitted the state tax lien filed against him in 2004, addressed above in 1.b.; the judgment against him, addressed above in allegation 1.d; and his debts over 180 delinquent within the previous seven years, and currently 90 days delinquent, respectively. He denied any intention to mislead the Government. He contends that he was unaware of any lien or judgment. Further he claimed that he was "unaware of what had been on the Credit Reports" and "at that moment of time, I didn't have any lates [sic]." (Tr. 97-98, 102-113.)

Considering the straight-forward nature of the EQIP questions, and Applicant's blanket denials of all of the information covered in questions 27 and 28, Applicant cannot be credited with good-faith mistake and confusion over his negative answers to

these questions. In July 2003, Applicant was the subject of a security investigation conducted by the Defense Security Service. He gave two in depth signed and sworn financial statements in which he disclosed his financial difficulties. These statements included a discussion of Applicant's past due taxes as well as monies owed to the creditor who received a judgment against the Applicant. Applicant should have realized that he would need to disclose those same issues covered in a previous investigation, along with any new debts, since he had not rectified his financial problems. Instead, he chose to omit them from his EQIP.

Applicant is well regarded by his Chief, who wrote a letter in support of Applicant. His Chief called him a "trustworthy employee and an asset to the department." In addition, Applicant presented numerous certificates, performance evaluations, and thank-you letters that he has been awarded, demonstrating his professional achievements and good conduct through his employment. (AE GG.)

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.

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 security 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 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* EO 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 concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and has been unable or unwilling to pay his obligations. His delinquencies have been on-going for several years, without resolution. He has a history, dating back to tax year 1983, of failing to pay his Federal and state taxes in a timely manner. Further, the Government established that Applicant failed to file his state income tax returns for tax years 1998, 1999, 2000, and 2001. The evidence is sufficient to raise the above disqualifying conditions.

Five 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 has satisfied several of his smaller debts, but his large debts to the two surety companies remain unpaid. Further, Applicant was unable to establish that he is taking any reasonable actions on either of these two surety debts. His actions with respect to his state tax debt have not been shown to be voluntary, nor do they evidence a good faith effort to repay the debt. His debt is current and on-going. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by periods of unemployment, three divorces, and his extended care for his father. These qualify as conditions that were outside his control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not made a significant attempt to responsibly address his remaining debts. AG ¶ 20(b) is not applicable.

Applicant sought financial counseling from his church. However, he has failed to show that his financial problems are under control. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has satisfied four of his debts totaling \$890 in addition to the IRS tax debt that was satisfied in November 2003. He recently made a single \$450 payment on his state tax debt. However, he has not made payment arrangements with any of his other creditors. There is no showing he has initiated a good-faith effort to repay his remaining overdue creditors or otherwise resolve debts with respect to allegations 1.d and 1.i. AG ¶ 20(d) is only partially mitigating.

Finally, Applicant has not contested his outstanding debts. AG ¶ 20(e) is not mitigating.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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 conditions are 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; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant failed to list debts on his 2008 EQIP in Sections 27 and 28 that he acknowledged in his 2003 signed statement. He clearly knew he had debts that had not been resolved since his last security interview. Yet, he chose not to include the debts on the EQIP. This behavior indicates questionable judgment and untrustworthiness.

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; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SF 86. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he fails to take responsibility for his actions. He has not provided information in this record to show that he has met his burden of proof for his personal conduct.

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.

Applicant is well respected by his Chief and has numerous certificates showing achievements over his long career. He is currently employed and has satisfied some of his debts. Despite his accomplishments, he has failed to demonstrate good judgment when it comes to satisfying his financial delinquencies, and in his personal conduct. His choices, with respect to his debts and his answers on his EQIP, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	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.

Jennifer I. Goldstein
Administrative Judge