



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06691
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc Laverdiere, Esquire, Department Counsel
For Applicant: David Price, Esquire

March 9, 2011

Decision

HOWE, Philip S., Administrative Judge:

On August 6, 2007, Applicant submitted his Security Clearance Application (SF 86)(e-QIP). On June 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 1, 2010. He answered the SOR in writing on July 6, 2010, and requested a hearing before an administrative judge. DOHA received the request on July 9, 2010. Department Counsel was prepared to proceed on August 25, 2010, and I received the case assignment on August 31, 2010, after it was reassigned from another administrative judge because of caseload considerations.

DOHA issued a Notice of Hearing on September 8, 2010, and I convened the hearing as scheduled on October 6, 2010. The Government offered Exhibits 1 through 17, which were received without objection. Applicant testified, as did a character witness, and he submitted Exhibits A through D, each of which contained from seven to ten subparts, without objection. DOHA received the transcript of the hearing (Tr.) on October 14, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 2.c, alleging the following:

“That you omitted, during the completion of your SF-86, on or about August 6, 2007, the fact that you had been terminated by Applied Methods, i.e., Hydro-Acoustics, a Maryland tax lien, and a judgment in Baltimore County District Court, for a debt to Discover Card in 2006.”

Applicant’s counsel objected to the motion, arguing that Department Counsel had not shown good cause for failing to raise the allegation sooner. After consideration of both counsel’s arguments, I granted the motion to amend the SOR. (Tr. 158-160)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.f, of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b to 1.e of the SOR. He denied ¶¶ 2.a and 2.b. Applicant did not enter a formal denial or admission to ¶¶ 2.c. that was amended into the SOR at the end of the hearing. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 57 years old, unmarried, and works for a defense contractor. He graduated from college in 1972 with a Bachelor of Arts degree with highest honors and distinction in physics. Applicant graduated from a foreign university with a master’s degree in June 1973. He then attained a doctor of philosophy degree in August 1976 from another foreign university in the field of theoretical physics. Applicant has lived in his home for 27 years and has a mortgage balance of \$233,000 as of May 2010. His current mortgage payment is \$2,084 monthly. He refinanced his home on occasion over the years to lower the interest rate and avoid taking out equity from the real estate. Applicant testified his main interests are wine, food, fine arts, literature, antiques, and martial arts. Applicant claims to have a collection of sound recordings valued at \$600,000. Other than his mortgage, his monthly expenses total \$871. (Tr. 44, 60, 61, 67, 69, 105, 152; Exhibits 4, B, D)

After Applicant's graduation in 1976, he taught in Europe for a year and then returned to the United States. He obtained employment in the defense industry, where he has worked since. He had a security clearance for 32 years from July 1978 until December 2008. (Tr. 44-54, 141, 142; Exhibits B.1 to B.8)

Applicant's work history is summarized as follows:

1. Applicant resigned from his first employer in 1983 because of personality conflicts.

2. He was laid off from one of his employers in 1990 in a large corporate downsizing. He admitted personality conflicts were also present between him and another employee.

3. In 1992, Applicant was terminated from another employer because of personality conflicts.

4. In 1996, after writing a proposal for another company for which he was hired, he was terminated when the proposal was finished.

5. From June 1997 to November 1998, Applicant worked as a scientist for a defense contractor.

6. Then, from November 1998 until January 2001, he worked for a large defense contractor as the manager of business development.

7. He was unemployed from January 2001 to August 2001.

8. Next, Applicant worked for a company in a scientific capacity until August 2002. He managed a contract until it was completed and was then terminated.

9. Again, he was unemployed from August 2002 until March 2004. Applicant worked from March 2004 until September 16, 2004, for a company from which he was terminated when his supervisor alleged he missed an important meeting and failed to follow instructions the supervisor gave him. Applicant considered the supervisor to be intellectually and educationally inferior to him, causing a conflict between the two men. He denied receiving a termination letter. (SOR Paragraph 2.a)

10. Applicant was unemployed from September 2004 to February 2005.

11. Then, he worked at a university as a physicist from February 2005 to December 2005. Applicant admitted personality conflicts with the

supervisor caused that termination with the reason given as unsatisfactory performance in a computer coding function and other assigned tasks. Applicant also did not like the size of his office. (SOR Paragraph 2.b)

12. From December 2005 to August 2006, Applicant operated his own consulting company.

13. From August 2006 to October 2006, he worked for another company and was terminated because of cultural differences.

14. Applicant again worked for his own consulting company from October 2006 to March 2007.

15. From March 2007 until June 2008, he worked for a company as the lead engineer. He was terminated from that company for unsatisfactory performance.

16. Later in 2008, he was hired by a company that terminated him in June 2009 because he no longer had a security clearance.

17. In April 2010, he was hired by his current employer who gave him 10 months to obtain a security clearance, otherwise he would be terminated. (Tr. 49-56, 70-78, 104-137, 140-143; Exhibits 1, 11)

In summary, Applicant had several periods of unemployment in the past decade. He was unemployed from January 2001 to August 2001, from August 2002 until March 2004, again from September 2004 until February 2005, then from October 2006 to March 2007, June 2008 until a date uncertain in late 2008, and from June 2009 until April 2010 when he obtained his most recent employment. (Tr. 55, 102-105; Exhibits 1-3, 11-17)

Applicant has five delinquent debts listed in the SOR. They total \$21,193. Applicant filed Chapter 13 bankruptcy in October 1993 to delay foreclosure on his mortgage while he was unemployed. After he obtained a job in March 1994, he withdrew the bankruptcy petition. The remaining delinquent debts listed in the SOR are:

1. A credit card debt for \$5,708 (SOR Paragraph 1.b) that appears on the 2009 and 2010 credit reports submitted as exhibits. Applicant researched the debt that was first reported to the credit agency in April 2010. The card issuer sent Applicant a letter dated August 31, 2010, stating the account would be deleted from his record. However, the account numbers on the credit report and the letter do not match. This account is unresolved and unpaid.

2. Applicant owes \$484 to a collector (SOR Paragraph 1.c) on a department store account that has been delinquent since 2004. He

admitted he knew he owed a debt to the department store. He also stated he had not shopped there for eight years. Applicant wrote to the collector and received information in return showing his last payment was in 2003 and that payment in full was demanded. Applicant refuses to pay the debt based on his state law statute of limitations of three years for civil lawsuits. The debt remains unresolved and unpaid.

3. Applicant owes a collector \$2,414 on a credit card debt (SOR Paragraph 1.d). Applicant's last payment on this account was in 2003. The collector provided him with proof of the debt including an affidavit signed by an authorized agent for the collector detailing the debt. Applicant refuses to pay this debt based on his state's statute of limitations. The debt is unresolved and unpaid.

4. Applicant owes \$2,167 to a collector (SOR Paragraph 1.e). Applicant has not paid this debt. This debt is unresolved.

5. Applicant admits he owes \$10,420 in arrearages on his \$229,000 mortgage (SOR Paragraph 1.f). The payments were delayed when he lost his job in December 2009. He then was re-employed in April 2010 and is working to resolve this delinquency with his bank which holds the mortgage. This debt is unresolved. (Tr. 63-65, 85-101; Exhibits 2-10, D)

Applicant completed his electronic SF-86 (e-QIP) on August 6, 2007. Question 22 of that form asked Applicant if he left a job under unfavorable circumstances in the previous seven years. He answered "yes" and listed two such departures, one in 2006 and another in 2005. He did not list his September 2004 termination. He attributed it to a "simple omission." This explanation is not credible when viewed in the total factual history. (SOR Paragraph 2.c) (Tr. 70-73, 107-114, 120, 158; Exhibit 1)

Applicant did not disclose on his SF-86 in answer to Question 27 that he had a state tax lien placed on file for \$2,000 in 2003, nor that a credit card company obtained a judgment against him for \$4,000 in 1996 that was not satisfied by Applicant until 2006. Applicant claims both non-disclosures were "simple omissions." Both the lien and the judgment satisfaction were paid within four years of Applicant's completion of the SF-86. (SOR Paragraph 2.c) His explanation is not credible when viewed in the total factual history. (Tr. 137-139; Exhibit 1)

Applicant submitted seven character and professional reference letters. A personal friend wrote and testified about Applicant's integrity and appreciation of wine and the better things in life. Another friend for 48 years stated in his letter that Applicant "is an exceptionally bright man with a very strong personality." Applicant is well-regarded by his peers for his mathematical acumen and scholarly abilities. His candor is also noted as a favorable quality. Applicant is regarded as a "first-rate theoretical physicist" by a former university research colleague. (Exhibit A)

Applicant provided copies of his curriculum vitae, his diplomas, and other academic documents to show his degrees and work history. Applicant submitted 10 documents pertaining to his charitable activities and martial arts prowess. (Exhibit C)

During his testimony, Applicant displayed impatience while being questioned about his work history. At times, he was argumentative and evasive. (Tr. 114, 120, 132, 134, 140)

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 useful 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, 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.

Under Directive ¶ E3.1.14, the Government must 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 the 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$21,193 in five delinquent debts from 2004 to the present time that remain unpaid. These delinquent debts are listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One condition may be 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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant refuses to pay his debts which have been delinquent for several years. He now seeks to use his state's civil statute of limitations to protect himself from his responsibility to pay these debts. He uses his demands for information about each debt to defer further payment on them. He received the information he sought on one debt, including an affidavit from the collector, but continued to refuse to pay that debt.

AG ¶ 20(b) has partial application. Applicant experienced about 40 months of unemployment in the past decade. The lack of employment during those months affected his ability to pay his debts, and may have been circumstances beyond his control.

However, Applicant did not demonstrate that he acted responsibly in handling his delinquent debts during that period. He had assets that could have been used to resolve the debts, the experience of unemployment that should have made him save his income when he was working so he could pay his debts, and sufficient income at the time the debts were incurred to pay them instead of allowing them to languish for several years in an unpaid status. Furthermore, Applicant has lived in his house for 27 years, yet has a \$229,000 mortgage. He denies taking equity from the home and contends he only refinanced his mortgage over the years to obtain a lower interest rate. However, the mortgage balance remains high. The facts seem to belie his assertion about his mortgage refinancings.

Finally, Applicant admits he has an asset, a collection of sound recordings worth about \$600,000. He provided no evidence that he used that asset to satisfy his unpaid mortgage, tax debts, or his credit card debts.

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. 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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 contains two conditions that could raise security concerns and may be disqualifying:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(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;

(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 that 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 inappropriate 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.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

The evidence supports the application of AG ¶ 16 (a). Applicant did not disclose his 2003 state tax lien on his SF-86 completed in 2007. Nor did he disclose a credit card judgment against him, which he did not satisfy until 2006. Finally, Applicant failed to disclose a September 2004 job termination in addition to the two job departures under unfavorable circumstances he did list in his SF-86.

AG ¶ 16 (d) is applicable. Applicant has been fired many times as a result of personality conflicts with supervisors and co-workers and performance problems with a series of employers throughout his career since 1983 and in particular in the previous decade. These situations are not explicitly covered under another guideline, but do raise serious questions about Applicant's judgment and unwillingness to comply with his employers' rules, regulations, and procedures.

AG ¶ 17 provides conditions that could mitigate security concerns. None of them apply to Applicant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not correct the falsification of his SF-86 before being confronted with the facts. His statement that the absence of this information is a "simple omission" is not credible. The falsification is not mitigated. AG ¶ 17 (a) does not apply.

AG ¶ 17 (b) is not supported by any facts on the record.

The falsification and adverse information about Applicant's work performance and personality conflicts are not minor offenses. They continued to the present into 2010. There are no unique circumstances that make it clear this pattern will not occur again. The totality of the facts and the Applicant's history cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17 (c) does not apply.

Applicant does not acknowledge his fault in any of these terminations or the deliberate falsification. He has not obtained counseling or taken other positive steps to alleviate the factors that caused the untrustworthy, unreliable, or other inappropriate behavior in the workplace, and in completing the SF-86, to ensure such conduct will not occur in the future. AG ¶ 17 (d) does not apply.

Applicant has not taken any positive steps to reduce his vulnerability to exploitation, manipulation, or duress to retain any current or future employment. His history of short-term employments and unemployment would reasonably make him desire to retain future employments to avoid his past financial and employment problems, thereby making him vulnerable. AG ¶ 17 (e) does not apply.

The information about Applicant and his work history and falsification was substantiated and supported by the evidence. AG ¶ 17 (f) does not apply.

Finally, the Mitigating Condition pertaining to association with criminals is not relevant because there is no evidence concerning such activity. AG ¶ 17 (g) does 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 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is a well-educated physicist, who is highly intelligent. However, he has an attitudinal problem that has made him unable to retain employment in several companies since 1983. He admitted there were repeated “personality conflicts” with his supervisors during that time. Applicant displayed that attitude during the hearing.

Applicant has not paid his delinquent debts. He ignored them for years and then wants to use a state statute of limitations to protect himself from paying those debts. For security clearance purposes, the state laws are an element to consider in an applicant’s financial history but are not determinative. A person’s attitude and willingness to resolve his financial obligations are important factors to consider in a determination of

Applicant's judgment and trustworthiness. Any changes in his financial history tending to show that his past financial difficulties are not likely to occur again are an important element to consider in the "whole-person" concept. Applicant obviously has no desire to pay his debts, and intends to ignore them.

Overall, the record evidence leaves me with serious questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations and personal conduct. I conclude the "whole-person" concept against Applicant.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge