



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-07105
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

August 24, 2010

Decision

LYNCH, Noreen, A. Administrative Judge:

On March 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), 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).

On April 8, 2010, Applicant answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated June 16, 2010.¹ Applicant received the FORM on June 23, 2010, and submitted a response to the FORM in a timely manner. On August 5, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case

¹The Government submitted twelve items in support of its case.

assignment on August 6, 2010. Based on a review of the case file, 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 the factual allegations under Guideline F (Financial Considerations), Guideline J (Criminal activity), and Guideline E (Personal Conduct).

Applicant is a 40-year-old employee of a defense contractor. He graduated from high school in 1988 and received a diploma from a technical college in 1992. Applicant is married and has three children. He has worked for his current employer since April 2006. Applicant obtained a security clearance in 2001. (Item 4)

In 1989, Applicant stole property from passengers' baggage while employed as a baggage handler with an airline. He admitted that he engaged in this illegal practice months before his arrest. Applicant was charged with felony grand larceny in November 1989. (Item 9) After finding him guilty, the court sentenced Applicant to six-months probation. Applicant's charges were dismissed in 1991. (Item 5) He reported that he committed the crime due to peer pressure and immaturity.

In March 1996, Applicant filed for bankruptcy under Chapter 7. The bankruptcy was discharged in June 1996. (Item 7) There is no information in the record as to the origin of the debts or the circumstances surrounding the bankruptcy.

After Applicant's bankruptcy, from 1996 until 1999, he worked full-time in one position. He moved to another state for a job opportunity, and from June 1999 until October 2001, Applicant was employed by an airline. However in light of the events on September 11, 2001, Applicant was unemployed for a few months (October 2001 until February 2002). He noted full-time employment with other companies (February 2002 until 2005) until his current employer. (Item 4)

Applicant reported having financial problems in April 2006 when his contractual position with his employer was not renewed. (Item 5) He was offered full-time employment but at a significantly lower rate, a reduction of approximately \$28,000. In 2008, Applicant's wife lost her job. At the same time, the interest rate on his adjustable rate mortgages (ARM) increased from four to seven percent. (Item 5) As a result, Applicant defaulted on his two home mortgage accounts. The accounts were charged-off for an approximate total of \$222,070. (Item 12) Applicant was in a loan modification plan for a third home mortgage account, which is now paid. (Item 6)

In August 2008, Applicant and his family sustained injuries in an automobile accident. Applicant forged the signature of his supervisor on an insurance company document to verify time and compensation for lost wages due to the accident. (Item 5) As a result of an investigation, Applicant was charged with two counts of (1) false/misleading information Fraud + \$300, (3) Att-Theft: Less \$500 value and (5)

Forgery. He pleaded guilty of one count of false/misleading info/fraud+\$300. In 2009, Applicant received unsupervised probation before judgment and was ordered to pay a fine and court costs. The other charges were nolle prosequi. (Item 8)

Applicant responded to DOHA interrogatories in December 2009. Regarding his financial situation, he explained that he tried to obtain a consolidation loan for the home mortgage accounts. However, he was denied due to his income/debt ratio. He was not making any payments as of April 2009 because he was negotiating with the collection agency. (Item 5) The file documentation reveals that Applicant's last payment was June 2008.

Applicant's 2009 monthly net income was \$7,143. His wife's income at the time from temporary work was \$1,068. He listed monthly expenses of \$2,503. In addition, Applicant noted that he was paying and current on approximately eleven credit accounts for a total of \$4,986. It would appear that there is a net remainder. (Item 6)

Applicant provided documentation in response to the FORM in mid-July 2010. He submitted two Stipulations of Agreement with the credit union for the two charged-off accounts listed in the SOR which totaled approximately \$222,000. The agreements were signed on July 12, 2010. The agreements called for monthly payments to begin on July 15, 2010. The monthly payments of \$500 and \$200 respectively would continue until the accounts were paid in full. The accounts would not be subject to any interest. Applicant claimed in the cover letter that accompanied the agreements that he started the payments in May 2010. He did not provide documentation of any payments to support his assertion. He also claimed that the delay in the repayment plan was caused by a mistake that the credit union made when completing the process. In the alternate, Applicant claimed that it had taken a year for him to get a repayment plan arranged because the person handling the case refused to see him. Applicant further noted that the representative who started the process for the repayment plan no longer worked at the credit union and he had to start the process over again, which was the reason for the delay until July 2010. (Response to FORM, dated July 14, 2010)

Applicant expressed sorrow for the criminal activity in 2009 concerning the forged insurance document. He claimed he did not want his supervisor to know how much he made on an hourly basis. Applicant elaborated that he did not believe his supervisor knew his salary. In the alternate, Applicant claimed that he was sorry for what happened but he admitted to the insurance investigator that he forged the document. Applicant also noted that he went to court and believed the case was "thrown out" with no probation. He believed he heard the judge say that he would not receive probation. This was Applicant's reasoning for not listing any probation on his 2009 interrogatories and stating on the 2009 DOHA interrogatories that the case was "thrown out without any probation." In the same 2009 interrogatories, Applicant claimed "he believed he learned a lot about pride and has grown in maturity on how to deal and handle people on both a personal and a professional level."

Applicant sent emails to his attorney in March 2010 asking for clarification of his plea and the status of the 2009 criminal case. He told his attorney that he wanted the

case “erased.” He noted that the investigation during his security clearance showed the guilty plea and unsupervised probation. Applicant claimed he was confused and wanted to be sure he was giving correct information.

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 (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.

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).

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 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 relating to the guideline 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.

Here, Applicant admitted that he filed for Chapter 7 bankruptcy in March 1996 which was discharged in June 1996. Applicant also has delinquent debts in the amount of \$222,070. 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 had a fresh start in 1996 after filing for Chapter 7 bankruptcy. Applicant noted several months of unemployment in 2001. However, after that he was steadily employed. He claimed that a reduction in pay in 2006 restarted his financial problems. His wife lost her job and the adjustable mortgage rates increased at the same time. This may have exacerbated Applicant’s ability to meet his obligations, but he provided no information about his efforts to otherwise meet those obligations during that period. He has just entered into a repayment plan, dated July 15, 2010. He has not provided

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

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

⁷ *Id.*

documentation to show he has made any payments on the two charged-off mortgage accounts. 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 had a short period of unemployment. He noted that his salary as a permanent employee was less than as a contractor. His wife also lost her job in 2008. These events, no doubt, impacted his finances. However, he did not act reasonably under the circumstances. He allowed the delinquent debts to remain unpaid. There is no record of any attempts to eliminate his debt until after he received the SOR.

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 entered a repayment plan and started payments in May 2010, but has not provided documentation to support this claim. His failure to disclose whether he ever received 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 J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and,

(f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

Applicant's 1989 and 2009 criminal conduct is sufficient to raise AG ¶¶ 31(a) and 31(c). Applicant admitted both crimes. Although Applicant received probation for his latest offense and the 2009 guilty plea was vacated, it does not diminish the seriousness of the crime. Applicant forged a document that was sent to an insurance company to gain compensation for lost time at work. This occurred last year. Although there was a 20-year gap in time between Applicant's two crimes, he has not shown any insight into his behavior. He has not been successfully rehabilitated and shows a pattern of untrustworthy behavior. In his 2009 DOHA interrogatory answers, he stated his 2009 case was thrown out and he did not receive any probation. This leaves me with doubts about his judgment and reliability.

AG ¶ 32 provides conditions that could mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and,

(e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

After reviewing the mitigating conditions, I find that none of them apply in this case. Applicant has not provided any information for the record concerning his employment evaluation record. He listed his jobs. But he provided no recommendations or performance evaluations.

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 admitted that he deliberately falsified his material facts in his response to DOHA 2009 interrogatories. He did not disclose his guilty plea, and one-day probation. His answer was the "case was thrown out." This is a misleading statement. In light of his later "confusion", and past history of untrustworthy behavior, I do not find his later explanations credible. His response to the FORM and his one-year later emails to his attorney requesting clarification on his case, do not persuade me. 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. He provided no information that indicates he was ill-advised. The intentional omissions occurred in 2009, and are too recent and serious to be mitigated. Applicant presented alternate reasons for his behaviors. 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 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 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 40 years old. He has a history of behavior that involves dishonesty. He has not shown successful rehabilitation or true insight into his behavior. Applicant has unresolved financial difficulties, despite having a fresh start in 1996 after a Chapter 7 bankruptcy. As recently as 2009, he forged a document for an insurance claim. He pleaded guilty to the crime, but chose to forget the outcome when he responded to DOHA interrogatories. His rationale for his behavior is varied. Applicant shows a lack of candor and questionable judgment. Although Applicant received minimal punishments for his 1989 and 2009 criminal behavior, it does not lessen the seriousness of them.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and carry his burden in this process. He failed to offer evidence of financial counseling. He failed to provide documentation regarding actual payments. I do not find his reasons and explanations credible for his criminal behavior. Accordingly, Applicant has not mitigated the security concerns under the three above referenced guidelines. 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 through 1.d:	Against Applicant

Paragraph 2., Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.b:	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