



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



In the matter of:)	
)	
)	ISCR Case No. 09-07531
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

March 7, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant acquired 22 debts, totaling over \$30,000, that became delinquent around 2005. He presented little documentary evidence of payments or good-faith efforts to resolve them before 2010. He failed to establish financial responsibility in the acquisition of the debts, good-faith efforts to resolve the debts, or a current track record of financial responsibility. Moreover, he deliberately failed to disclose his delinquent debts on his security clearance application. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On October 6, 2010, DOHA issued Applicant a Statement of Reasons (SOR), which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the adjudicative guidelines (AG).²

Applicant timely answered the SOR, and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on November 2, 2010, convening a hearing on November 5, 2010. At the hearing, the Government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified, and presented exhibits (AE) 1 through 3, which were admitted without objection. I kept the record open, allowing Applicant additional time to submit documentary evidence. He submitted AE 4, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 16, 2010.

Procedural Issue

Applicant affirmatively waived his right to 15 day advance notice of his hearing. (Tr. 16)

Findings of Fact

Applicant admitted the SOR allegations under ¶¶ 1.b – 1.g, 1.i – 1.k, 1.m – 1.o, 1.t, and 1.u. He denied the SOR allegations under ¶¶ 1.a, 1.h, 1.l, 1.p – 1.s, and 1.v – 1.y. He denied SOR ¶¶ 1.h, 1.l, 1.p – 1.s, 1.x, and 1.y, because he believed he paid these debts. SOR ¶¶ 1.d and 1.k duplicate the same debt, thus ¶ 1.k is found for Applicant. He neither admitted nor denied the allegations in SOR ¶ 2.a. I entered a denial. His admissions are incorporated as findings of fact. After a thorough review of the evidence, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 65-year-old employee of a defense contractor. He finished high school and completed some college courses around 1964. He married his wife in 1964, and they separated in 1979. He has four adult children.

Applicant worked for a U.S. company from May 1970 until August 2000, as a software specialist. He retired from that company and receives a \$2,200 monthly pension. In his SCA, he indicated he was consistently employed from his retirement date until May 2005, when he was hired as a systems technician by his current employer, a defense contractor. At his hearing, Applicant testified that after his retirement he was unemployed twice, from June 2000 until August 2000, and from July

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

until September 2004. He received unemployment benefits during his second unemployment period.

Applicant stated he worked for another government agency around March 2003 and that he was granted access to classified information. However, he lost his access when he changed jobs shortly thereafter. There is no evidence that he has ever compromised or caused others to compromise classified information.

In his answers to SCA section 27 (asking about his financial record), Applicant stated that in the last seven years he had not filed for bankruptcy protection, his wages had not been garnished, he had no property repossessed, he had no liens placed against his property for failure to pay taxes or other debts, and that he had no outstanding judgments against him. In his answer to SCA section 28 (asking whether in the last seven years he had been 180 delinquent on any debts and whether he was currently over 90 days delinquent on any debts), Applicant answered "No."

Applicant's background investigation revealed the 25 delinquent or charged-off debts alleged in the SOR, totaling approximately \$36,740. Five of the alleged debts (SOR ¶¶ 1.d, 1.l, 1.n, 1.p, and 1.u) and an unpaid judgment (SOR ¶ 1.a), were 180 days delinquent as of January 2008. Applicant claimed that SOR ¶ 1.a was his son's debt and judgment. He failed to present any documentary evidence to support his claim. As of his hearing date, he had not disputed the 2004 outstanding judgment either through the court system or the credit bureaus.

In his response to the SOR and at his hearing, Applicant admitted that SOR ¶¶ 1.d, 1.l, 1.n, 1.p and 1.u were his delinquent debts. He claimed that when he completed his January 2008 SCA, he was participating in a debt payment plan. He averred he had retained the services of a company (FS) to help him resolve his delinquent debts, and that he was making monthly payments of \$286 pursuant to the debt consolidation plan. He further claimed he believed FS had negotiated payment arrangements with his creditors, that the company was making payments on his debts, and that he was no longer delinquent on any of his accounts.

Applicant's documentary evidence failed to show he had a debt consolidation plan in place in January 2008. His evidence shows that around March 2008, he established a bank account with GCS to handle some of his delinquent accounts under a debt consolidation plan with FS. Applicant presented no documentary evidence to show which of his delinquent accounts were included in that debt consolidation plan. Moreover, Applicant testified that he stopped dealing with FS when he discovered that the company had not contacted or negotiated with his creditors and that no payments were made to his creditors. (Tr. 27-28) This part of Applicant's testimony contradicts his answers to the SOR, and contradicts part of his hearing testimony, where he stated that some of his debts had been paid under the FS debt consolidation payment plan.

In February 2010, he retained the services of a law firm (S&S) to help him resolve his delinquent debts. Applicant made monthly payments of \$308 from March to

November 2010, towards this debt payment plan. However, it is not clear from the evidence provided which creditors were included in his plan or whether any debts were paid. In July 2010, he retained the services of another law firm (B&A) to help him resolve his delinquent debts. He included 18 creditors in his payment plan agreement, 11 of which were also included in the SOR (§§ 1.c, 1.d, 1.g, 1.i, 1.k, 1.l, 1.m, 1.n, 1.o, 1.q, and 1.s). Although not included in the written agreement, Applicant claimed the following accounts were also included in this consolidation agreement: SOR §§ 1.b, 1.e, 1.f, 1.j, and 1.u.

In summary, Applicant paid SOR §§ 1.d (same as 1.k), 1.g, 1.i, and 1.q. Concerning SOR § 1.q, Applicant had two accounts with this retailer. He presented a document indicating that one account had a "0" balance. Another document indicates that a second delinquent account for \$1,624, was forgiven as uncollectible and Applicant was issued an IRS 1099c form. Applicant claimed not to recognize the creditors in SOR §§ 1.v and 1.w. I find for him on both accounts. Concerning the remaining SOR allegations, I find these are Applicant's outstanding financial obligations that have been delinquent for many years. Most of them are currently under a viable debt payment plan. Others he claimed he paid, but failed to present documentary evidence of such payments.

Applicant explained his financial problems were the result of several factors. After he retired, he was unemployed from June 2000 until August 2000, because he wanted to take a break and enjoy his retirement. He was unemployed and received unemployment benefits, from July 2004 until September 2004, after he left another job. Additionally, he received only 60% of his salary while on medical leave from April 2007 until August 2007. Although he had medical insurance, his monthly income was not sufficient to pay for his day-to-day living expenses and his debts. Applicant also claimed that over the years, he provided financial assistance to his live-in girlfriend and to his brother. He and his brother lived together in his home until 2005, when his girlfriend moved in. He averred both his girlfriend and his brother have medical problems, and he has been providing them with financial support. Applicant used his credit cards to pay for his day-to-day living expenses, as well as those of his girlfriend and brother, and became financially overextended.

Applicant has been supporting his girlfriend since 2005. Because of her medical problems, she has been out of work for approximately 18 months and can only work sporadically. Applicant pays the loans for both his and her vehicles. He was suspended from his employment in June 2010, because of the pending security concerns. His employer assigned him to a different contract pending the resolution of his clearance, but that contract ended.

In 2000, Applicant purchased a home and financed it with a \$175,000 mortgage. In 2003, he purchased a timeshare property for approximately \$15,000 that was foreclosed in 2007. SOR § 1.u alleges the remainder of his financial obligation after the sale of the timeshare property. He refinanced his home both in 2004 and 2006 to pay off his then delinquent financial obligations. (Tr. 56) In 2007-2008, he was over 120 days

delinquent on his mortgage. He has not made any mortgage payments since August 2010, because he is seeking a mortgage modification. His mortgage adjustable interest rate is too high and he owes more on the mortgage than the current property value. SOR ¶ 1.t alleges his mortgage arrearages.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Applicant developed financial problems around 2004 that continue to present. He acquired at least 22 debts, including a 2004 unsatisfied judgment, totaling over \$30,000. Applicant presented documentary evidence that he settled and paid four accounts (SOR ¶¶ 1.d (same as 1.k), 1.g, 1.i, and 1.q). Applicant did not recognize the creditors in SOR ¶¶ 1.v and 1.w, and I find for him. The remaining 19 SOR allegations are Applicant's outstanding financial obligations that have been delinquent for many years. AG ¶ 19(a): "inability or unwillingness to satisfy debts;" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

In 2008, Applicant started to take some action to resolve his delinquent financial obligations, albeit unsuccessfully. In 2010, he retained the services of two different law firms to help him consolidate and pay his debts. As previously discussed, 11 of the SOR allegations are currently under a viable debt payment plan (SOR ¶¶ 1.c, 1.d, 1.g, 1.i, 1.k, 1.l, 1.m, 1.n, 1.o, 1.q, and 1.s). Although not included in the written payment plan agreement, Applicant claimed the following accounts were also included on his payment plan, SOR ¶¶ 1.b, 1.e, 1.f, 1.j, and 1.u.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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's favorable evidence does not support the applicability of AG ¶ 20(a). His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

Applicant presented some evidence of circumstances beyond his control that may have contributed to his inability to pay his debts, e.g., one period of unemployment in 2004, and his medical leave in 2007. He elected not to work after he retired in 2000, thus, that period cannot be considered "beyond his control." Additionally, he testified that he has been providing financial support to his girlfriend and his brother. Notwithstanding, Applicant's documentary evidence is not sufficient to corroborate many of his claims and show that he acted responsibly in the acquisition of his debts, that he made good-faith efforts to resolve his debts prior to 2010, or that he has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

Considering his age and work experience, Applicant should have been more responsible and diligent in addressing his delinquent obligations. In light of the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, the limited evidence of efforts to resolve his financial obligations, and his employment history, Applicant's information is insufficient to establish that his financial problems are unlikely to recur. He failed to show financial responsibility and good faith in addressing his legal obligations. AG ¶ 20(c) partially applies because in 2010 he retained the

services of two law firms to help him resolve his delinquent debts. The remaining mitigating conditions are not reasonably raised by the facts in this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant deliberately failed to disclose in his January 2008 SCA that he had at least one unpaid judgment (SOR ¶ 1.a) and five outstanding debts (SOR ¶¶ 1.d, 1.l, 1.n, 1.p, and 1.u) that had been delinquent for more than 180 days in the previous seven years, or were more than 90 days delinquent at the time he submitted his SCA. He claimed that he believed he was current on these debts because the debts were under a debt consolidation plan. His contradicting testimony and lack of documentary evidence failed to establish that he was participating in a debt payment plan when he submitted his SCA. I find Applicant's testimony about participating in a viable payment plan prior to 2010 not credible.

Applicant's deliberate falsification triggers the applicability of the following disqualifying condition:

AG ¶ 16(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.

AG ¶ 17 lists seven conditions that could potentially mitigate the personal conduct security concerns:

(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.

After considering the above mitigating conditions, I find none apply. Applicant falsified his January 2008 SCA. His falsification is a serious, recent offense (felony-level).³ He made no effort to correct his falsification. To the contrary, during his testimony he was not candid about his efforts to resolve or pay his debts. His behavior shows questionable judgment, untrustworthiness, unreliability, and lack of candor.

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 the 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.

³ See 18 U.S.C. 1001.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guidelines F and E.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his many years of work for a U.S. company and two government contractors. He provides financial support for his girlfriend and brother. He had some circumstances beyond his control that may have contributed, to some extent, to his inability to pay his debts.

Notwithstanding, security concerns remain. Applicant's evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve his legal obligations in a timely manner, or a current track record of financial responsibility. His behavior shows that he does not understand what is required of him to be eligible for access to classified information. Moreover, Applicant deliberately falsified his January 2008 SCA. The record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations and personal conduct.

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-1.c, 1.e, 1.f, 1.h, 1.j, 1.l-1.p, 1.r-1.u, 1.x and 1.y:	Against Applicant
Subparagraphs 1.d, 1.g, 1.i, 1.k, 1.q, 1.v, 1.w:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge