



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



In the matter of:)
)
) ISCR Case No. 09-07601
)
)
Applicant for Security Clearance)

Appearances

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

August 3, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On January 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations, and 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 after September 1, 2006.

Applicant answered the SOR on February 7, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 1, 2011. DOHA issued a notice of hearing on March 14, 2011, scheduling the case for April 11, 2011.

On April 11, 2011, DOHA rescheduled the hearing due to the potential of a Government shut down, and the hearing was convened as scheduled on May 3, 2011. On May 3, 2011, Applicant requested a continuance because he was not prepared. His request was denied as he had been given adequate notice of the hearing. (Transcript (Tr.) 9-12.) The Government offered Exhibits (GE) 1 through 17, GEs 1-3 and 5-17 were admitted without objection. GE 4 was admitted over Applicant's objection. (Tr. 30-31.) The Applicant testified on his own behalf but offered no exhibits at hearing. The record was held open for Applicant to submit additional information until May 17, 2011. Applicant submitted AE A through D, which were admitted without objection, post hearing. DOHA received the transcript of the hearing on May 17, 2011.

Findings of Fact

Applicant admits SOR allegations 1.a, 1.c, 1.d, and 1.g. He denies allegations 1.b, 1.e, 1.f, 1.h, 2.a, and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 1987. From 1979 to 1983, Applicant was enlisted in the U.S. Army. He is married and has two adult children. He is a naturalized citizen of the United States. (GE 8.)

Applicant has a history of financial indebtedness. A 1992 statement of Applicant showed he experienced credit problems and had delinquent accounts at that time. His financial problems continued and he filed Chapter 7 bankruptcy on March 26, 1996. He listed \$51,499 in debt on his Chapter 7 filing. Applicant testified that the financial problems that caused his bankruptcy stemmed from financially supporting his father, who was dying from throat cancer. His bankruptcy was discharged in July 1996. (GE 1; GE 2; GE 3; GE 4; GE 6; Tr. 46- 49.)

Currently, he is indebted to seven creditors in the approximate total amount of \$88,362, as listed on the SOR. He also recently had real estate property foreclosed upon, as detailed below. He attributed his current debts to his wife's mismanagement of their finances. The evidence showed that Applicant's wife gambles at casinos. He testified that the gambling losses noted on his 2007 and 2009 Income Tax Returns, which total \$16,680, were attributable to his wife. He noted that in 2005 his wife also won a \$280,000 jackpot while gambling. Her jackpot was spent on their children and the purchase of a recreational vehicle (RV), which they still own. Applicant admitted in his testimony that he gambled too, but claimed that in 2010 he only spent \$250 gambling. He gambled approximately twice a year and spent \$100 to \$200 when he gambled. (SOR; GE 5; GE 11; Tr. 43-45, 50-57, 75, 77, 88.)

Applicant has now taken over handling his family's finances. He presented a number of Excel worksheets showing his current and projected monthly income and expenses. His monthly remainders after all of his expenses, as detailed in the

spreadsheets, range between \$169 to \$424.¹ As of May 2011 Applicant indicated he has savings of \$1,917.55. However, he also presented a Personal Financial Statement dated May 11, 2011, that showed a monthly net remainder of \$1,057.31 after his expenses were met. Applicant testified that a portion of his net remainder is sent to his wife's relatives overseas. (GE 1; GE 2; GE 5; GE 11; AE B; AE C; Tr. 68-75.)

A federal tax lien was filed against the Applicant in August 2010 in the amount of \$6,183. Applicant testified that he satisfied this debt. He claimed that he withdrew \$6,000 from his 401K to satisfy this debt. The tax lien was released in November 2010. This debt has been satisfied. (GE 14; GE 17; Tr. 46-47, 69.)

Applicant is indebted to his state of residence for unpaid income taxes in the approximate amount of \$24,853. As of November 19, 2008, Applicant's state obtained a garnishment order for personal income tax. The garnishment was for 25% of Applicant's earnings. By letter dated July 30, 2009, Applicant's employer was informed that the order to withhold the garnishment was withdrawn. Applicant indicated that the garnishment was withdrawn pursuant to an installment agreement. He testified his payments of \$425 per month are automatically withdrawn from his bank account. His Federal Income tax refunds are also garnished to satisfy this debt. Attached to his answers to interrogatories dated March 23, 2010, he presented a copy of his bank statement showing a January 28, 2010 payment to the state for \$425. He failed to provide additional proof that he is making his installment payments on this debt. He did include monthly allotments for this debt in his budget. (GE 7; GE 8; GE 10; GE 13; AE C; Tr. 46, 70-71, 89.)

Applicant is indebted on a medical account in the approximate amount of \$100. Applicant claimed this was a dental bill. He indicated he intended to satisfy this debt but Applicant failed to present evidence showing the debt has been addressed. (Tr. 72-73.)

Applicant had a mortgage with a bank in the total amount of \$406,000. As of December 2010 he was past due on this loan in the approximate amount of \$33,474. Applicant purchased this property in 2007 for approximately \$431,000. He made a down payment of \$16,000 on the property and financed \$417,000 through one mortgage. On December 14, 2010, Applicant agreed to a loan modification on this property. He presented documentation that established his debt to the original creditor was satisfied through the modification. He has a newly modified principal balance of \$436,656 on this loan. His monthly payments are \$2,084.66 with a fixed interest rate of 4%. He testified that since receiving the modification, he has only been late with his mortgage payment on one occasion, and that he was only late by two days. (GE 14; AE D; Tr. 41, 79, 84-87.)

The SOR listed Applicant as past due in the approximate amount of \$7,453 to a bank on a total debt of \$57,830. This debt is for a second mortgage on a condominium property Applicant purchased in 1994. He originally purchased this property with a \$130,000 mortgage. He did not put any money toward the initial purchase. He

¹ These figures were calculated by subtracting Applicant's total monthly expenses from his total monthly income of \$6,600 for the months January through May.

refinanced this property approximately three times. In approximately 2006 he refinanced it for the final time, assuming a \$310,000 first mortgage with a fixed interest rate, and a \$58,200 second mortgage. Applicant lived in this property from 1994 to approximately 2007, when he moved to his current residence. In early 2007 he rented the condominium. The renters stopped paying rent after two months, but due to complex state laws Applicant could not evict the renters immediately. At the same time, Applicant stopped receiving incentive pay from his employer, and his mother-in-law became ill and needed financial assistance to pay for her medical treatment. Applicant's last payment on this house was in November 2008. The house was foreclosed upon in 2009. He presented the Notice of Trustee's Sale as evidence of the sale, but did not present documentation of the distribution of the funds from the sale. Applicant testified that he has not been in contact with this creditor, but believes the second mortgage debt was forgiven. He presented a 1099-A from the lender displaying the \$340,395 first mortgage on this property but failed to present any documentation on his second mortgage. His March 2011 credit report still lists this account as delinquent. (GE 10; GE 17; AE D; Tr. 41, 57-58, 61, 79-84.)

Applicant is indebted on an account for a repossessed motorcycle in the amount of \$13,239. Applicant purchased the motorcycle in approximately 2007. It was repossessed some time in approximately 2008. Applicant has had no contact with this creditor since 2009. He testified that he intends to repay this debt, but presented no documentary evidence to show he has taken any actions to repay this creditor. (GE 9; GE 10; Tr. 41-42, 88.)

Applicant is indebted on a dental bill in the approximate amount of \$3,105. At hearing, he testified that this debt was for dental services performed in 1998. The dental work was covered by his insurance and his insurance sent a check directly to the dental office. He claimed that his dental insurance sent him a copy of the check endorsed by the dental office, but he failed to provide a copy of that check. Applicant claimed the \$3,150 was a fee charged by the collection agency for the dental office. In his post hearing exhibits, Applicant presented a billing statement from a dental office indicating Applicant owed \$80.85, but offered no explanation with respect to which account the bill pertained to. He also included a copy of a check payable for this amount. The billing statement does not bear the same account number as the one listed on the July 31, 2009 credit report for this SOR-alleged debt. (GE 9, AE B; Tr. 42-43.)

On November 12, 2010, Applicant responded to interrogatories from DOHA. He was asked, in part, "In the last seven years, have you had a lien filed against you or your property for failure to pay taxes?" Applicant answered this question "No," and failed to disclose the Federal Tax lien filed against him. He testified that "I think at that time I didn't have a lien." (GE 13; Tr. 89.)

He was also asked "According to the information you provided us in March 2010, you made at least four (4) ATM withdrawals at various casinos over a two month period (totaling about \$1,500.00). Please provide a written statement below describing your gambling activities." (GE 13.) Applicant disclosed:

During those months, my favorite Bands [sic] were performing in Las Vegas. The \$1500 [sic] total ATM withdrawals are budget that we allocated for those trips. Our occasional trips to Las Vegas are not mainly gambling, but are mostly spending quality time w/ [sic] my family and shared the enjoyment that Las Vegas can offered [sic]. I spend \$250 for those three days in Las Vegas and that I don't consider as a gambling habit. (GE 13.)

He further indicated that gambling has not caused his financial problems nor affected his financial problems. (GE 13.)

At hearing Applicant was reluctant to address the gambling allegations. He testified that he and his wife share a bank account that is solely in his name. Any transactions she made would appear as transactions he made. He further indicated that most of the time his wife is in Las Vegas, Applicant is not present. When questioned about the over \$16,000 in gambling losses in 2007 and 2009 Applicant stated:

I'm not going to call it gambling - - but this \$16,000 that you're seeing in this Report, this is the - - we did spend a lot of money, because I bought her a ring. It's a used ring. . . . But spending this much money doing gambling, \$16,000, I don't think we spend that much for gambling. (Tr. 44-45.)

However, when pressed further Applicant indicated that he "just ignore[ed]" his wife's gambling problem. Applicant's wife last gambled approximately three months prior to the hearing. He indicated that she intends to stop gambling. Applicant has not sought financial counseling. (Tr. 77, 88.)

Applicant has been praised for his "exemplary attitude, professionalism, and hard work" in executing his tasks at work. He has been awarded a number of certificates and has been recognized for his "outstanding work." (AE A.)

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 concerns for Financial Considerations are 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 concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated seven delinquent debts, totaling \$88,362, and is unable or unwilling to pay the majority of these obligations. His delinquencies have been on-going for several years, without resolution. Further, he had had significant financial problems as far back as 1992. He discharged \$51,499 through Chapter 7 bankruptcy in 1996, but continued to experience financial delinquencies after that discharge. 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 failed to present sufficient documentation that he has satisfied the majority of his delinquent debts listed on the SOR. The federal tax lien has been removed and Applicant has successfully refinanced his existing home loan. However, it is unclear how much he currently owes in state taxes and if he is current on his repayment agreement. He is still indebted on two medical bills, his second mortgage on the foreclosed home, and his repossessed motorcycle. His debt is current and on-going. Further, he gave little indication that his financial situation is likely to improve. His inability to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were caused in part by his wife's spending habits. Applicant turned a blind eye to her practices. He failed to present evidence that the conditions that resulted in his financial problem were largely beyond his control. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. While he has now taken over their finances, not enough time has passed to demonstrate that he will not face similar problems in the future. Further, Applicant has not shown he made any attempt to responsibly address his remaining debts. He has not presented documentation to establish payments to those creditors. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. He failed to provide proof that AG ¶ 20(c) applies.

Applicant presented minimal documentation that he made a payment on his state tax debt in February 2010. However, he failed to present documentation of subsequent payments. Further, he has not proven he made payments on his two medical bills, his second mortgage on the foreclosed home, and his repossessed motorcycle. There is no showing he has initiated a good-faith effort to repay these overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable to them.

Finally, he failed to introduce documented proof to substantiate the basis of any disputes with his creditors or provide evidence of actions he has taken to resolve the issue with his creditors. 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 condition is 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.

Applicant failed to disclose his federal tax lien in his answers to the November 12, 2010 DOHA interrogatories. He knew he had a federal lien that was released the same month he completed the interrogatories, yet he denied its existence in his

response to the interrogatories. This behavior indicates questionable judgment and untrustworthiness.

Further, Applicant was not truthful with the Government in his answers to questions about the debits to his account made at various casinos. He initially contended in his answers to the interrogatories that he went to casinos to see bands perform, not to gamble. He then testified that the over \$16,000 loss could be attributed to his purchase of a used ring in Las Vegas. Finally, he admitted that he had been ignoring the fact that his wife had a gambling problem.

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 falsifications. He provided no information that indicates he was ill-advised in completing his answers to interrogatories. 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 meet his burden of proof to mitigate the security concerns arising from 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's letter of commendation and certificates show he is a valued employee. However, he has been unable to make ends meet and satisfy his past due accounts. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. Further, his falsification leaves one to question his reliability. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant

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

Jennifer I. Goldstein
Administrative Judge