



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



In the matter of)
)
) ISCR Case No. 09-08451
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

February 28, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (Standard Form 86) on October 14, 2008, to request a security clearance required as part of his employment with a defense contractor. 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.

On July 13, 2010, The Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) citing security concerns focused on Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Adjudicative Guidelines (AG).² Applicant submitted an undated Answer to the SOR dated, in which he denied three allegations (1.j., 1.w., and 1.y.) under Guideline F and admitted the remaining 23 allegations. He denied the 11 Guideline E allegations.

The case was assigned to me on September 10, 2010. DOHA issued a Notice of Hearing on October 5, 2010, and I convened the hearing as scheduled on October 20, 2010. During the hearing, I admitted nine government exhibits (GE), identified as GE 1 through 9. Applicant testified and offered six documents, which I admitted as Applicant's Exhibits (AE) A through F. I held the record open to allow both parties to submit additional evidence. Department Counsel timely submitted a relevant state statute. Department Counsel's cover memorandum is marked Hearing Exhibit (HE) I. I take administrative notice of the submitted statute, which I mark as Hearing Exhibit II. Applicant timely submitted five additional documents, admitted as AE G through AE K. Applicant's cover letter and document list are marked as HE III. DOHA received the transcript (Tr.) on October 28, 2010.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 48 years old, joined the Army in 1984 and was honorably discharged at a pay grade of E-3 in 1986. (Tr. 28-29) He married in 1990 and divorced in 1992. (GE 2) He has two children, 20 and 21 years old. He holds a bachelor's degree in business administration. He completed a master's degree in information system management in 2007. (Tr. 33-34) Over the past ten years, he has been unemployed periodically for a few months at a time while job-seeking, for a total of 12 to 24 months. (Tr. 32-33) In May 2010, he began working for his current employer, a federal contractor. He is the senior subject-matter expert for certification and accreditation. (Tr. 29-31)

Applicant filed a Chapter 7 bankruptcy petition in 1999, which was discharged the same year. He has accumulated debts since that time, and his current debts appear in

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines (AG), which were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive.

his credit reports of May and October 2008, and January and May 2010. (GE 5–9) Applicant consulted a consumer credit company in 2009. Its plan required Applicant to pay \$1,585 per month. He decided against using the company, because it charged a high payment but proposed paying only negligible amounts to creditors, which the creditors refused to accept. He decided to pay the debts on his own. (AE H; Tr. 44-45, 65-66, 111)

Applicant's Personal Financial Statement (PFS) of April 2010 shows a net monthly income of \$4,224. His expenses total \$3,755, leaving a monthly net remainder of \$469. Applicant's PFS does not include payments on any of the SOR debts or other monthly debt payments. He does not have a savings account. His child support payments ended in 2008; however, his children attend college, and Applicant provides \$400 to \$500 per month to his daughters to help pay for college expenses such as books and fees. (GE 5; AE I; Tr. 26-27) He also pays for his mother's medicines, sending her \$300 to \$400 per month. He makes the minimum monthly payment on his one credit card. As of the hearing date, he was in the process of applying for a second job. (Tr. 83, 110)

The SOR lists 25 debts that total \$39,520. However, the actual total of the SOR debts is \$30,605 because of payments made on the debt at allegation 1.a. Applicant made payments on this 2006 judgment for furniture debt through garnishments of approximately \$400 per month between 2006 and 2008. The garnishment ended when the job ended in 2008. He also made two payments in September and October 2010. The balance has been reduced from \$10,515 to \$1,600. (AE A, K; Tr. 35-40)

In his interrogatory response of April 2010, Applicant stated he would set up payment arrangements for the 14 debts at allegations 1.d, e, g, h, k, n, o, p, q, r, s, u, v, and x. (GE 5) However, he did not set up a payment program for his debts. He decided to pay the debts individually, starting with the largest debts -- his student loans and federal tax debt -- because non-payment of these debts would result in garnishment of his pay.³ He did not contact other creditors to work out plans because he was unable to pay them. He plans to negotiate settlements to pay lower amounts on some debts. He has not bought a car so that he can have funds available to implement his plan. He expects his financial situation to improve within six months. He is also considering contacting a credit counseling company that would pay higher amounts to his creditors. He testified that he did not concentrate on his debts previously because he was "not really paying attention to what I need to do." (Tr. 69, 112-116)

Applicant stated that the following debts were paid:

Utility, \$341 (allegation 1.j.) He provided no supporting documentation. (Tr. 51-52)

³ Applicant owes federal taxes of approximately \$10,000, and student loans of approximately \$80,000. These two debts were not alleged in the SOR. (Tr. 115)

Medical, \$123, \$50 (allegations 1.t. and 1.y.) He provided no supporting documentation. (Tr. 75, 79)

School, \$81 (allegation 1.w.) He provided no supporting documentation. (Tr. 77-78)

He disputed the following debt:

State lien, \$865 (allegation 1.c.) Applicant testified that this debt was paid through seizure of his tax refund. He provided no documentation to support this claim. (Tr. 42-43)

The following debts resulted in judgments filed against Applicant: 1.a. (see previous discussion); and allegation 1.r. for unpaid rent in the amount of \$1,086. He was required to appear in court in February 2007 regarding this judgment for unpaid rent, but failed to appear because he did not have the funds to pay it. During his 2008 security interview, he reported the balance to be \$3,000. He intended to pay the debt in January 2009. (GE 4)

Applicant resigned from a company where he was employed in 2006. He had signed out a company van on a Friday, but did not pick it up until Saturday. He drove it to his home. A third party called the local police to report that the van was being driven erratically on Friday. His company was notified that he was cited by police on Friday for his erratic driving. Applicant denied having the van on that day, or driving erratically, or being stopped by the police. He believes his supervisor did not like him and fabricated the events. Applicant was accused of stealing the van and placed on administrative leave. In November 2006, he decided to resign rather than fighting the accusation. When he completed three federal employment applications in July 2007, and April and October 2008, he did not disclose that he had left a job under unfavorable circumstances within the previous seven years. He testified that he did not understand the question. (GE 1, 4)

In December 2007, Applicant was involved in events that led to his arrest. The versions of events Applicant provided in his July and November 2008 security interviews differ somewhat. Both involve several strangers trying to gain entry to Applicant's home. He refused and brandished either a stick or a BB gun. Either Applicant or the strangers called the police. During a search of Applicant's home, police recovered a broken BB gun. Applicant was arrested and charged with second-degree assault. He remained in jail for three days before being released on bail. In April 2008, the complainants did not appear in court, and the charge was dismissed. (GE 4)

Applicant completed a security clearance application in 2008, and applications for a public trust position in 2007 and 2008. On each of the three applications, he answered "No" when asked the following questions:

- if he had been more than six months delinquent on any debt in the previous seven years;
- if a tax lien had been filed against him within the previous seven years;
- if a financial judgment had been filed against him within the previous seven years;
- if he had left a job under unfavorable circumstances in the previous seven years.

On the 2008 security clearance application, he also denied

- that he was ever charged with or convicted of a felony offense, or
- that he currently had debts that were more than 90 days past due.

Applicant had a security interview in July 2008, after completing the two public trust position applications. Other than one debt for unpaid rent, he did not discuss his delinquencies. A special interview was conducted in November 2008 to discuss the multiple delinquencies that the security investigation disclosed. (GE 4) He also told the investigator that he resigned from the job because he did not get along with the staff. As to his judgments, he was paying the judgment resulting from the furniture debt, so did not consider it to still be a judgment. He also stated he was not fully aware of his delinquencies, but did not think any were currently more than 90 days delinquent, or had been 180 days past due within the previous seven years. He admitted at the hearing that he did not list the debts that he owed because he had not obtained his credit report. He testified that he did not disclose his resignation because he did not understand the question. (Tr. 87-91, 95-107)

Applicant submitted the first public trust position application in July 2007. He was charged with assault in five months later, in December 2007. The charge was dismissed in April 2008. On April 15, 2008, he completed his second public trust application, and he listed the assault charge. Six months later, in October 2008, he completed a security clearance application, which asked if he had ever been charged with a felony; he did not list the assault charge. He testified that he did not deliberately falsify the security clearance application; he believed he was not required to list it because it had been dismissed at that time. (GE 4, p 5; Tr. 91-93)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions

⁴ Directive 6.3

must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The relevant disqualifying conditions are AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges more than \$39,000 in debts. The oldest of the debts were incurred in 1994. Most remain unpaid. AG ¶¶ 19(a) and (c) apply.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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: and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts started accruing in the mid-1990s. Delinquencies have continued, and most of the debts in the SOR remain unpaid. As of the date of the SOR, he had more than 25 delinquencies. His debts are both frequent and recent. His failure to work on resolving his debts raises questions about his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) involves financial problems stemming from unexpected events beyond an applicant's control. Here, there is no record evidence that Applicant suffered unforeseen events that affected his ability to pay his debts such as a costly divorce, or significant medical expenses. He has had intermittent periods of unemployment, but it does not appear to be extensive or persistent. AG ¶ 20(b) does not apply.

Applicant was on notice that delinquent debts were a security concern after he completed three applications in 2007 and 2008. He was reminded that debts were a security concern when he met with an investigator in 2008. He talked with a debt resolution company in 2009, but did not hire the company because it did not allocate enough of his payment to the creditors. Applicant claims that some debts were paid, but did not provide evidence to support his claim. He substantially reduced the largest debt

of \$10,000 to \$1,600, but it cannot be considered a good-faith effort because it was accomplished through garnishment of his pay rather than his own initiative. His financial situation is not under control. Moreover, his lack of action over the past three years, despite his awareness that his debts were a security issue since at least 2007, does not support a finding of a good-faith effort. AG ¶ 20(c) and (d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

(a) 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 Government alleges that Applicant deliberately failed to disclose a felony charge, his job termination, and financial delinquencies. The allegations implicate the following disqualifying condition under 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; and

Applicant was accused by his employer of theft of a company vehicle. He testified that he did not steal the vehicle. Ultimately, he resigned from the company because of what he believed were false accusations. On three federal job applications between July 2007 and October 2008, Applicant did not disclose that he left this job under unfavorable circumstances. Applicant did not disclose his past-due debts on either the 2007 or 2008 public trust applications, or on the 2008 security clearance application. His testimony he was not fully aware of his delinquencies, and that he did not think any were currently more than 90 days delinquent, or had been 180 days past-due within the previous seven years was not credible. Given the length of time his debts were delinquent, he was well aware that he had outstanding balances for several years. AG ¶ 16 (a) applies.

As to mitigation, the following mitigating conditions are relevant under AG ¶17:

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

(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.

Applicant disclosed the assault charge on his application completed in April 2008, when he was asked if he had been charged with any offense in the previous seven years. He did not disclose it in October 2008, when the question asked if he had ever been charged with a felony. Because he disclosed the charge in the earlier application, I conclude that Applicant did not deliberately fail to disclose it subsequently, but believed he was not required to do so once it had been dismissed.

However, Applicant did not disclose his numerous delinquencies, although he had been required to list them on three separate applications. In addition, there is no evidence that Applicant informed any authorized government official that he wished to correct the answers on his applications. AG ¶17(a) cannot be applied. AG ¶17(c) is also inapplicable. Applicant's conduct cannot be considered minor because he failed to be forthright with the government not once, but on numerous questions in the 2007 and 2008 applications. His conduct casts doubt on his current trustworthiness.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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 that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a well-educated and mature man who has accomplished laudable goals in completing an advanced degree and assisting his two children with their college expenses. However, he has accumulated substantial debts since the mid-1990s, including a state tax lien, a federal tax debt, and numerous credit card, rent, and utility debts. He made some effort by contacting a consumer credit agency within the past

year, but did not retain the company. His decision not to retain the company may have been legitimate, but the key is that he has not set up another payment plan in its place. He has had three years since he was first on notice that his debts were an issue, and has shown little substantive debt resolution during that period. He has a general plan to resolve debts starting with the IRS and school loans, but he admits he has not done what he should have in regard to his debts. Moreover, his claim that he did not understand the questions on the applications is not credible. Taken together, his lack of effort over the past several years on his debts, combined with his failure to disclose to the Government his resignation and the extent of his financial indebtedness, raise doubts about his good judgment and trustworthiness.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts currently raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.z.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	For Applicant
Subparagraphs 2.c. – 2.k.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge