



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



In the matter of:)	
)	
)	ISCR Case No. 10-00036
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

CURRY, Marc E., Administrative Judge:

Over the past ten years, Applicant accrued \$85,000 of delinquent debt that remains outstanding. He also failed to disclose it on his security clearance application. These issues generate financial considerations and personal conduct security concerns that Applicant failed to mitigate. Clearance is denied.

Statement of the Case

On November 18, 2010, 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 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) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on December 30, 2010, admitting all of the allegations. He requested a hearing, and the case was assigned to me on January 12, 2011. On February 11, 2011, a notice of hearing was issued scheduling the case for February 28, 2011. The hearing was conducted as scheduled. I received six Government exhibits, marked as Government's Exhibits (GE) 1 through 6, and Applicant's testimony. DOHA received the transcript (Tr.) on March 8, 2011.

Findings of Fact

Applicant is a 48-year-old married man with an adult stepson and an adult adopted daughter.¹ Applicant has some college education and currently works as a security electronics specialist responsible for the installation, repair, and maintenance of security access systems. (Tr. 17)

During the past ten years, Applicant accrued approximately \$85,000 of delinquent debt including a \$37,000 federal tax lien, an \$8,000 mortgage delinquency, two judgments totalling approximately \$4,000, two medical accounts, and numerous credit card delinquencies.

Applicant accrued the tax delinquency (SOR ¶ 1.c) in 2002. His employer failed to withhold taxes from his paychecks leaving him with a lump-sum amount due at the end of the year that he could not afford to pay. (Tr. 33) The Internal Revenue Service filed a lien on Applicant's property in 2006. Since then, they have been garnishing his tax refunds. Applicant contends that he has paid down the arrearage to \$21,000. (Tr. 33) He provided no supporting documentation. Currently, Applicant's income tax filings are up to date. (Tr. 35)

Applicant's delinquent mortgage (SOR ¶ 1.u) involves a townhouse where he lived with his wife, stepson, and adopted daughter. In 2006, Applicant purchased another home. (Tr. 63) Because his job was substantially closer to the townhouse than his new home, he kept the townhouse, and lived there from Monday through Thursday. In approximately 2009, he stopped spending any time at the townhouse, and allowed his adopted daughter, then a young woman in her early twenties, to live there, provided she paid the mortgage and the miscellaneous expenses. (Tr. 22)

In January 2010, Applicant discovered that his adopted daughter "trashed" the townhouse, generating multiple expenses. (Tr. 48) Also, she failed to pay either the mortgage payments or any of the miscellaneous expenses.

Applicant then attempted to sell the townhouse, but his efforts were unsuccessful. (Tr. 50) Next, he sought to refinance the loan. However, the refinance process stopped after the original creditor assigned the loan to the current creditor. (Tr. 33) Currently, Applicant is considering a short sale, but provided no documentation of

¹ Applicant never legally adopted his daughter, but raised her from childhood. I am using the term "adopted" for ease of reference.

any efforts to achieve this objective. Currently, the delinquent mortgage payments total \$8,000. (Tr. 33)

The SOR lists two delinquent medical accounts totalling \$271 (SOR ¶¶ 1.d, 1.e) Applicant disputes these debts, but provided no supporting documentation.

The remainder of Applicant's delinquent debt is owed to credit card companies. Applicant attributes the accrual of these delinquencies to stupidity. (Tr. 60) He has neither organized payment plans, nor retained a credit counselor to help him resolve these debts.

Applicant failed to list any of his derogatory financial information, as required on Sections 28 and 29 of his security application that he completed in April 2009. Applicant was aware of his delinquencies when he completed the security clearance application, but chose to omit them because "they were so numerous." (Tr. 52)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. In addition to 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 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."

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 applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18).

Applicant’s extensive delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” I have considered the potentially applicable mitigating conditions and conclude none apply. Applicant has neither sought credit counseling to address his delinquencies nor documented any progress toward satisfying them. Similarly, he failed to provide evidence supporting his dispute of the medical bills appearing on his credit report. So long as Applicant’s delinquencies are outstanding and unaddressed, he remains a security risk under Guideline F.

Guideline E, Personal Conduct

Applicant’s omission of his financial delinquencies from his 2009 security clearance application raises the issue of whether 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,” applies. Applicant’s explanation that he was aware of his delinquencies, but chose not to include them on his security clearance application because they were too numerous is not credible. I conclude Applicant omitted the derogatory information with the intention of concealing it, and that AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

Under the whole-person concept, 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.

Given the ongoing nature of Applicant's financial problems, and his uncorroborated assurances that he will remedy the problem, I conclude that his finances continue to pose a security concern. Moreover, I remain troubled by Applicant's omission of these delinquencies from his security clearance application. Applicant has failed to mitigate the security concerns.

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.v:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 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.

MARC E. CURRY
Administrative Judge