



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



In the matter of:)
)
) ISCR Case No. 10-00438
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2011

Decision

MASON, Paul J., Administrative Judge:

In 1999, Applicant and his wife were working and meeting their financial obligations. When his wife became sick and had surgery in 2003, Applicant turned to credit cards for a short time to help pay bills. Applicant exercised good judgment by halting his credit card use. The credit reports show he has incurred no new debt since January 2007. Applicant deliberately omitted material information on his security form in October 2009. Conversely, at the hearing he voluntarily confessed to his dishonest conduct before being confronted with the falsification. On balance, because I do not find Applicant a security risk, I find for Applicant under the financial and personal conduct guidelines. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on October 14, 2009. On June 4, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). 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 September 1, 2006.

Applicant submitted his answer to the SOR on June 30, 2010. DOHA issued a Notice of Hearing on September 14, 2010, for a hearing on October 6, 2010. The hearing was held as scheduled. At the hearing, three exhibits (GE 1 through 3) were admitted in evidence (without objection) in support of the Government's case. Applicant testified. Applicant's three exhibits (AE A through AE C) were admitted without objection. The hearing record remained open until October 15, 2010, to allow Applicant to submit additional evidence. DOHA received no additional evidence. The record closed on October 15, 2010. DOHA received the transcript on October 19, 2010.

Findings of Fact

The SOR alleges nine allegations (SOR 1.a through SOR 1.i) under the financial considerations guideline. The nine accounts, which include two telephone accounts and seven credit card accounts, total approximately \$45,884. SOR 2 lists one allegation (SOR 2.a) under the personal conduct guideline. In his answer to the SOR, Applicant did not respond individually to each allegation of the SOR. At the hearing, Applicant admitted all nine allegations under financial considerations and one allegation under personal conduct. (Tr. 13, 39) Applicant's admissions are incorporated into the following findings of fact.

Applicant is 81 years old. He was married to his first wife for 23 years. The record does not disclose the reason why the marriage ended. He has been married (common law) to his current wife since September 1970. (GE 1, 20) At the present time, he has ten children from two marriages. He has been employed as a postal administrator for a defense contractor since February 1986.

Financial Considerations

The nine delinquent accounts total approximately \$45,884. Seven of the accounts became delinquent between 2005, 2006, and January 2007. SOR 1.a (cellular phone,

\$155) became delinquent in April 2009, and SOR 1.b (cellular phone, \$400) became delinquent in March 2008.

In December 1999, Applicant had about six credit cards and was current on all his financial obligations because he had the availability of overtime to earn extra money. (Tr. 47). Applicant's wife was working as a cook for several restaurants. She earned about \$1,200 a month or approximately \$12,000 a year. (Tr. 49)

In 2003, his wife could no longer work because of her advancing rheumatoid arthritis. She also had a back operation that fused several discs in her back. (Tr. 28) She began receiving a disability, but not nearly enough to assist in paying off the larger credit card debt. In addition, Applicant was no longer allowed to work overtime. After his wife became sick, Applicant permitted his children to use his credit cards. (Tr. 13) Sometimes they repaid him and sometimes they did not. (Tr. 24) He did not apply for any new credit cards. (Tr. 33) In his recollection, he never misused the credit cards for extravagant expenditures. (Tr. 21, 23-24) The only credit card Applicant uses now is the one he needs to obtain medication for his wife. (Tr. 34) The cell phone accounts in SOR 1.a and 1.b were in Applicant's name, but were used only by his daughters. (Tr. 34-35)

Since 2000, Applicant has been living in the same house, and paying the same mortgage of about \$693 a month. Currently, his wife, daughter, daughter-in-law, and three grandchildren live with him. (Tr. 36) One of his daughters provides approximately \$200 a month to the household expenses for herself and her ten-year-old daughter. Applicant's 18-year-old granddaughter lives with him because she cannot get along with her stepmother. Her biological mother moved away. (Tr. 51) Applicant's daughter-in-law is not working. (Tr. 22) The record does not explain the status of the third granddaughter.

For the last four to five years, Applicant has earned about \$700 every two weeks. He pays about \$200 every two weeks for medical insurance, and is happy to have the medical insurance because his wife's medical problems have been costly. Since 2003, he estimates he has paid \$20,000 in copayments to doctors and hospitals. (Tr. 29) He puts approximately \$40 a month into his retirement savings plan.

When Applicant's wife stopped working in 2003, he made a conscious decision to focus on the mortgage, utilities, and his wife's copayments. (Tr. 21) He has received telephone calls and letters from the creditors seeking various settlement offers. Since the onset of his wife's sickness in 2003, all Applicant's earnings, even his tax returns, have been applied to day-to-day or month-to-month needs of his wife and family, and paying the utilities. (Tr. 38) Because his earnings have usually been exhausted by family needs, he is unable to meet settlement demands. Applicant has never tried to repay the debts because he is unable. If he could repay the delinquent account, he would. (Tr. 39-42)

Applicant has never had financial counseling. (Tr. 35) He has always been current in filing and paying his taxes. (Tr. 38)

Personal Conduct

On October 26, 2009, Applicant completed and certified an e-QIP. In response to three questions of Section 26, Applicant answered “no.” Those questions are: 26 g. (Have any bills been turned over to a collection agency?); 26 m. (Have you been over 180 days delinquent on any debt(s)?); and 26 n. (Are you currently over 90 days delinquent on any debts?) At the hearing, Applicant admitted he deliberately lied about his finances on the e-QIP because of his age and embarrassment. He explained why he answered “no” to the financial questions:

Well, because here I am, at that time I was only 79 years old [when he filled out the e-QIP in 2009] and I should have retired ten, fifteen years already. And I’m still working. I’m still working my 40 hours a week. I was so embarrassed when they asked you that question and I was on the questionnaire there I said no, not thinking that it was going to create such a big thing. You know, Hey, I’m working. I’m paying my taxes which I do every year. And I’m not asking anybody for anything. So, yes, I did lie. I’m admitting to that I lied on the application as far as my finances were concerned. (Tr. 22-23, 43-44)

Character Evidence

Applicant’s performance evaluation covers the period from January to August 2010. Applicant’s overall evaluation was “meeting expectations,” meaning that he fully met all job responsibilities and performed his job in a manner consistent with the objectives of his employer. The evaluation was signed by Applicant’s manager who furnished a character statement. (AE B)

In his character statement dated October 5, 2010, Applicant’s manager indicated that from his knowledge of Applicant’s job performance over many years, he is completely satisfied with Applicant’s organization, trustworthiness, efficiency, and cooperative manner in performing his job tasks. (*Id.*) Applicant’s supervisor has known Applicant for 15 years and supervised him for the last three. He considers Applicant to be a friendly, honest employee, who cares about the quality of his job performance as much as he cares about his wife, daughter-in-law, and three grandchildren. (AE C)

There is no indication in the record that Applicant has a criminal history, that he has ever abused alcohol or engage in illegal drug use. (GE 1)

Credibility Findings

Having carefully listened to Applicant's failure to repay his creditors and his explanation for omitting the financial information from his e-QIP, I find he intentionally falsified the form, but is genuinely contrite about his dishonest conduct.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about the potential, rather than actual, risk of compromise of classified information.

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

Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

Applicant owes almost \$46,000 in delinquent debt to nine creditors. He is willing but unable to pay those creditors. The delinquent debt history began in 2005 when the first account became delinquent. There is no indication that Applicant's financial problems were caused by dishonesty, gambling, drug use, or abuse. AG ¶¶ 19(a) and 19(c) apply.

Two conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

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*); and

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*).

As the 1999 credit bureau report shows, Applicant was current with his financial obligations. If he had a problem meeting bills, he could earn extra income by working overtime. In addition, he could rely on his wife's earnings. In 2003, his financial stability was altered dramatically with his wife's sickness and back surgery. Without the option of working overtime and his wife's inability to work, Applicant resorted to credit cards to pay the bills, but he did use the cards for unnecessary items. The record suggests, however, that his children probably abused the credit cards and cellular accounts, particularly at times when they did not repay him. Except for the two cellular accounts, which Applicant activated for his daughters in early 2008 and 2009, he has not applied for any additional credit cards and has incurred no new delinquent debt since January 2007. The unforeseen circumstances of his wife's illness and surgery in 2003, and Applicant's actions to stop his use of credit, entitle Applicant to mitigation under AG ¶ 20(b). Applicant's problem is that he is unable to repay the listed creditors.

Personal Conduct

Paragraph 15 of the AG sets forth the security concern for personal conduct:

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.

The following disqualifying condition under ¶ 16 may apply:

AG ¶ 16(a) *deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness.*

The focus of AG ¶ 16(a) is the intentional concealment or omission of material information from an e-QIP. On October 26, 2009, Applicant filled out an e-QIP. He answered "no" to Section 26 g. (any bills or debts turned over to a collection agency?); Section 26 m. (debts over 180 days delinquent in the last 7 years) and 26 n. (debts over 90 days delinquent). At the hearing, Applicant admitted he lied on the form by deliberately omitting financial information. The financial information is material because a person's credit history may make him resort to illegal acts to generate funds, or make him vulnerable to coercion or influence. The Government has a legitimate right to know about financial information in order to make a more informed decision about an applicant's security worthiness.

There are three mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are:

AG ¶ 17(a) *the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts;*

AG ¶ 17(c) *the offense was 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; and*

AG ¶ 17(d) *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or*

other inappropriate behavior, and such behavior is unlikely to recur.

Applicant receives some mitigation from AG ¶ 17(a). While his disclosure that he intentionally omitted information from his e-QIP did not occur until the hearing, he volunteered the information early in the hearing during his discussion of the reasons for his financial problems.

Applicant also derives some mitigation from AG ¶ 17(c). The offense was not minor because Applicant answered “no” to three questions covering major areas of his financial history. Applicant’s candor in unequivocally and remorsefully confessing his dishonesty and providing the reasons, demonstrates to me that he will not act in the same dishonorable fashion in the future. Applicant has acknowledged his dishonesty and demonstrated that his behavior is an aberration from his general habit of honesty and trustworthiness on the job. Judging by the totality of the circumstances, the personal conduct guideline is resolved in his favor.

Whole-Person Concept

In evaluating Applicant’s security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial and personal conduct guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual’s conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 81 years old. He has been married for 40 years. He has been working for his employer for almost 25 years. The record demonstrates that in 1999, with the availability of overtime and his wife’s earnings, Applicant was meeting his financial obligations. In 2003, Applicant’s wife became ill and had surgery. Since then, Applicant has spent about \$20,000 in copayments for his wife’s surgeries and treatment. There are seven delinquent credit card debts, but, except for the two cellular accounts, Applicant has incurred no additional debt since January 2007.

As observed by Applicant's manager over the course of many years, Applicant has provided a consistently good job performance characterized by his trustworthiness. He has been a good family man who is providing shelter and care for his wife, daughter, daughter-in-law, and three granddaughters. With no record for security infractions or disciplinary problems on the job, no record of criminal conduct, no record of illegal drug use, and no record of alcohol abuse, Applicant has overcome the adverse evidence under the financial and personal conduct guidelines.

Formal Findings

Paragraph 1 (Guideline F): FOR APPLICANT

 Subparagraph 1.a through 1.i: For Applicant

Paragraph 2 (Guideline E): FOR APPLICANT

 Subparagraph 2.a: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge