



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01715

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

March 7, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated November 4, 2010, Applicant admitted all allegations raised in the SOR and requested an administrative determination. On December 15, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant did not submit any response or information within the time period of 30 days after his receipt of the FORM. The case was assigned to me on February 28, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 31-year-old senior software engineer who has worked for the same defense contractor since June 2009. He has earned a bachelor's degree and a master's degree. He is married and has one infant child. On July 2, 2009, Applicant completed a security clearance application (SCA). In response to Section 26 of that document, he denied being over 180 days delinquent on any debt(s) and denied being currently over 90 days delinquent on any debt(s). Investigators ultimately discovered that Applicant has eight delinquent debts amounting to approximately \$298,572. In his answer to the SOR, Applicant admitted that he denied having delinquent debts on his SCA. He also admitted that the eight delinquent debts remain outstanding.

Applicant has been continuously employed in the engineering field since at least January 1997. In 2006, his then-fiancee, now wife, was deployed to a distant state. Applicant believed "he had to follow her deployment schedules and move" to the state of her deployment.¹ When his then-current employer relocated in 2006, Applicant chose to lease his home, continue his job by working from home, and moved to his then-fiancee's state of deployment. For the next two years, Applicant had difficulty leasing his prior home and he was unable to sell it. He was also unable to secure permission from the lender to explore a short-sale arrangement.

In about February 2008, Applicant's fiancee left the military, but had difficulty finding a civilian job. In July 2008, Applicant and his fiancee married. Soon thereafter, the couple moved to a different town and Applicant began work for a new employer. He eventually bought a second home in his new state for about \$380,000. He was not financially able to sustain two mortgages simultaneously. In August 2008, he decided to stop making payments on his first home, which he still could not sell. That home then went into foreclosure. Given the circumstances, the economy, and his role as head of his family, Applicant describes his decision as a "quick and rational decision."² In early-to-mid 2009, Applicant and his wife had a baby. As of August 2009, Applicant's wife was attending to their baby and not working.³

Between 2006 and 2009, Applicant acquired significant debt, in terms of charged-off accounts, collection accounts, and the past-due mortgage that went into foreclosure. Applicant attributes his debts to the economic recession and to the severely depressed real estate market in his former state of home ownership. He concedes that the debts at issue in the SOR remain unpaid.⁴ He claims that he is trying to honor his debts. As evidence, Applicant notes that he paid off two debts not referenced in the SOR. First, he claims payment of a credit card balance, account

¹ FORM, Item 4 (Applicant's Answer, dated Nov. 4, 2010).

² *Id.*

³ FORM, Item 6 (Interrogatories, Interview of Aug. 27, 2009) at 3.

⁴ FORM, Item 4, *supra*, note 1. As noted in the SOR, these debts range from as high as approximately \$179,305 to as low as about \$329 and \$468.

ending – 61597, on September 2, 2009. An August 2009 credit report notes that the account, for home furnishing, was previously in collection, charged-off, had a high credit limit of \$1,500, and a balance of \$990.⁵ Applicant also notes that he paid off a car loan, for an account ending – 93819, on February 23, 2010. The auto loan was shown in the August 2009 credit report as then having a current balance of \$10,186.⁶

In responding to the SOR, Applicant provided scant information regarding his life and finances. There is little indication as to how his debt was incurred. There is no evidence showing Applicant has received financial counseling.

Applicant admitted the two allegations raised under Guideline E, regarding his failure to note delinquent debts on his SCA. In explaining why he failed to identify his delinquent debts on the SCA, Applicant qualified his admissions to the allegations. He wrote: “I admit that I overlooked the details of the questions asked upon me. In all future personnel security questionnaire [sic], I promise to read the questions carefully and thoroughly to fully understand each question and ensure the accuracy of my responses . . . and will not rush through them quickly.”⁷

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

⁵ FORM, Item 9 (Credit report, dated Aug. 1, 2009) at 8.

⁶ *Id.* at 7.

⁷ FORM, Item 4, *supra*, note 1.

admitted by applicant or proven by Department Counsel. . . .”⁸ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁹

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”¹⁰ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹² A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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.”¹³ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”¹⁴ Here, Applicant admitted that he owes the debts alleged in

⁸ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ See also EO 12968, § 3.1(b) and EO 10865 § 7.

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹² *Id.*

¹³ AG ¶ 18.

¹⁴ *Id.*

the SOR. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number and represent nearly \$300,000 in delinquent debt. To date, those debts remain unpaid. There is no evidence of efforts to dispute, address, negotiate, settle, or satisfy these debts. Consequently, Financial Considerations Mitigating Conditions (FC MC) 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 FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) do not apply.

Applicant provided scant facts as to why the debt at issue remains unaddressed. Citing mainly to the recent economic downturn and a soured real estate market, Applicant only referenced some difficulties in selling a house as a potential mitigation for the debts noted in the SOR. While such difficulties, if substantiated with documentation, could help mitigate a corresponding debt noted in the SOR, there is insufficient evidence to invoke application of FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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).

Although Applicant wrote that he has satisfied two debts not at issue in this case, debts amounting to about \$11,200, he provided no evidence of their satisfaction. There is no evidence Applicant has sought formal financial counseling and that he has made any resultant progress on the nearly \$300,000 in delinquent debts at issue. Absent evidence of financial counseling and some tangible effort toward resolution of the debts noted in the SOR, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply. Moreover, given the limited facts provided, none of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. Lacking evidence that he has made any progress on addressing any of the allegations noted in the SOR, financial considerations security concerns remain unmitigated.

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “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.”¹⁵ In addition, “any failure to

¹⁵ AG ¶ 15.

provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.¹⁶ Here, personal conduct concerns were potentially raised when Applicant failed to identify his delinquent debts on his SCA. If such a failure was deliberate, such omissions would be sufficient to raise Personal Conduct 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). The burden, therefore, shifts to Applicant to mitigate security concerns.

Applicant admitted the Guideline E allegations, but qualified his admissions with commentary. His answers suggest that he rushed through the SCA and overlooked the details of each question inquiring about delinquent debts. Based on the written record, however, it is nearly unfathomable as to how an individual could forget, unintentionally omit, or dismiss delinquent debt nearing or surpassing \$300,000. After reviewing the personal conduct mitigating conditions under AG ¶ 17, I conclude that none of the mitigating conditions apply and that related security concerns remain unmitigated.

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 an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors.¹⁷ In choosing a decision without hearing, there are scant facts of record. Applicant is a mature and well-educated man who has build a career in the engineering field. He has had no significant breaks in employment in over a decade. He is married and the father of a small child.

Feeling compelled to follow his then-fiancee, Applicant left his primary home behind, taking the risk that long distance management of the property would assure tenants whose rents could off-set his mortgage payments. Once relocated, he found that this arrangement was deficient. After he married, he bought another home in

¹⁶ *Id.*

¹⁷ Examination of the “whole-person” in this matter is limited due to Applicant’s failure to supplement the record with more personal information that might be relevant and material to this case.

another state. Finding it difficult to pay two mortgages at the same time, he walked away from his obligations on that house in favor of his new home and new life. Ultimately, between 2006 and 2009, he acquired about \$300,000 in delinquent debt which remains unaddressed. Aside from his first home, the origin of the balance of that debt remains unclear.

While Applicant stated that he has paid off two debts not at issue, those debts amount to only about \$12,000, a relatively minor obligation compared to the nearly \$300,000 at issue. There is no indication that he took reasonable steps to mitigate his acquisition of debt. Moreover, he submitted no evidence showing his financial needs or resources, or describing his lifestyle. He provided no evidence of a strategy to address the debt noted in the SOR and he submitted no documentation showing he has made any significant attempt to resolve his financial dilemma.

With multiple disqualifying conditions raised, Applicant has the burden mitigating the financial considerations and personal conduct security concerns raised. There is insufficient evidence to mitigate Applicant's failure to give notice of nearly \$300,000 in delinquent debt on his SCA. Moreover, Applicant provided insufficient information that might tend to mitigate financial considerations security concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. In light of the foregoing, security concerns remain unmitigated. Clearance is denied.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.h: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 1.a-2b: | 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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge