



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-03380
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

May 12, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the 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.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) signed on December 9, 2009. 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 September 16, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal

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

Conduct) of the Adjudicative Guidelines (AG).² Applicant signed his notarized Answer on October 5, 2010, denying the six allegations under Guideline F, and the single allegation under Guideline E. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 4, 2010, and the case was assigned to me on November 8, 2010. DOHA issued a Notice of Hearing on November 29, 2010, and I convened the hearing as scheduled on December 14, 2010.

The Government offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified and offered seven exhibits, admitted as Applicant's Exhibits (AE) A through G. DOHA received the transcript (Tr.) on December 22, 2010. I held the record open to allow Applicant to forward additional documentation. He timely sent four documents, which I admitted as AE H through AE K. The record closed on January 7, 2011.

Findings of Fact

After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant is 54 years old. He married in 1980, and has two children, 18 and 32 years old, who reside with him. He served as a field communicator in the U.S. Marine Corps starting in 1977, serving five years on active duty, and two years inactive. He was honorably discharged in 1984. He earned a bachelor's degree in business administration in 2007. (GE 1; AE A, C; Tr. 24-25, 28-29)

From 1986 to 2007, Applicant worked as a network engineer for a secondary home mortgage company. He accepted early retirement after 21 years with the company. He began a small computer business in July 2007. He was unemployed for approximately one year. In August 2008, he held part-time positions as a substitute teacher for a county school system and as a transit driver. As of the hearing date, he continued to work the part-time jobs. He held a full-time position as a senior engineer from August 2008 to August 2009, but was terminated because he "was not doing the job for which I had been hired." He testified that he held a secret security clearance when he was in the Marines, but did not complete a security clearance application. He stated that the first time he completed a security clearance application was in December 2009, when he began a position with a federal contractor. He worked for that contractor until March or April of 2010. Since June 2010, he has worked for a subsequent defense contractor, where he performs cyber-analysis, monitoring agencies for evidence of cyber crimes. (GE 1; AE A; Tr. 25-29, 40)

² Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Before his retirement in 2007, Applicant earned more than \$100,000 per year. He owned his own home, which in July 2010 was worth approximately \$500,000. Starting in 1990, he opened about 24 credit card accounts, half of them between 2002 and 2007. In 1990, he bought a townhouse rental property. The first mortgage was approximately \$350,000 (allegation 1.c), and the second mortgage was approximately \$55,000 (allegation 1.d). His monthly payment was \$2,500. He began renting the house to his mother and brother in 2002. In 2004 and 2005, he opened several loan accounts, ranging from \$43,000 to \$97,000. He used the money to make home improvements and to take trips. In 2006, Applicant applied for a \$100,000 home equity line of credit (HELOC), secured by the townhouse. His monthly payments were \$670 on the HELOC (allegation 1.b). (GE 4, 5; AE G; Tr. 35, 39-40)

In 2007, Applicant's mother and brother suffered strokes. His brother lost his job, and could not pay the rent to Applicant. Another brother also moved into the townhouse. On the day Applicant took his early retirement in August 2007, his mother passed away. He testified, "I think I may have went into some kind of depression. At that point for the next two years I made some bad financial decisions and that's how I got in trouble." In August 2007, he went on an Alaskan cruise, which cost \$16,000. In October 2007, he vacationed at his son's timeshare in Maui. He did not pay for accommodations, but did pay for the airfare. Applicant was subsequently unemployed and underemployed, and lived on his retirement savings. Between 2007 and 2009, he accumulated numerous delinquencies. Applicant stated during his security interview that his delinquencies resulted from his retirement, the economic crisis, and significant losses in his investments and stocks. (GE 2, AE B; Tr. 22, 35-36, 39-40, 49, 67)

In January 2010, Applicant had ten active credit card accounts and was at least one month behind on six of them. Three credit card accounts were with creditor A. One account, with a balance of approximately \$40,000, was delinquent (allegation 1.f), but he did not think the other two accounts with this creditor had been more than three months past due. In November 2009, he reached an agreement with creditor A to make monthly payments of \$1,200 that would be applied to three of his delinquent accounts. He made timely payments in the two months before his security interview in January 2010. (GE 2, AE B; Tr. 49)

Applicant investigated obtaining assistance to resolve his debts. He spoke to an attorney but did not hire him. He contacted two debt-consolidation companies, but did not hire either. One company, which he contacted in February 2010, proposed a plan to pay his debts of \$94,779. It would have required three monthly payments of \$1,409, followed by monthly payments of \$1,137 for four years. Applicant did not retain the company. (AE J; Tr. 37-38)

Applicant's personal financial statement (dated January 3, 2010 and January 3, 2011) shows net monthly income of \$7,830 and monthly expenses of \$5,050, which leaves \$2,780. The only debt payment listed is a mortgage payment of \$2,101. He

believed he did not owe on any other debts, in light of his bankruptcy petition. Applicant's monthly net remainder is \$679. (AE K; Tr. 69-71)

The SOR lists the following allegations.

Allegation 1.a – Chapter 7 Bankruptcy. Applicant retained an attorney in approximately July 2010 and filed a bankruptcy petition. The attorney's letter notes that Applicant filed Chapter 7 "to ensure that his financial issues would not affect his security clearance." The petition lists assets of \$371,886 and liabilities of \$794,501. It showed a total monthly income of \$5,710. The income included two sources: his wife's \$2,821 income and Applicant's \$2889 from unemployment compensation and "pension or retirement income."³ The bankruptcy was successfully discharged on October 25, 2010. Applicant believes that all of his debts were included in the petition. (GE 2, 5; AE E, G; Tr. 30, 74-78)

Allegation 1.b - Townhouse HELOC - \$101,000. This line-of-credit account became delinquent in 2008. Applicant contacted the lender in 2008 and 2009 to negotiate a reduced payment plan. His monthly payment was \$670; in June 2009, he was sending payments of \$300 every other month. The lender charged off the debt and sold it to a collection agency. This debt was discharged in Applicant's bankruptcy. (GE 2, 4, 5; AE G at 14; Tr. 39-41)

Allegations 1.c, 1.d. - Townhouse foreclosure: 1st mortgage \$298,000; and second mortgage \$55,551. The value of the townhouse fell during the nationwide economic crisis. Between late 2007 and December 2008, Applicant contacted the lender several times. In November and December 2008, he requested a loan modification. He stopped making mortgage payments in December 2008. In February 2009, he was informed he did not qualify for a modification. In May 2009, Applicant was delinquent \$5,034 on the second mortgage, and the lender charged off the debt and sold it to a collection agency. The second mortgage was discharged in Applicant's bankruptcy. (GE 2, 5; AE G at 20, AE I; Tr. 48)

By August 2009, Applicant was \$20,000 delinquent on the first mortgage. He knew that his lender was preparing to foreclose on the property on September 4, 2009. He contacted a company that specialized in short sales, and was told it could complete a sale within a few weeks. The short-sale company secured a buyer, who submitted earnest money. Applicant expected the company would complete the short-sale before the foreclosure. Applicant states in AE I that on September 3, 2009, his lender agreed verbally to allow the short sale. However, one week later, the short-sale company informed Applicant that it could not proceed with the short sale because the property was being foreclosed. The

³ The income listed in Applicant's petition appears to reflect the period when he was unemployed (approximately March 2010 to June 2010). He started his current full-time position on June 25, 2010. (Tr. 25) His petition was filed on July 13, 2010. (AE G)

house was foreclosed before Applicant's bankruptcy petition was filed in 2010. Applicant testified that when he filed his application in December 2009, he did not know the foreclosure had been completed. (GE 2, 4, 5; AE D, I)

Allegation 1.e. - Creditor A credit card account, past due \$250 – Applicant opened this account in 2004. His credit bureau report of December 2009 shows a balance of \$2,270. His credit history indicates he was 90 days late four times, and 120 days past due at least two times. This debt was discharged in Applicant's bankruptcy. (GE 4 at 8; AE G at 18)

Allegation 1.f. Creditor A credit card account, past due \$4,300 – In June 2003, Applicant opened this credit account. His December 2009 credit bureau report shows a balance of \$42,206. He told the security investigator that, as of mid-2009, he was six months delinquent on this account, and had received several delinquency notices. He was behind \$4,300 for at least 120 days. His payment history indicates he was late 30 days twice; 60 days five times; 90 days three times. This debt was discharged in Applicant's bankruptcy. (GE 4 at 9; AE G at 18)

Applicant completed a security clearance application in December 2009. It required him to disclose whether, during the previous seven years, he had experienced any of the following financial situations: property foreclosure; debts sent to a collection agency; accounts charged off by the creditor; debts more than 180 days delinquent; or debts more than 90 days delinquent at the time he completed the application. Applicant answered “No” to each of these questions.⁴ He did not think his townhouse had been foreclosed, because “it should have short-sold” and he was unaware in December 2009 that it had been foreclosed. He did not remember any debts being sent to a collection agency, and did not think any were more than 180 days past due. (GE 1; Tr. 52-61)

During his security clearance interview, and at the hearing, Applicant stated that he obtained a credit bureau report in December 2009, when he was completing his security clearance application. When the interviewer asked why he had not disclosed his financial situation on his application, despite having the report, Applicant said he knew his finances would be discussed during his investigation, and he did not intentionally falsify his application. At the hearing, Applicant testified that his security officer provided him with a credit bureau report when he was doing the application. He entered the financial information on his application, but the form would not “finalize,” so he decided to omit the financial information. (GE 2) He stated,

And I couldn't get my financial information to finalize and I couldn't figure out why, again, being unfamiliar with this form. So, I informed the

⁴ Applicant testified that he failed to disclose other facts on his security clearance application: a trip outside the U.S. to Mexico in 2003; and unpaid federal income taxes of approximately \$34,000 for tax year 2009. The taxes are listed in the bankruptcy petition. These items are not alleged as deliberate falsifications. (Tr. 64-65, 72-73)

[company] recruiter that I couldn't get it to finalize. He said "we need to submit this today" something to the effect of give me what you have and you can explain it all to the investigator when you speak to him. (Tr. 52)

Applicant testified that several months later, he realized that it might not have finalized because he entered the creditors' telephone numbers with dashes, which the computer program would not accept. The security clearance application that Applicant submitted contains telephone numbers both with and without dashes. Applicant also testified that he answered the financial questions truthfully and did not misrepresent his financial situation. Although he had two credit bureau reports when he completed his security clearance application – one that he had obtained and one provided by the security officer – he stated he did not understand the credit bureau reports:

I can honestly tell you I understand what not one of them says. Along with this eQIP form, I read it. I'm an intelligent individual too. I could not honestly say I understood everything that was in this form and my impression is all of that, well editorializing but the form is complicated. You are under pressure. You are out of work. The economy is bad. You need work. You need to save the house. I, to the best of my knowledge and to the best of my knowledge I answered truthfully. (GE 2; Tr. 52-59, 97)

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.⁵ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the AG.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be 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 the questions of whether it is clearly consistent with the national interest⁶ 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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁷ 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 requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁸

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to 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 known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Over the years, Applicant opened 24 credit card accounts, half of them between 2002 and 2007. By 2010, he was delinquent on at least six of them. The balance on one account alone was \$42,000. Between 2004 and 2006, he opened several home improvement/home equity loans, ranging from \$43,000 to \$100,000. In 2007, he decided to retire from a well-paid position, and was subsequently unable to maintain payments on his numerous accounts. Applicant's 2010 bankruptcy petition shows his liabilities exceeded his assets by more than \$400,000. The following disqualifying conditions under AG ¶ 19 apply:

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The Financial Considerations guideline also contains conditions that can mitigate security concerns. The following conditions under AG ¶ 20 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.

AG ¶ 20(a) does not apply. Applicant's delinquencies are not distant in time, as they were discharged in bankruptcy in October 2010, only two months before his hearing. Moreover, he made poor financial decisions in the years between 2002 and 2007 by accruing an unreasonable amount of credit card and loan debt, which could recur in the future. Applicant's history of excessive debt raises questions about his reliability and judgment.

Several events that Applicant could not have foreseen or controlled affected his ability to meet his financial obligations. He did not know that his mother and brother would experience serious illnesses, with the resulting loss of his brother's job and inability to continue paying rent to Applicant. These events were beyond his control. However, Applicant did not act reasonably in response. In 2007, after his mother had suffered a stroke, he went forward with a voluntary decision to leave a job that provided a stable and substantial income. Within two months of retiring, and with a large unresolved debt load, Applicant spent significant funds on two vacations. The job had provided a good and stable income, and subsequently, he was unemployed for a year. Applicant receives only partial mitigation under AG ¶ 20(b).

AG ¶ 20(c) requires financial counseling or indications that the problem is resolved. Applicant made sporadic efforts at obtaining financial assistance. He contacted a debt-resolution agency in February 2010; however, he did not retain it. In

July 2010, a few months after his security clearance interview, he retained an attorney and filed a Chapter 7 bankruptcy petition. In October 2010, he successfully discharged his debts, including those listed in the SOR. Applicant receives mitigation under AG ¶ 20(c).

Mitigation under AG ¶ 20(d) requires a good-faith effort to repay debts. The Appeal Board has defined “good faith” as acting in a way that shows “reasonableness, prudence, honesty, and adherence to duty or obligation.” Applicant clearly filed the bankruptcy petition in response to the security investigation, as stated in his attorney’s letter, rather than in a good-faith effort to resolve his legitimate obligations. In the same decision, the Appeal Board held that, “Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [this mitigating condition].”⁹ Applicant’s imprudent assumption of excessive debt led him to a situation where, ultimately, his only recourse was bankruptcy. Although it is a legitimate option to resolve overwhelming debt, it does not qualify under the Appeal Board’s jurisprudence as a good-faith effort. AG ¶ 20(d) does not apply.

Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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 Applicant deliberately failed to disclose true financial status, implicating 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.

Applicant failed to report any financial issues on his 2009 security clearance application. He did not report that he had debts that were sent to a collection agency; that he had debts more than 90 or 180 days past due; that he had property which had been foreclosed; and that he had debts that were charged off. His 2009 credit bureau report shows that Applicant had debts that fell into each of these categories. Applicant

⁹ ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004), quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001).

was well aware of his delinquencies. He had received notices from creditor A, to whom he owed more than \$40,000 on one account. He knew he was behind on the HELOC and was making intermittent reduced payments in mid-2009. He had been trying to avoid foreclosure, and he knew that the lender planned to foreclose on September 4, 2009, three months before he completed his security clearance application. At the time he completed his application in December 2009, he still had not resolved his financial problems, yet he submitted a “clean” application, giving the Government no indication that finances were an issue to be further investigated.

Applicant gave a variety of reasons for not disclosing his indebtedness. At his interview, he said he knew the information would be disclosed during his investigation. At the hearing, he said he was rushed by the security officer. He also said he had technical problems “finalizing” the application, a problem he had not mentioned during his security interview. Applicant had his credit bureau report available, which listed which debts were delinquent, charged off, sent to a collection agency, and 90 or 180 days past due. But he stated he did not understand the credit bureau report and disclosed no financial issues on his application. Even without his credit bureau report in hand, Applicant was well aware of his financial issues. His reasons for not disclosing his delinquencies were not credible.

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 did not inform any authorized government official that he wished to correct the answers on his application, which he maintains are accurate. Although he discussed his debts with the investigator during his interviews, the Appeal Board has held that honesty at an interview does not negate the security implications of initial dishonesty on security clearance applications.¹⁰ AG ¶17(a) cannot be applied. AG ¶17(c) also does not apply. Applicant’s conduct cannot be considered minor because he failed to be forthright with the Government during a security clearance investigation. In addition, Applicant submitted his latest security clearance application a little over one year ago, making his conduct recent. Applicant's conduct reflects poorly on his reliability and judgment.

¹⁰ ISCR Case No.02-23073 at 3 (App. Bd. Mar 20, 2004).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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 upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions under the applicable guidelines in light of all the facts and circumstances surrounding this case.

When Applicant began accruing delinquencies, he was a mature adult. He was not prudent in the years before his early retirement in 2007, when he opened 12 credit card accounts, in addition to those he already had, and had first and second mortgages on two houses. He obtained home equity lines of credit, using the funds not only for home improvements but for vacations. He traveled to Alaska and Hawaii in 2007, immediately after he left his job, and before obtaining another job. Applicant's attempts at debt resolution were fitful and incomplete. Not until after he had his security interview did he engage an attorney to file a bankruptcy petition. When he filed the petition, his liabilities surpassed his assets by more than \$400,000.

Applicant was well aware of the financial problems that arose between 2007 and 2009. Yet he did not inform the government of his delinquent debts when he submitted his security clearance application in December 2009. During his investigation, Applicant offered several reasons for his failure to disclose: he knew the government would learn of his debts through its investigation; he did not think his debts were 180 days overdue; he had technical problems with the application software; and he entered telephone numbers without dashes, which caused the software to reject his application – although his application clearly contains telephone numbers with and without dashes. Applicant's explanations were not credible, especially in light of the fact that he had his credit bureau report with him when he completed the application.

Overall, doubts remain as to Applicant's suitability for a security clearance. I conclude he has not mitigated concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline F	AGAINST Applicant
Subparagraphs 1.a. – 1.f:	Against Applicant
Paragraph 2, Guideline E	AGAINST Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge