



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



In the matter of:)	
)	
)	ISCR Case No. 10-03911
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

June 28, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations and Personal Conduct concerns. He is indebted to four creditors for over \$16,000 and failed to show that his financial problems are under control. He falsified his security clearance application by failing to disclose his debts that were in collection status. Clearance is denied.

Statement of the Case

On November 8, 2010, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information. DOHA issued a Statement of Reasons (SOR), which set forth the security concerns of Guideline F (Financial Considerations) and Guideline E (Personal Conduct), as the basis for its decision.¹

¹ This action was taken pursuant to 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.

On December 10, 2010, Applicant submitted his initial Answer to the SOR. He admitted all the allegations under Guideline F, but failed to respond to the Guideline E allegations. On January 13, 2011, Applicant submitted his second Answer to the SOR, wherein he admitted all the allegations in the SOR. He affirmatively waived his right to a hearing and requested that a decision be made on the administrative record.

On February 7, 2011, Department Counsel filed its File of Relevant Material (FORM). The FORM contains Government Exhibits (GE) 1 through 10. Applicant filed a Response to the FORM (Response), which was received by DOHA on March 15, 2011. Neither side objected to the other's submissions. Accordingly, GE 1 – 10 and Applicant's Response are admitted.² The case was assigned to me on May 18, 2011.

Findings of Fact

Applicant is 54 years old. In 2007, his wife passed away. He has two adult children. From 1981 to the present, he has primarily worked as a security guard. In 1992, he received certification as an emergency medical technician. He was first granted a security clearance in 1995. He has been with his present employer since May 2009 and has been renting a room at \$600 per month since September 2009.³

On February 12, 2010, Applicant completed and certified as "true, complete, and correct to the best of [his] knowledge and belief" a security clearance application (SCA). Section 26 of the application asked Applicant to disclose his derogatory financial information, including debts that had been "turned over to a collection agency" or were "currently over 90 days delinquent". Applicant denied he had any bad debts to report. On February 25, 2010, the government secured a credit report. This report revealed that Applicant had several accounts in collection status, including the debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.i. The dates of last activity on these four accounts range from April 2007 to November 2009.⁴

On March 16, 2010, Applicant was interviewed by an agent from the Office of Personnel Management (OPM). Applicant denied he had intentionally failed to disclose his delinquent debts on his SCA. Applicant explained his bad debts and failure to disclose these debts as follows:

Subject attributed his collections accounts to his lack of steady full-time work. Subject has worked in the security field for the past thirteen years,

² The Government requested that I take administrative notice of GE 10, which is the Equifax Training Brochure that "explains how to read Equifax credit reports." (FORM at 4). Department Counsel failed to cite to any authority for this position, and I find that GE 10 is not suitable for administrative notice. See ISCR Case No. 05-11292 at n. 1 (App. Bd. Apr. 12, 2007) (examples of matters that are proper for administrative notice). However, I have admitted GE 10 as evidence.

³ GE 5; GE 8.

⁴ GE 5 (SCA, at 45 and Signature Page); GE 6 at 5-8; GE 8 (3/10 Subject Interview); GE 10.

but has work (sic) primarily part-time over the years. Subject has made efforts to pay his collections accounts as he can based on his income. Subject estimated that he has been late on his accounts for the past thirteen years, but had always managed to make the payments before they were sent to collections agencies. In 01/2007, Subject wife passed away and Subject became overwhelmed with her passing. Subject ignored correspondences from his creditors who eventually sent his accounts to collections agencies. Subject acknowledged that he has received correspondences from the collections agencies over the years . . .⁵

At the end of the interview, Applicant noted he had hired a private company to dispute several of the bad debts appearing on his credit report and promised to resolve his financial delinquencies.⁶

In his Response, Applicant again denied intentionally omitting his adverse financial information from the SCA. Applicant claims he was being rushed to complete the application by his employer and negligently failed to disclose the adverse financial information. He was also rushing to complete the SCA because the job he was applying for was a full-time job versus the part-time jobs he had primarily held in the past.⁷

The SOR alleges 11 delinquent debts totaling \$19,756. Applicant submitted proof that he disputed seven of the debts with the credit reporting agency and they were deleted from his credit report.⁸ The remaining four accounts, SOR ¶¶ 1.c, 1.d, 1.e, and 1.i, total \$16,558. Applicant has filed disputes with the credit reporting agency as to each of these debts. The medical debt in ¶ 1.c for \$11,377 and the delinquent phone bill in ¶ 1.i for \$4,844 make up the largest portion of the total amount outstanding. Applicant did not submit any proof to substantiate his dispute as to these debts or any document showing that he has addressed these four debts directly with the creditors. The debts in ¶¶ 1.c, 1.d and 1.e are still listed on his February 2011 credit report. No evidence was submitted as to why the debt in ¶ 1.i is no longer being reported.⁹

⁵ GE 8 (3/10 Subject Interview at 1-2).

⁶ *Id.* at 2.

⁷ Response ["At the time of when I was doing my (SCA) I was under pressure to hurry up and get my (SCA) done so I could go to work . . . at the time of doing the (SCA) I was rushing thew (sic) as fast as I could and didn't mean to answer these questions (in Section 26 with a negative response) . . . in no way would I have on perpose (sic) lied I was just hurried and pressured by [] security to hurry up and get it done or (I) would not be getting to work . . ."].

⁸ *Compare*, GE 6, *Trade Section*, at 5-7, *with*, GE 3 (12/10 Credit Report at 1-3) (credit agency removes debts alleged in SOR ¶¶1.a, 1.b, 1.f, 1.g, 1.h, 1.j, and 1.k). See also, GE 8.

⁹ GE 9. See *also*, GE 3; GE 4; GE 8.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out 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.

The guideline notes several disqualifying conditions under AG ¶ 19. Applicant owes over \$16,000 in delinquent debt. He is unable or unwilling to satisfy his debts. AG ¶ 19(a) and (c) are established.¹⁰

Guideline F also lists a number of mitigating conditions under AG ¶ 20. I have considered all the mitigating conditions, and find that the following 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant disputed the debts alleged in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, 1.h, 1.j, and 1.k with the credit reporting agency and these debts have been deleted from his credit report. AG ¶ 20(e) applies to these debts, and I find in favor of Applicant as to these

¹⁰ "(a) inability or unwillingness to satisfy debts; and (c) a history of not meeting financial obligations."

debts. However, Applicant failed to submit any evidence to substantiate his dispute as to the remaining four debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.i, which total \$16,558.¹¹ AG ¶ 20(e) does not apply to these four debts.

In analyzing an applicant's debts vis-à-vis the concern of Guideline F, the Appeal Board has held that:

[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.¹²

Applicant failed to establish that he has acted responsibly under the circumstances and that his financial problems are under control. His wife's passing in 2007 and his inability to gain full-time employment until 2009 were clearly matters beyond his control that contributed to his financial situation. However, Applicant admitted during his background interview that he would regularly ignore notices from his creditors and has not presented any evidence that he has satisfied or contacted the creditors for the debts in SOR ¶¶ 1.c, 1.d, 1.e, and 1.i. The collection accounts in SOR ¶¶ 1.d and 1.e are for past-due utility bills and together total just \$337. Applicant failed to explain why he could not satisfy these relatively minor debts when he has been employed full time since 2009. Although he is apparently living a somewhat frugal lifestyle, he has not taken a financial counseling course and failed to demonstrate that his financial problem is under control. Applicant failed to establish any of the mitigating conditions under Guideline F, except for those debts removed from his credit report, as noted above. Applicant failed to mitigate the Guideline F concern.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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.

The guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16. I have considered all the disqualifying conditions and find that the following warrants discussion:

¹¹ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate their claim about the debts at issue).

¹² ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 9, 2009).

(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 security clearance process is contingent upon the honesty of all applicants seeking access to classified information, and begins with the answers provided in the security questionnaire. An applicant should err on the side of over-inclusiveness and, when in doubt, disclose any potential derogatory information that is responsive to a question in the questionnaire. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified their security questionnaire. Instead, an Administrative Judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.¹³

Applicant intentionally falsified his SCA when he omitted his delinquent debts that were in collection status. Applicant admitted that he would regularly ignore delinquency notices from his creditors. During his March 2010 interview, he admitted that he was aware that he was at least 13 months late on several debts. This is just a month after completing his SCA where he failed to disclose any derogatory financial information in response to the detailed questions in Section 26. Applicant has previously been granted a clearance and, thus, should have been aware of the importance of providing truthful, complete, and accurate information on a security questionnaire. I did not find his explanation of purportedly being rushed by his employer credible. He failed to list any derogatory financial information on his SCA because he needed a full-time job.

AG ¶ 17 sets forth several conditions that could potentially mitigate the Personal Conduct security concern. I have considered all the mitigating conditions under AG ¶ 17, but only the following is relevant:

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

Applicant continues to deny he falsified his SCA. His dishonesty on the SCA and continued failure to admit his dishonest conduct calls into question his reliability, trustworthiness, and ability to protect classified information. Applicant failed to establish AG ¶ 17(a) and to mitigate the Personal Conduct security concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's

¹³ ISCR Case No. 07-16511 at 4 (App. Bd. Dec. 4, 2009) ("In the case of an omission in a SCA or some other document, the Government's burden of production requires more than merely showing that the omission occurred. Rather, the Government must present substantial evidence that the omission was deliberate.").

conduct and all the relevant circumstances. An 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.

Applicant has been faced with several challenges that have affected his ability to meet his financial obligations. It appears that he has started down the right path, but he failed to address even the most minor debts that are still outstanding. Applicant's favorable whole-person factors do not mitigate the serious security concerns raised by his conduct, not the least of which was his decision to deliberately falsify his SCA.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a, 1.b, 1.f, 1.g, 1.h, 1.j, and 1.k: **For Applicant**

Subparagraphs 1.c, 1.d, 1.e, and 1.i: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: **Against Applicant**

Conclusion

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

Francisco Mendez
Administrative Judge