



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



In the matter of:)
)
) ISCR Case No. 10-06464
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

September 27, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Statement of Case

On March 22, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On April 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided an answer to the SOR, dated May 5, 2011. He did not request a hearing. The Government compiled its File of Relevant Material (FORM) on May 19, 2011. The FORM contained documents identified as Items 1 through 10. On May 25, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 31, 2011. His response was due on June 30, 2011. Applicant did not file any additional information within the required time period. On August 3, 2011, the case was assigned to me for a decision.

Procedural Matters

The allegation at SOR ¶ 2.a. mistakenly identifies Section 26c on the e-QIP Applicant completed on March 22, 2010, when quoting Section 26b. Accordingly, on my own motion, I strike the reference to Section 26c and correct in pertinent part the text of SOR ¶ 2.a. to read as follows:

- a. You falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by you on or about March 22, 2010, in response to ‘**Section 26, Financial Record** . . . b. Have you had any possessions or property voluntarily or involuntarily repossessed [or] foreclosed?’

Findings of Fact

The SOR contains five allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.e.), and five allegations of disqualifying conduct under Guideline E, Personal Conduct (SOR ¶¶ 2.a. through 2.e.). In his Answer to the SOR, Applicant admitted all Guideline F and Guideline E allegations. Applicant’s admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant’s 2010 e-QIP; official investigation and agency records; Applicant’s responses to DOHA interrogatories;¹ and Applicant’s credit reports of August 9, 2005, March 27, 2010, February 6, 2011, and May 19, 2011. (See Items 4 through 10.)

Applicant is 47 years old, divorced, and the father of two children. He has a high school diploma. He has worked for his present employer, a federal contractor, since 1985. He was awarded a security clearance in 2005. (Item 4.)

¹Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on April 6, 2010. On March 3, 2011, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of the interview and found it to be true and correct. He made no changes, corrections, or revisions to the investigator’s summary. (Item 5.)

Applicant married for the first time in 1986. He and his first wife divorced in 1995. Applicant married for a second time.² His second wife did not have good credit. Accounts opened during the marriage were in Applicant's name only, although Applicant's wife was authorized to use some of the accounts. In 2007, Applicant's wife refused to help pay their joint debts, and she left the marriage in 2008. (Item 4; Item 5 at 3.)

The SOR alleges that Applicant is responsible for delinquent debts totaling \$17,567. (SOR ¶¶ 1.a. through 1.e.) Four of the delinquent debts alleged in the SOR are in collection status (SOR ¶¶ 1.a., 1.b., 1.d., and 1.e.). A fifth debt, alleged at SOR ¶ 1.c., recites a credit account charged off by the creditor. In his response to DOHA interrogatories, dated March 3, 2011, Applicant stated that the debts later alleged on the SOR had not been paid, and no payment plans were in place for the resolution of the debts. (Item 1; Item 6.)

Applicant has a history of financial difficulties. In 2009, a judgment was entered against him for approximately \$18,963. He provided documentation showing that, since April 15, 2010, the judgment was being satisfied by a \$250 garnishment from his pay every two weeks. (Item 1; Item 3; Item 6.)

In 2009, a judgment for \$2,462 was filed against Applicant when he failed to repay a personal loan. The judgment was satisfied in about December 2009 through garnishments from Applicant's paycheck. (Item 1; Item 3; Item 5.)

In 2008, another judgment was filed against Applicant for \$4,247. This judgment was satisfied in about November 2008 through garnishment. (Item 1; Item 3; Item 5.)

In 1997, Applicant purchased a house for \$135,000. In November 2004, Applicant refinanced the mortgage on the house and used \$50,000 from the refinance to purchase another house, which he designated as a rental property. In July 2005, Applicant refinanced the house again and took \$100,000 from the refinance proceeds to pay off his debts. When the housing market dropped in 2008 and his second wife left the marriage, Applicant was unable to make payments on the house. The value of the house dropped, and Applicant approached the lender and requested forbearance. The lender denied Applicant's request for forbearance. The property was foreclosed upon in about 2009. (Item 5 at 5.)

Applicant purchased another residence in 2007. His monthly payments of his first and second mortgages were \$2,811. Applicant told the OPM investigator that the rise in the cost of living, increased expenses, and his obligation to pay college tuition costs for one of his children caused him to fall 180 days in arrears in paying his combined mortgages. (Item 5.)

² Applicant did not list his second marriage on his e-QIP. The information about his second marriage appears in his personal subject interview. (Item 4; Item 5 at 3.)

Applicant completed and certified an e-QIP on March 22, 2010. Section 26b of the e-QIP asks: "Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?" Applicant responded "No" to Section 26b. He did not reveal that real property he owned was foreclosed upon in 2009. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.a. (Item 1; Item 4.)

Section 26e on the e-QIP asks: "Have you had a judgment entered against you?" Applicant responded "No" to Section 26e. He did not reveal the three judgments for \$2,462, \$4,247, and \$18,963 entered against him in 2008 and 2009. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.b. (Item 1; Item 4.)

Section 26g on the e-QIP asks: "Have you had any bills turned over to a collection agency?" Applicant responded "No" to Section 26g. He did not reveal that the debts alleged at SOR ¶¶ 1.a., 1.b., 1.d., and 1.e. were in collection status and had been turned over to collection agencies. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.c. (Item 1; Item 4.)

Section 26h on the e-QIP asks: "Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" Applicant responded "No" to Section 26h. He did not reveal that the debt alleged at SOR ¶ 1.c. had been charged off. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.d. (Item 1; Item 4.)

Section 26m on the e-QIP asks: "Have you been over 180 days delinquent on any debt?" Applicant responded "No" to Section 26m. He did not reveal that he was over 180 days past due on his home mortgage. Applicant's failure to reveal this information is alleged as a deliberate falsification in SOR ¶ 2.e. (Item 1; Item 4.)

On March 22, 2010, after completing his e-QIP, Applicant signed the following certification:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the foregoing instructions to complete this form. I understand that a knowing and wilful false statement on this form can be punished by fine or imprisonment or both. (18 U.S.C. 1001). I understand that intentionally withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance, or my removal and debarment from Federal service.

In his March 2011 response to DOHA interrogatories, Applicant stated that he did not provide accurate information about his financial delinquencies on his e-QIP because he “thought [his] financial business was personal information[,] not realizing the impact it could have . . . on [his] clearance.” In his May 2011 answer to the SOR, Applicant stated that he was under stress from his divorce when he completed the e-QIP. He stated that he did not read the questions carefully and did not intend to answer any of the questions on the e-QIP incorrectly. (Item 3.)

Applicant provided a personal financial statement in response to DOHA interrogatories. He reported a net monthly salary of \$4,691.78, monthly living expenses of \$625, and \$4,290 in monthly debt payments.³ He listed a monthly net remainder of \$401. The record does not reflect that Applicant has had financial credit counselling. (Item 6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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.

³ The monthly debts identified by Applicant for payment did not include the delinquent debts alleged on the SOR. (Item 6.)

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.” 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 relating to the guideline 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 two conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially

disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

Applicant admits five delinquent debts that total approximately \$17,567. These debts remain unsatisfied. Applicant put forward no plans or arrangements to resolve his delinquent debts. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. He has not made good-faith efforts to pay or otherwise resolve the debts alleged in the SOR. His delinquencies are recent and ongoing. They have occurred under circumstances that are likely to recur.

Applicant has been steadily employed with his current employer since 1985. While he claims his second divorce caused financial problems beyond his control, he failed to show that he acted responsibly when faced with debts from his second marriage. He did not provide documentation to establish that his failure to satisfy his creditors is the result of circumstances beyond his control. The record does not reflect that Applicant has had financial counseling.

In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that none of the financial considerations mitigating conditions fully applies to the facts of Applicant’s case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

When Applicant completed and signed his e-QIP in March 2010, he failed to provide truthful answers to queries about his foreclosure, three judgments, four debts in collection status, one debt in charged-off status, and a mortgage delinquency of over 180 days. The SOR alleged that Appellant's "No" responses to these questions were deliberate falsifications. Applicant admitted the falsifications but denied that they were willful and deliberate.

DOHA's Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant's false answers raise a security concern under AG ¶ 16(a), which reads: "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 was an experienced federal contractor employee who held a security clearance. As a person entrusted with access to classified information, he had reason to know that he was required to answer all questions on the e-QIP truthfully. He knew that his financial problems were serious and long-standing. He also knew when he applied

for a security clearance as a government contractor that his background would be investigated thoroughly.

Applicant wanted to receive a security clearance. He had good reason to know that his current financial delinquencies might prevent him from receiving a security clearance. Instead of revealing these matters on his e-QIP, Applicant chose to conceal these matters from the Government.

In his answer to the SOR, Applicant argued that the stress he felt as a result of his second divorce impacted his ability to read the e-QIP questions thoroughly and to answer them truthfully. He denied intentionally falsifying his answers to the e-QIP questions. These assertions lack credibility when viewed against Applicant's experience as a federal contractor who knew, or should have known, the importance of telling the truth to the Government.

Several Guideline E mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "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," then AG ¶ 17(c) might apply.

AG ¶ 17(d) might apply if "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." AG ¶ 17(e) might apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant falsified material facts on the e-QIP that he executed and certified as true in 2010. Nothing in the record suggests that he took prompt good faith action to correct the omissions, concealments, or falsifications before he was confronted with the facts. Nothing in the record suggests that his failure to report his several financial delinquencies was caused or significantly contributed to by improper or inadequate advice specifically about the security clearance process from authorized individuals or legal counsel. (AG ¶ 17(b).) When he executed his security clearance application, Applicant knew or should have known that he had a record of financial delinquency and mismanagement. As a mature adult, he knew that his financial problems were not minor, so remote in time, so infrequent, or had occurred under such unique circumstances that they would not seriously impact his eligibility for a security

clearance. (AG 17(c).) Applicant failed to provide documentation that he obtained counseling or had taken other positive steps that might alleviate the circumstances that caused his unreliable conduct and, as a result, such behavior was unlikely to recur. (AG ¶ 17(d).) Nothing in the record suggests that Applicant took positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress that his behavior caused. (AG ¶ 17(e).) I conclude, therefore, that none of the applicable personal conduct mitigating conditions applies to the facts of Applicant's case. I also conclude that Applicant's falsifications on his 2010 e-QIP were deliberate.

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 conduct and all relevant circumstances. 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant deliberately falsified his answers on the e-QIP he completed and certified in 2010. He failed to reveal that he lost a home to foreclosure, had been served with three judgments that were resolved by wage garnishments, had accounts that were charged-off or referred for collection, and was over 180 days past due in paying his mortgage. He provided no documentation to establish that he had established a plan to pay his debts and remain solvent in the future. Applicant's ongoing financial delinquencies and lack of candor in reporting them on his 2010 e-QIP raise concerns about his judgment, trustworthiness, and reliability.

Overall, the record evidence leaves me with serious doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies and personal conduct.

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.e.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraphs 2.a. - 2.e.: 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.

Joan Caton Anthony
Administrative Judge