



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



In the matter of:)
)
) ISCR Case No. 10-07076
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/20/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns generated by his history of financial delinquencies and his failure to disclose them, as required, on his security clearance application. Clearance is denied.

Statement of the Case

On October 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 8, 2011, denying all of the allegations and requesting a hearing. The case was assigned to me on January 18, 2012 after

having been previously assigned to another judge. A notice of hearing was issued on January 20, 2012, scheduling the case for February 8, 2012. I held the hearing as scheduled and received six Government exhibits, marked as Government Exhibits (GE) 1 through 6, and 12 Applicant Exhibits (AE) marked as AE A through L. Also, I considered the testimony of Applicant.

At the close of the hearing, I left the record open, at Applicant's counsel's request, for the submission of additional exhibits. Within the time allotted, he submitted eight additional exhibits marked as AE M through T. DOHA received the transcript (Tr.) on February 16, 2012.

Findings of Fact

Applicant is a 44-year-old man with two children, ages 23 and 13. He has a high school education and has obtained some certifications in information technology. Applicant started his current job two days before the hearing. He is an information technology consultant for a defense contractor. She has a high school diploma and has earned two and a half years of college credit. (Tr. 28)

From 2005 to 2008, he worked as a field services technician for a telecommunications contractor. (GE 1 at 18) He was then laid off and unemployed for approximately a year. (Tr. 41) For the next three years, Applicant struggled to find long-term, steady employment. Typically, six months to one year employment stints were followed by periods of unemployment. Before obtaining his current job, Applicant had been unemployed for approximately three months. (Tr. 22)

In 2008, Applicant and his girlfriend, the mother of his children, with whom he had lived for the previous 20 years, separated. (Tr. 18) Applicant retained physical custody of their teenage son. (Tr. 78) While Applicant and his girlfriend were together, she managed the family finances. After their separation, Applicant discovered that she accrued debts without his knowledge and failed to pay many of the bills. (Tr. 18) Because of his struggles finding steady employment, Applicant was unable to sustain any debt repayment efforts. Also, each time he obtained a new job, he had to relocate at his own expense. (GE 3 at 4) By 2010, he had accrued approximately \$19,000 of delinquent debt. One of the debts, subparagraph 1.a, resulted in a civil judgment entered against Applicant.

In November 2010, Applicant contacted a credit management company to help him get some of his debts removed from his credit reports. They successfully got subparagraph 1.o removed from his credit report. (Tr. 56) The credit management company also gave Applicant suggestions for organizing his finances. (Tr. 56-57)

Currently, Applicant has paid the debt listed in subparagraph 1.i. (AE B at 12) He settled subparagraph 1.d (delinquent rent), for \$2,635, approximately \$500 less than the balance. (AE M) Per the agreement, Applicant will pay \$439 per month from February

2012 to June 2012, then make a final payment of \$1,102 in July 2012. As of the hearing date, he had not yet begun implementing the payment plan.

Applicant also settled the debt listed in subparagraph 1.g, totaling \$3,858. He has been making monthly \$259 payments since August 2011. (AE O)

Applicant contends he also satisfied subparagraphs 1.b, 1.c, 1.e, 1.f, 1.j, 1.l, and 1.m. He provided no supporting documentation. Applicant disputes 1.a, 1.k, 1.h, and 1.n. Applicant provided correspondence from the creditor listed in subparagraph 1.a indicating that the balance was zero; however, the account number of the debt referenced in the correspondence does not match the account number of the debt listed in subparagraph 1.a. (*compare* AE T with GE 4 at 2-3) I find that subparagraph 1.a and the debt referenced in AE T are different accounts with the same credit card company. As for the remainder of the disputed debts, Applicant provided no evidence of contacts with the creditors setting forth the basis of the disputes.

Applicant maintains a budget. Because he just started his current job, the budget is based upon his monthly unemployment security benefit. (Tr. 65) He intends to live off of the same budget he used while unemployed even though his monthly salary is more than what he received in monthly unemployment compensation. (Tr. 77) He has approximately \$1,000 in savings. (Tr. 68)

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2010. In response to Question 26e,¹ Applicant did not list the judgment as set forth in subparagraph 1.a. Also, Applicant listed neither any of his debts that had been referred to collection in response to Question 26g,² nor any of his debts that were 90 days delinquent in response to Question 26n.³

Applicant testified that the only debts of which he was aware when he completed the e-QIP were subparagraphs 1.a, 1.f, and 1.g. (Tr. 52) He contends that he included these debts, but they did not appear when he input them electronically. Applicant testified that he then notified his company's facility security officer of the problem. (Tr. 52) During an interview with an investigator, in July 2010, Applicant stated that he did not list the debts because he was unaware he was required to do so. (GE 3 at 4)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the

¹Have you had bill of debts turned over to a collection agency?

²Have you had bills of debts turned over to a collection agency?

³Are you currently 90 days delinquent on any debt(s)?

adjudicative process. 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial delinquencies triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 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.

Applicant's financial problems were primarily caused by employment instability. The disruption resulting from the separation from his long-time girlfriend who, unbeknownst to Applicant, mismanaged the family's finances when they were together, also contributed to his financial problems. Since then, Applicant has consulted a credit management agency and begun satisfying his delinquent debts. AG ¶¶ 20(b), the first prong of 20(c), and 20(d) apply.

The delinquencies that Applicant contends he has paid total approximately \$10,500. Applicant provided corroborating documentary evidence establishing payment of only half of that amount. Similarly, Applicant disputed approximately \$6,500 of the delinquencies, but provided no documented proof to substantiate the basis for disputing them. Although Applicant got subparagraph 1.o removed from his credit report, he did not establish that this debt was not his responsibility. I conclude that neither the second prong of AG ¶ 20(c) “. . . there are clear indications that the problem is being resolved or is under control,” nor AG ¶ 20(e) apply.

Guideline E, Personal Conduct

Under this guideline, “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.” Moreover, “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.” (AG ¶ 15)

Applicant's omission of relevant and material information about his finances from his security clearance application raises the issue of whether 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,” applies. Applicant's explanation provided at the hearing contradicted his earlier explanation to the investigator during his subject interview. This contradiction undermines his credibility. I conclude AG ¶ 16(a) applies without mitigation.

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 the applicant's conduct and all the 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.

Applicant's employment instability and his then-girlfriend's mismanagement of their finances significantly contributed to his financial problems. There is some presence of rehabilitation as demonstrated by the payment plans Applicant has implemented. However, Applicant failed to provide enough supporting documentation to overcome the financial security concern.

Lastly, Applicant falsified his security clearance application generating an unmitigated personal conduct security concern. Considering this case in the context of the whole-person concept, I conclude Applicant failed to mitigate the security concerns.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h - 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k - 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	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.

MARC E. CURRY
Administrative Judge