



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



In the matter of:)	
)	
)	ISCR Case No. 10-07318
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On February 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On March 7, 2011, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on May 19, 2011. The FORM was forwarded to Applicant on May 25, 2011. Applicant received the FORM on June 1, 2011. He had 30 days to submit a response to the FORM. He did not submit additional information. On August 2, 2011, the FORM was forwarded to the hearing office and was assigned to me on August 3, 2011.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits SOR allegations ¶¶ 1.a -1.c, 1.e, 1.j, 1.l, and 1.m. He denies SOR allegations ¶¶ 1.d, 1.f – 1.i, 1.k, and 1.n – 1.w. (Item 3) In the FORM, the Government moved to strike SOR ¶ 1.x because it is a duplicate of SOR ¶ 1.n. SOR ¶ 1.x is found for Applicant.

Applicant is a 44-year-old employee of a Department of Defense contractor seeking a security clearance. He has been employed with the company since February 2010. He is a high school graduate. From October 1990 to March 2005, he served on active duty in the U.S. Navy. He is single and has no children. (Item 6)

On March 3, 2010, Applicant completed a security clearance questionnaire in order to apply for a security clearance. Section 26 of the questionnaire asked questions about Applicant's financial record. There were 15 questions, and Applicant answered "No" to all of the questions. In particular, he answered, "No" to question 26f "Have you defaulted on any type of loan?"; question 26g "Have you had bills or debts turned over to a collection agency?"; question 26h "Have you had any account or credit card suspended, charged off, or cancelled for failing to pay a debt as agreed?"; question 26m "Have you been over 180 days delinquent on any debt(s)?"; and question 26n "Are you currently 90 days delinquent on any debt(s)? (Item 6)

Applicant's security clearance background investigation revealed 24 delinquent accounts with an approximate total balance of \$31,821. The delinquent accounts include: a \$53 account placed for collection in November 2009 (SOR ¶ 1.a: Item 9 at 1; Item 10 at 1); a \$7 account placed for collection in November 2009 (SOR ¶ 1.b: Item 9 at 1; Item 10 at 1); a \$249 delinquent apartment lease placed for collection in July 2006 (SOR ¶ 1.c: Item 9 at 1; Item 10 at 11); a \$249 delinquent satellite television account placed for collection in June 2007 (SOR ¶ 1.d: Item 9 at 1); a \$475 cable television account placed for collection in January 2007 (SOR ¶ 1.e: Item 9 at 1; Item 10 at 1); a \$449 credit card account placed for collection in October 2010 (SOR ¶ 1.f: Item 9 at 1-2; Item 10 at 1-2); a \$770 delinquent loan placed for collection in November 2010 (SOR ¶ 1.g: Item 9 at 2; Item 19 at 2); and a \$403 delinquent credit card account placed for collection in November 2010 (SOR ¶ 1.h: Item 9 at 2).

Additional delinquent accounts include: a \$741 delinquent credit card account placed for collection in July 2009 (SOR ¶ 1.i: Item 9 at 2; Item 10 at 2); an \$8,953 deficiency balance from an automobile loan that was charged off in November 2010 (SOR ¶ 1.j: Item 9 at 2; Item 10 at 2); a \$3,529 delinquent account that was charged off in November 2010 (SOR ¶ 1.k: Item 9 at 2; Item 10 at 2); a \$127 parking ticket placed for collection in November 2006 (SOR ¶ 1.l: Item 7 at 3); a \$228 parking ticket placed for collection in November 2007 (SOR ¶ 1.m: Item 7 at 3); a \$1,531 delinquent credit card account placed for collection in May 2008 (SOR ¶ 1.n: Item 7 at 4); a \$531 credit

card account that was charged off in March 2008 (SOR ¶ 1.o: Item 7 at 4); a \$959 delinquent credit card account placed for collection in March 2008 (SOR ¶ 1.p: Item 7 at 5); a \$1,261 delinquent credit union account placed for collection in March 2010 (SOR ¶ 1.q: Item 7 at 6; Item 9 at 1; Item 10 at 1); and a \$1,101 delinquent credit card account placed for collection in July 2007 (SOR ¶ 1.r: Item 7 at 3; Item 10 at 2).

Additional delinquent accounts include: a \$300 cash advance account placed for collection in October 2009 (SOR ¶ 1.s: Item 7 at 7, 11); a \$640 delinquent account placed for collection in October 2009 (SOR ¶ 1.t: Item 7 at 7); a \$7,474 automobile loan deficiency resulting from a repossession in 2008, placed for collection in February 2010 (SOR ¶ 1.u: Item 7 at 11, 12; Item 8 at 4); a \$1,035 delinquent credit card account placed for collection in November 2009 (SOR ¶ 1.v: Item 7 at 12); a \$225 storage account placed for collection in April 2009 (SOR ¶ 1.w: Item 7 at 12); and a \$531 delinquent account placed for collection. (SOR ¶ 1.x: Allegation found for Applicant. This debt is a duplicate of the debt alleged in SOR ¶ 1.n).

In his answer to the SOR, Appellant stated that debts alleged in SOR ¶¶ 1.c, 1.e, 1.i and 1.m will be paid in full by June 1, 2011. He did not provide receipts verifying this assertion. He claims he formally disputed the debts alleged in SOR ¶¶ 1.f – 1.i, 1.k, 1.n – 1.t, 1.v, and 1.w. He claims that he did not open these accounts. He did not provide proof that he submitted a formal dispute and any results from the dispute. If the debts alleged in SOR ¶¶ 1.f, 1.k, 1.n, 1.q, 1.r and 1.v were actually determined to be his debts, he claims that they are uncollectable because the statute of limitations has passed. (Item 3)

Applicant indicated that he intends to make payments towards the \$8,943 charged off automobile repossession account alleged in SOR ¶ 1.j. He previously mentioned during a personal subject interview on March 26, 2010, that he agreed to make \$200 monthly payments towards this debt beginning in July 2010. He provided no proof that he began making payments in July 2010 nor did he provide a written agreement between himself and the creditor. The debt remains unresolved. (Item 3; Item 8) He also claims that the debt alleged in SOR ¶ 1.j is the same as the debt alleged in SOR ¶ 1.u. Upon looking at three different credit reports, the debts have the same account number. I find that SOR ¶ 1.u is a duplicate of the debt alleged in SOR ¶ 1.j and find for Applicant with regard to SOR ¶ 1.u.

Applicant claims the debt alleged in SOR ¶ 1.d is deleted from his credit report. He provided no proof that the debt was deleted. He indicated the debts alleged in SOR ¶¶ 1.a and 1.b were resolved. A credit report dated May 19, 2011, verifies that these debts were paid. I find for Applicant with respect to SOR ¶¶ 1.a and 1.b. (Item 3; Item 10)

During his personal subject interview on March 26, 2010, Applicant indicated that he filed for bankruptcy in 1998. He believed the debts alleged at SOR ¶¶ 1.k, 1.p, and 1.r were discharged in his 1998 bankruptcy. He did not provide a copy of his 1998 bankruptcy case. Applicant admits that his financial problems resulted from living

beyond his means. After his 1998 bankruptcy, Applicant believes that he has a better understanding of financial responsibility. He indicates that he did not list his delinquent accounts on his security clearance questionnaire because he did not have a copy of his credit report with him. He claims that he was not aware of the delinquent accounts and assumed the background investigation would obtain information about his delinquent accounts. (Item 8)

On November 15, 2010, Applicant certified that the summary of his personal subject interview conducted on March 26, 2010 was accurate. In his response he added a letter dated November 11, 2010, updating the status of his delinquent accounts. He reasserted his claim that the debts alleged in SOR ¶¶ 1.p and 1.r were discharged in bankruptcy. He claims he paid the debts alleged in SOR ¶¶ 1.d and 1.e. He indicated the debt alleged in SOR ¶ 1.k was charged off and the debt alleged in SOR ¶ 1.w no longer appears on his credit report. He claims a friend is responsible for the parking tickets alleged in SOR ¶¶ 1.l and 1.m. He disputes the debts alleged in SOR ¶¶ 1.f – 1.h, 1.n, 1.o, 1.r – 1.t, and 1.c because he claims they do not belong to him. (Item 8)

Applicant has not provided documentation to verify any of his assertions pertaining to debts being discharged in his 1998 bankruptcy, debts being paid, or that he formally disputed the accounts that he claims do not belong to him. He did not provide any reference letters or copies of his performance evaluations for consideration under the whole-person factors.

Policies

When evaluating an applicant's suitability for a security clearance, the 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 must be considered when 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, these guidelines are applied 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining 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 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find disqualifying conditions AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has a history of not meeting financial obligations as indicated by the 24 delinquent accounts discovered during his background investigation.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant’s case: 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) does not apply. Applicant continues to have financial problems. He did not provide information regarding his income and expenses. I cannot ascertain if he has sufficient money left over each month to resolve his delinquent debts. Although not alleged in the SOR, Applicant filed for bankruptcy in 1998, which indicates he has long history of financial irresponsibility. While he claims that most of the debts do not belong to him or that he resolved the debts, he provided no evidence corroborating his assertions. His financial situation continues to cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) does not apply. Applicant admitted that his financial problems were caused by him living beyond his means. He provided no evidence that the financial problems were caused by circumstances beyond his control.

AG ¶ 20(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) does not apply. Applicant did not indicate that he attended formal financial counseling. It would be helpful for him to do so in order to learn how to create a budget and manage his finances more effectively. Most of the delinquent debts remained unresolved at the close of the record. Applicant's financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.a and 1.b. He did not provide proof that he paid any of the other debts alleged in the SOR.

AG ¶ 20(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) potentially applies to the debts that Applicant disputes. However, he did not provide proof that he took steps to formally dispute the debts with the credit reporting agencies and/or pursue a formal dispute with the respective creditors. For this reason, I cannot apply AG ¶ 20(e) to any of Applicant's disputed debts.

Applicant also raised the possibility that several of his accounts are uncollectable because of the statute of limitations. Even if the debts were legally unenforceable under the state law where he acquired the debt, the circumstances under which Applicant acquired them remains a security issue because he owes these debts and refuses to pay them. (See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003)). In this case, Applicant used poor judgment and spent beyond his means, resulting in a large amount of delinquent unresolved debts. He incurred these debts after apparently receiving a bankruptcy discharge in 1998. Applicant did not provide sufficient mitigating evidence to establish that he is resolving his delinquent accounts and that he is taking

steps such as creating a budget and attending financial counseling to prevent future financial problems. The financial considerations concerns are not mitigated.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

Under the personal conduct concern the following disqualifying condition potentially applies to Applicant's case in regard to his omission of his delinquent accounts in response to the questions 26f, 26g, 26h, 26m and 26n on his security clearance questionnaire signed by Applicant on March 3, 2010: 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 provided a negative response on all of the questions related to financial considerations despite his extensive delinquent debt. In response to question 26f, which asks Applicant if he has defaulted on any type of loan, he should have listed his two automobile repossessions that are alleged in SOR ¶¶ 1.j and 1.u.

In response to question 26g, which asks whether Applicant had any bills or debts turned over to a collection agency, he did not list the collection accounts alleged in SOR ¶¶ 1.a – 1.f, 1.l, 1.m, 1.p, 1.q, 1.s -1.w. In response to question 26h, which asks whether Applicant any account or credit card account suspended, charged off, or cancelled for failing to pay as agreed, he should have listed the charged off accounts alleged in SOR ¶¶ 1.j, 1.k, 1.n, 1.o, and 1.r.

Finally, in response to question 26m which asks whether Applicant has been over 180 days delinquent on any debt(s), and 26n, which asks whether Applicant is currently over 90 days delinquent on any debt(s), he should have listed the delinquent debts alleged in SOR ¶¶ 1.a – 1.e, 1.i, 1.l – 1.w.

Applicant claims in his response to the SOR, that he did not disclose the delinquent accounts on his security clearance application because he did not have a copy of his credit report. He did not become aware of the delinquent accounts until he was interviewed by the investigator conducting his background investigation. During the background investigation interview, he admitted responsibility for some of the debts that

he knew were his but claimed he did not deliberately falsify his security clearance application. I find his assertions not credible based on the extensive amount of delinquent debt and his history of financial irresponsibility, including a 1998 bankruptcy discharge. Approximately 24 delinquent accounts were discovered during his background investigation, including a broken apartment lease in 2006, and two car repossessions. It is unlikely that a reasonable person would forget such debts. I find Applicant intentionally omitted his financial delinquencies from his security clearance questionnaire.

Several personal conduct mitigating conditions potentially apply:

AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts):

AG ¶ 17(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); and

AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

AG ¶ 17(a) does not apply because Applicant did not make prompt good-faith efforts to correct his falsifications before being confronted with the facts.

AG ¶ 17(c) does not apply because questions about Applicant's reliability, trustworthiness, and good judgment remain. Deliberately providing false information to the government is a serious offense. Applicant deliberately withheld from the Government his problematic financial situation.

AG ¶ 17(e) applies because Applicant cooperated when he was confronted about his delinquent accounts. Although AG ¶ 17 applies, a security concern remains because of Applicant's deliberate omission of his delinquent debts on his security clearance questionnaire.

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 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. I considered Applicant's active duty service in the Navy. I considered that Applicant received a bankruptcy discharge in 1998. I considered Applicant's explanations about the status of his accounts. However, he did not provide any documentary evidence to corroborate his assertions. I find Applicant did not meet his burden of proof to mitigate the concerns raised under financial considerations and personal conduct.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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, which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their finances, this can raise doubts about an individual's ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations 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.b:	For Applicant
Subparagraphs 1.c – 1.w:	Against Applicant
Subparagraph 1.x:	For 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge