



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



In the matter of:)	
)	
)	ISCR Case No. 10-07713
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 18, 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. DOHA acted under Executive Order (EO) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on May 17, 2012. DOHA issued a notice of hearing on May 31, 2012, and the hearing was convened as scheduled on June 18, 2012. The Government offered exhibits (GE) 1 through 6, which were admitted

without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. The record was held open until July 23, 2012, for Applicant to submit additional evidence. He did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on July 2, 2012.

Findings of Fact

Applicant admitted some of the SOR factual allegations and denied others. These admissions are incorporated as findings of fact. After a review of the pleadings, testimony, and admitted exhibits, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a defense contractor who works as a translator. He has worked for his employer for about three years and has been deployed overseas for about 24 months. He is married and has three children. He has a high school diploma.¹

The SOR alleged a judgment, a federal tax lien, and eight delinquent debts totaling approximately \$16,419. The debts were listed on credit reports obtained in May 2010, June 2010, and April 2011.²

Applicant currently makes about \$185,000 per year in his translator position. However, before he was hired in his current position he worked in the retail industry and made about \$1,800 per month. The debts listed in the SOR were primarily accrued during the time when he was making significantly less money at his job.³

The debt alleged in SOR ¶ 1.a is a delinquent student loan account in the amount of \$3,268. Applicant attended school for a short time then dropped out. He was responsible for the tuition. He was sent a bill for the debt in 2000. He stated he paid this amount, but provided no supporting documentation. This account is unresolved.⁴

The debt alleged in SOR ¶ 1.b is a judgment filed against Applicant in the amount of \$1,135. This delinquent debt arose from the use of an ambulance service when he was involved in an automobile accident. He believed his then employer would pay the amount, but it did not. He was aware of the judgment entered against him. He stated he paid this amount, but provided no supporting documentation. This account is unresolved.⁵

¹ Tr. at 6-7, 26-28.

² GE 4-6.

³ Tr. at 35-37.

⁴ Tr. at 30-31.

⁵ Tr. at 45-48.

The debt alleged in SOR ¶ 1.c is a federal tax lien in the amount of \$5,515. Applicant believes this tax debt accrued when he was living in a different state. He does not recall why the lien was entered against him. He does recall receiving notice of the lien in approximately 1994. He has attempted to call the IRS to resolve this debt with no success. This debt is unresolved.⁶

The debt alleged in SOR ¶ 1.d is a collection for a utility account in the amount of \$498. He claims he paid this debt, but provided no documentation supporting his assertion. This debt remains unresolved.⁷

The debt alleged in SOR ¶ 1.e is a collection for a consumer account in the amount of \$78. He claims he paid this debt, but provided no documentation supporting this assertion. This debt remains unresolved.⁸

The debts alleged in SOR ¶¶ 1.f and 1.g are medical collection accounts in the amounts of \$1,638 and \$322, respectively. He claims he paid these debts, but provided no documentation supporting this assertion. These accounts are unpaid and unresolved.⁹

The debt alleged in SOR ¶ 1.h is a collection on a consumer account in the amount of \$137. He claims he paid this debt, but provided no documentation supporting this assertion.¹⁰

The debt alleged in SOR ¶ 1.i is a collection for a cable television account in the amount of \$213. He recalls receiving bills from the company in 2008 and 2009. He claims he paid this debt, but provided no documentation supporting this assertion.¹¹

The debt alleged in SOR ¶ 1.j is a collection for a consumer account in the amount of \$3,620. He purchased tools for work in 2002. He claims he paid this debt, but provided no documentation supporting this assertion.¹²

Applicant claimed that he paid all the bills, except for the federal tax lien, by calling the various creditors or collection companies and using his bank debit card to make the payments in December 2010. He still has an account with the bank he used to pay off the debts. He agreed that his bank statement for December 2010 or January 2011 should show all the debit payments he stated he made. He was given over 30

⁶ Tr. at 39-43.

⁷ Tr. at 49-51.

⁸ Tr. at 51-52.

⁹ Tr. at 52-56.

¹⁰ Tr. at 57-58.

¹¹ Tr. at 58-59.

¹² Tr. at 60.

days after the record hearing date to provide these statements for the record. He failed to produce any statements or other documentary evidence. He did not seek out professional tax advice concerning the lien filed against him. He has not sought financial counseling for his debts.¹³

On May 18, 2010, Applicant completed his security clearance questionnaire. He answered “no” to questions concerning whether he had a tax lien, whether he had a judgment entered against him, and whether he had any past debts that were over 180 days delinquent or any current debts that were over 90 days delinquent. As the above-stated facts reveal, his answers were not true.

Applicant claimed that when he filled out his security clearance questionnaire, he did not understand some of the questions. He also claimed that he may have “accidentally” put the wrong information on the form concerning having a lien, a judgment, and past current delinquent debts. He admitted that he was aware of the lien, the judgment, and the delinquent debts before he completed the questionnaire. He stated that he did not intend to deceive the Government with his answers.¹⁴

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 that 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

¹³ Tr. at 79-80, 83-84.

¹⁴ Tr. at 67-71.

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 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 about 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* Executive Order 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 as follows:

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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 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 provided no documentary evidence to support his claims that he paid any of his obligations. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Although Applicant accrued the debts when he was making substantially less money than he currently makes, he has been well paid over the last three years and in a position to pay off his delinquent obligations. These are not conditions beyond his control. Applicant's actions do not show responsible behavior. He has done nothing to resolve his debts, despite having the resources to do so since obtaining his current job three years ago. AG ¶ 20(b) is not applicable.

Applicant did not seek financial counseling to assist with his delinquent debts. He failed to document payments to his creditors. His debts remain unsettled and unresolved. Therefore, his finances are not being resolved and are not under control. The evidence is insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are not applicable. He offered no documentary evidence that would support disputing any of the debts. AG ¶ 20(e) does not apply. Applicant's finances remain a concern.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire....

Applicant's acknowledged that he was aware of the lien, the judgment against him, and the delinquent debts which he failed to acknowledge on the questionnaire. He also gave conflicting testimony concerning why he answered the way he did. First he said he did not understand the questions, and then later he stated he accidentally put the wrong information on the form. After judging his demeanor while testifying, I do not find his explanations credible. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(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.

Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's service to his employer and in particular his multiple deployments to hostile areas in support of U.S. armed forces. Although Applicant is making substantial money now, he provided no documentary proof that he has paid any of his delinquent obligations listed in the SOR. He was given additional time to submit supporting documentation (over 30 days), but failed to do so. He has not shown a track record of financial stability. Additionally, he deliberately falsified his security clearance questionnaire. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or personal conduct 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.j:	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.

Robert E. Coacher
Administrative Judge