



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



In the matter of:)	
)	
)	ISCR Case No. 10-08632
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns generated by his delinquent debt and his failure to disclose it, as required, on his security clearance application. Clearance is denied.

Statement of the Case

On June 15, 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 December 1, 2006.

Applicant answered the SOR on August 30, 2011, admitting all of the allegations except 1.k, 1.l, 1.u through 1.w, and 2.a. He requested a hearing and the case was

assigned to me on September 27, 2011. A notice of hearing was issued on October 19, 2011, scheduling the case for November 17, 2011. I held the hearing as scheduled, received five Government exhibits, marked as Government Exhibits (GE) 1 through 5, and considered Applicant's testimony. DOHA received the transcript (Tr.) on November 28, 2011.

Findings of Fact

Applicant is a 28-year-old married man with three children, ages eight, six, and three. He is a high school graduate and has taken some college courses. In 2001, Applicant enlisted in the U.S. Navy. He was honorably discharged in 2007 after failing a physical fitness test. (Tr. 44)

Since February 2010, Applicant has worked for a defense contractor as an engineering technician. His duties include building, repairing, and troubleshooting radar systems. (Tr. 17)

Applicant owes 20 creditors approximately \$61,000 in delinquent debt, as alleged in the SOR, including, among other things, the deficiencies from two cars that he voluntarily surrendered in 2007, totalling approximately \$18,000 (subparagraphs 1.o and 1.p), and a delinquency owed to a furniture rental company totalling approximately \$5,300. (Tr. 61) Five of the creditors obtained judgments totalling approximately \$15,000 (subparagraphs 1.a - 1.e).

The evidence is unclear as to when Applicant first began experiencing financial problems. Applicant testified during direct examination that his "accounts were being paid on time and full during [his] time in the military." During cross-examination, Applicant testified that in 2005, his wife, who had power of attorney over his finances while he was in the Navy, contacted him while he was deployed at sea, and informed him that she was having trouble paying their bills. (Tr. 75) Moreover, Applicant testified on cross-examination that he and his wife attended debt counseling in 2005 to address their troubled finances. (Tr. 73)

After Applicant left the military in 2007, he was unemployed for the next two and a half years, from June 2009 to September 2009. (GE 1 at 19) He was solely dependent on unemployment compensation. His delinquent debt continued to accrue. Applicant contends he was unaware his delinquencies were continuing to accrue because he thought his wife was "taking care of" the debt, and that he received no delinquency notices from creditors while unemployed. (Tr. 23-24) Applicant's wife has not worked since 2005. (Tr. 84)

Applicant has made minimal progress in satisfying his delinquent debt. Although he has contacted all of his creditors, most of them are demanding large, lump-sum payments that he cannot afford. (Tr. 24) Applicant contends he has satisfied subparagraphs 1.v, 1.t, 1.n, and 1.m, and is making payments on subparagraphs 1.b and 1.j. He provided no proof. (Tr. 24-25, 31, 33, 36)

Applicant testified that he has negotiated payment plans with the creditors listed in subparagraphs 1.e and 1.g. (Tr. 27-28) He provided no evidence. Applicant disputes subparagraph 1.k, but provided no evidence relating to the basis of the dispute. (Tr. 76)

Applicant is working with a financial counselor. (Tr. 72) With the counselor's help, Applicant developed a spending plan. (Tr. 72) He did not submit a copy of his spending plan.

Applicant completed a security clearance application in May 2010. Section 26 required him to disclose whether he was currently more than 90 days overdue on any debt, and whether he had ever been more than 180 days overdue on any debt. Also, he was required to disclose any repossessions or judgments. Applicant did not disclose any of his delinquencies, nor any of the judgments or car repossessions. Applicant contends that he was unaware that his debts had become delinquent primarily because his wife managed the finances. Also, he suspects that his creditors lost track of his whereabouts after he moved twice within seven months between 2007 and 2008. (Tr. 50, 52)

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 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 financial struggles trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

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; and

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

(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.

Although Applicant's lengthy unemployment after leaving the Navy exacerbated his financial situation, record evidence reflects that he was having financial difficulties at least two years before leaving the Navy. Although Applicant asserts that he retained a financial counselor who helped him develop a spending plan, he provided no supporting evidence. Similarly, Applicant disputed one debt, asserted that he satisfied five debts, and developed payment plans for two additional debts, but provided no corroborating evidence. None of the mitigating conditions 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." (AG ¶ 15) 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."

Applicant's omission of relevant financial information 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 was aware that he was having financial problems as early as 2005. Consequently, it strains credulity that he did not know his debts were becoming delinquent during his lengthy unemployment between 2007 and 2009, particularly since his wife was not working either. Moreover, he never reconciled the fact he voluntarily surrendered two automobiles at or about the same time in 2007 with his failure to list the repossessions on his security clearance application. I conclude Applicant's omissions were intentional and none of the mitigating conditions 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 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.

Applicant remains more than \$61,000 in debt, and provided no evidence corroborating the progress he has allegedly made in satisfying some of it. Moreover, he intentionally omitted derogatory financial information from his security clearance application. Upon considering this case in the context of the whole-person concept, I conclude Applicant has 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.w:	Against 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge