



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



In the matter of:)
)
) ISCR Case No. 11-00188
)
)
Applicant for Security Clearance)

Appearances

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

November 28, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations or Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 24, 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 (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 after September 1, 2006.

Applicant answered the SOR on June 16, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 8, 2011. DOHA issued a notice of hearing on July 25, 2011, scheduling the case for August 25, 2011. The

Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and presented Exhibits (AE) A through G (the letter E was unintentionally omitted when naming the documents), which were admitted without objection. The record was held open for Applicant to submit additional information until September 6, 2011. Applicant submitted AE H through K, which were admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on September 6, 2011.

Findings of Fact

Applicant admitted SOR allegations 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.j. He failed to admit or deny 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since March 2010. Applicant earned a bachelor's degree in finance in 2002. He is divorced and has one child from his prior marriage. Applicant currently lives with his parents. (Tr. 36-39.)

As listed on the SOR, Applicant is indebted to ten creditors in the approximate total amount of \$20,522. He contracted with a debt settlement company in 2009. However, the company is not a debt consolidation firm. He calls the company when he has saved up some money on his own and has them attempt to negotiate with creditors one at a time. Applicant no longer uses credit cards. He has not received any financial counseling or education. (GE 4; Tr. 54, 62-65.) His debts are as follows.

Applicant is indebted on a judgment filed against him in November 2007 for the approximate amount of \$1,926. Applicant testified that this debt was for jewelry he purchased. At the time of the hearing, this debt was still outstanding. Applicant has failed to address this debt. (Tr. 54-55.)

Applicant is indebted on an account that has been past-due since 2006 in the approximate amount of \$322. Applicant testified that he does not know how this debt was incurred nor is he aware of the current status of this debt. According to Applicant's credit reports, this debt is still outstanding. (GE 5; Tr. 49.)

Applicant is indebted to a bank on a charged-off account in the approximate amount of \$1,971. This debt has been past due since 2005. Applicant testified at hearing that he intended to settle this account within two days of the hearing. He presented a letter dated July 18, 2011, from this creditor that offered to settle this debt for \$1,000. He also presented a Client Settlement Agreement that a debt settlement company helped him obtain with this creditor. However, he failed to provide proof that he made his promised payment to this creditor. (GE 5; AE C; AE K; Tr. 53.)

Applicant is indebted a collection agent for a bank in the approximate amount of \$6,146. This debt has been past due since 2010. Applicant presented a settlement letter, dated June 15, 2011, offering to settle this debt for a payment of \$3,566.

Applicant presented a copy of his bank statement showing a check for this amount was drawn on his account on June 30, 2011. This was the first account Applicant settled with the help of the debt settlement company. (GE 4; AE B; AE J; Tr. 65.)

Applicant is indebted to a bank in the approximate amount of \$4,055. This account has been delinquent since 2009. Applicant presented a Client Settlement Agreement that a debt settlement company helped him obtain with this creditor. It indicates the creditor would accept payment of \$1,217 to settle this debt in full. Applicant presented a copy of his bank statement that displayed a \$1,000 check drawn on Applicant's account on June 6, 2011, and a \$217 withdrawal from the collection agent on June 7, 2011, as proof of payment. (GE 4; AE B; AE C; Tr. 53-54.)

Applicant is indebted to a collection agent in the approximate amount of \$2,175. This debt appears to be a duplicate of the judgment, discussed above. It remains unpaid. (GE 6.)

Applicant is indebted to a department store in the approximate amount of \$170. This debt has been past due since 2006. Applicant failed to present documentation showing that he is addressing this debt. This debt is still outstanding. (GE 4; Tr. 55.)

Applicant is indebted to a collection agent for a cell phone company in the approximate amount of \$601. This debt has been past due since 2006. Applicant claims this debt is satisfied. He presented documentation from two different cell phone companies addressing payments on another account, but failed to present documents that reflected this debt has been satisfied. (AE I; Tr. 55.)

Applicant is indebted to a collection agent for a department store in the approximate amount of \$1,491. Applicant indicated that this debt should have been satisfied by his ex-wife. Applicant's credit report reflects "account paid for less than full balance." This debt has been settled. (GE 4; Tr. 56.)

Applicant is indebted on a medical account if the approximate amount of \$1,665. Applicant believes this debt should be his ex-wife's responsibility. She provides health insurance for their son; however, she refused to give the hospital the insurance information when Applicant sought treatment for their son. This account has been past due since at least June 2010. (GE 4; Tr. 57.)

Since 2006, Applicant has taken vacations to Germany, Aruba, and traveled twice to Spain. He indicated that the trips were largely paid for by his friend who used airline and hotel miles to pay for airfare and lodging, although he spent \$500-\$600 in spending money himself. (Tr. 57-61.)

Despite Applicant's indebtedness, he answered, "No," on his January 4, 2008 Electronic Questionnaire for Investigations Processing (e-QIP), when he was asked: "Section 26. Your Financial Delinquencies e. Have you ever had a judgment entered against you?; g. Have you had any bills or debts turned over to a collection agency(s)?; h. Have you had any account or credit card suspended, charged off, or cancelled for

failing to pay as agreed?; m. Have you been over 180 days delinquent on any debt(s)?; n. Have you been over 90 days delinquent on any debt(s)?" He testified he did not know why he failed to list his debts on the e-QIP. (Tr. 61.)

Applicant is well respected by his co-workers. The Director of Applicant's department indicated "During his employment with us, he has become an invaluable technical asset to our team and this organization." (AE A; AE D.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which 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 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 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 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns for Financial Considerations are 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 nine delinquent debts (one debt was listed twice), totaling \$18,596, and has been unable or unwilling to pay the majority of these obligations. His delinquencies have been ongoing for several years, without resolution. The evidence is sufficient to raise the above disqualifying conditions.

Five 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 failed to present sufficient documentation that he has satisfied the majority of his delinquent debts listed on the SOR. While he has addressed two of his delinquent accounts and a third was apparently settled by his ex-wife, Applicant remains indebted to six other creditors. His debt is current and ongoing. Further, he gave little indication that his financial situation is likely to improve. His inability to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. Applicant failed to present evidence that the conditions that resulted in his financial problem were largely beyond his control. Further, he has not acted responsibly under the circumstances. He took several vacations spending \$500-\$600 at a time, while ignoring small debts of \$170 and \$322 that had been delinquent for a number of years. While he has recently begun repayment of some of his delinquent accounts, not enough time has passed to demonstrate that he will not face similar problems in the future. Further, Applicant has not shown he made any attempt to responsibly address his remaining six debts. Applicant has not sought financial counseling. There is no showing he has initiated a good-faith effort to repay these overdue creditors or otherwise resolve debts. Finally, he failed to introduce documented proof to substantiate the basis of any disputes with his creditors or provide evidence of actions he has taken to resolve the issue with his creditors. No mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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.

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

(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 failed to disclose his debt in his answers to the January 4, 2008 e-QIP. He should have been aware that he had a significant amount of delinquent debt at the time he completed his e-QIP, however, he failed to list any delinquent accounts and affirmatively denied their existence. At hearing, he was unable to explain his omission. I find he deliberately omitted his debts from his January 4, 2008 e-QIP.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(b) 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 clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) 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; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsifications. He provided no information that indicates he was ill-advised in completing his answers on the e-QIP. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he fails to take responsibility for his actions. He has not provided information in this record to meet his burden of proof to mitigate the security concerns arising from his personal conduct.

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

Applicant's letter of commendation and certificates show he is a valued employee. However, he has been unable to make ends meet and satisfy his past due accounts. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. Applicant earned a finance degree in 2002, yet he has failed to practice sound financial judgment in his personal affairs. Further, his falsifications leave one to question his reliability. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	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.

Jennifer I. Goldstein
Administrative Judge