



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



In the matter of:)
)
) ISCR Case No. 11-00498
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 16, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 11, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 20, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity

to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 6, 2012. Applicant submitted documents that were marked Applicant's Exhibits (AE) A through D and admitted without objection. The case was assigned to me on February 27, 2012. The Government exhibits included in the FORM are also admitted.

Findings of Fact

Applicant is a 61-year-old employee of a defense contractor. He has worked for his current employer since May 2007. He served in the U.S. military from 1970 until he was honorably discharged in 1978. He is applying for a security clearance for the first time. He is a high school graduate. He is married with three adult stepchildren.¹

Applicant was an independent contractor in the construction industry from 1978 to 2007. He indicated that most of his clients were satisfied with his work, but a few unsatisfied customers took him to court.² The SOR alleges three unpaid judgments totaling about \$22,800 and an unpaid \$59 utility bill. Individual debts are discussed further below.

One of Applicant's customers obtained a \$357 judgment against Applicant in April 2004. This unpaid judgment is alleged in SOR ¶ 1.c. Applicant admitted owing the judgment. He stated that the customer "was unjustifiabl[y] hostile to the revelation that to complete his job additional work would need to be addressed. [The customer] demanded the balance of his down payment be returned. [Applicant] kept it for work completed." Applicant stated that he has no intention of willingly paying the judgment, but if the customer "comes to collect it [Applicant] will pay [the judgment]."³

Applicant was sued by another customer, who obtained a \$2,500 judgment against Applicant in October 2004. This judgment is alleged in SOR ¶ 1.b. Applicant disagrees with the verdict. He stated that the plaintiff "lied in court and the case was found against [Applicant] for \$2,500." Applicant stated that he paid all of the judgment except for \$100. He stated that "not paying the last \$100 just makes [Applicant] feel better." Applicant stated that he has no intention of paying the rest of the judgment, but if the plaintiff "comes to collect [Applicant] will pay it." Applicant did not submit any documentation establishing that he paid \$2,400 of the judgment. Applicant's credit report lists the judgment as unsatisfied.⁴

A collection company obtained a \$19,943 judgment against Applicant in January 2006. This judgment is alleged in SOR ¶ 1.a. The court records state that the sheriff served Applicant personally on December 16, 2005. Applicant told an investigator from

¹ Item 3.

² Items 2, 4, 5; AE A.

³ Items 2, 4, 5, 8; AE A.

⁴ Items 2, 4, 5, 7, 8; AE A.

the Office of Personnel Management (OPM) in September 2010, that he was working on a site for a customer when the project was halted for about a year. When the project was ready to continue, Applicant did not have the time to return to the project. The customer threatened Applicant with violence, began stalking him and his family, and damaged his car. The customer, who was connected to the collection company that was named as the plaintiff, sued Applicant, and Applicant countered that the contract was void because of the delay in construction. Applicant notified the state police about the threats against him and his family. The state police told Applicant that there was nothing they could do about the threats. Applicant told the OPM investigator that he feared for his life. He abandoned his business, cut all ties to the area, and moved to his current state of residence. Applicant stated that a collection company contacted him about a month before his OPM interview and offered to settle the matter for \$4,000.⁵

In May 2011, the plaintiff collection company offered to settle the judgment for \$8,391, to be done “no later than June 27, 2011.” The collection company stated that the original creditor was a bank and noted an account number. Applicant responded to the offer on June 28, 2011, indicating that he accepted the offer, and included a payment of \$100. He wrote that he would “continue to pay as much as [he] can monthly until the debt is resolved.” Applicant submitted proof that he has been making monthly \$100 payments to the collection company since June 2011.⁶

SOR ¶ 1.d alleges a \$59 delinquent debt to a utility company. Applicant paid the debt in July 2011.⁷

Applicant submitted a Questionnaire for National Security Positions (SF 86) on July 30, 2010. Section 26 asked about Applicant’s financial record, and indicated that he was required to “answer for the last 7 years, unless otherwise specified in the question.” Applicant answered “No” to all the financial questions, including Question 26.e, which asked “Have you had a judgment entered against you?” Applicant failed to list the three judgments alleged in SOR ¶¶ 1.a, 1.b, and 1.c.⁸

Applicant discussed the judgments during his background interview in September 2010. The OPM investigator reported that Applicant told him that Applicant did not list the judgments on his SF 86 because it was too much trouble, and that he wanted an in-person interview to present his side of the story. A signed statement was not taken, but a summary of the interview was memorialized in a report of investigation (ROI). In his response to DOHA interrogatories, Applicant verified the accuracy of the ROI.⁹

⁵ Items 2, 4-9; AE A, B.

⁶ Items 2; AE A, B.

⁷ Items 2; AE A, C.

⁸ Items 2, 3.

⁹ Item 4.

In his response to the SOR, Applicant denied intentionally falsifying the SF 86. He stated that he had no knowledge of the \$19,943 judgment; he forgot about the \$347 judgment; and the \$100 balance on the \$2,500 judgment “seemed insignificant.” He reiterated that position in his response to the FORM.¹⁰

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, 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁰ Item 2; AE A.

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 concern 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 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 pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant paid the \$59 delinquent debt to a utility company in July 2011. The remaining three debts in the SOR are unpaid judgments. Applicant has been paying \$100 per month since June 2011 toward the \$19,943 judgment. He is unwilling to pay the \$357 judgment. He stated that he paid of all the \$2,500 judgment, except for \$100, which he has refused to pay. He did not provide any documentary proof that he paid \$2,400 of the judgment.

There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) are not applicable. AG ¶ 20(d) is applicable to the paid \$59 debt. It is not applicable to any of the other debts.

Guideline E, Personal Conduct

The security concern 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following 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 denied that he intentionally falsified his SF 86 when he failed to list his judgments. His explanations are inconsistent and not supported by the evidence. I find that Applicant intentionally falsified the SF 86. AG ¶ 16(a) is applicable.

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.

Applicant intentionally provided false information on his SF 86 in July 2010. He provided inconsistent explanations for why he did not list his judgments. There are no personal conduct mitigating conditions applicable.

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 refused to pay judgments that were ordered by a court of law, and he intentionally provided false information on his SF 86. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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 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
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.

Edward W. Loughran
Administrative Judge