



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



In the matter of:)	
)	
)	ISCR Case No. 11-05502
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *pro se.*

09/28/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for personal conduct and financial considerations. His request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on November 8, 2010 to request a security clearance required as part of his employment with a defense contractor. On May 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR listed security concerns addressed in the

Directive under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Applicant signed his notarized Answer on June 6, 2012, in which he denied one of the two allegations under Guideline E, and one of the eight allegations under Guideline F. He also requested a hearing before an administrative judge.

Department Counsel was ready to proceed on June 28, 2012. The case was assigned to me on July 2, 2012. DOHA issued a Notice of Hearing on July 5, 2012, setting the hearing for July 31, 2012. The Government offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified on his own behalf and offered three exhibits, which I admitted as Applicant Exhibits (AE) A through C. DOHA received the transcript on August 7, 2012.

Procedural Matters

Applicant attached three documents to his Answer to the SOR. At the hearing, I severed these attachments, and admitted them as AE A through C.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is a 46-year-old acquisition analyst lead. He has worked for his current employer since 2009. He married in 1988 and divorced in 2007. He has two children, 17 and 23 years of age. He received an associate's degree in contract management in 2004. Applicant was an enlisted member of the Air Force from 1985 to 2006. His first specialty was air crew life support; he later retrained in the acquisition field in 1994. (GE 1; Tr. 24-29)

Guideline E, Personal Conduct

For several months in 2003, Applicant was stationed in a middle-eastern country, working as a contingency contracting officer. His team let contracts to obtain items needed for basic needs, such as ablution units and food preparation. In the course of dealing with companies bidding on contracts, Applicant had frequent contact with X, who represented a company that was bidding on several contracts. He was approached several times by X, who promised him a payment if he would ensure that X's company received a certain large contract. Applicant resisted X's initial overtures. Eventually, he agreed to accept a percentage of the award amount in exchange for guaranteeing that X's company would get the contract. X brought to the base an initial payment of \$6,500, and promised Applicant that he would receive the contract percentage once X's company was awarded the contract. Applicant ensured that the contract was awarded to X's company. (GE 2; Tr. 29-34)

In October 2003, Applicant returned to his U.S. duty station. X contacted him and told him when and where to rendezvous with X's contact in another state. Applicant flew there, met the contact, and received a shoebox containing \$45,000. He decided not to return by airplane with the cash, so he rented a car and drove from the state where he received the payment to his home base. He was stopped for speeding, and police discovered the cash. Applicant was arrested and, during questioning, he disclosed his actions. Police contacted his commanding officer and released Applicant to return to base. (GE 2; Tr. 34-37)

Following an investigation by the Office of Special Investigations (OSI), Applicant was charged under the Uniform Code of Military Justice (UCMJ), Article 134, Bribery and Graft: Asking, Accepting, or Receiving. On July 22, 2004, he appeared at a general court martial and pled guilty. He was convicted, sentenced to 18 months confinement, and his pay and allowances were forfeited. He was fined \$6,500, received a formal letter of reprimand, and was reduced in grade from E-6 to E-1. Applicant was confined in the brig and served 14 months. He was released for good behavior in September 2005. He returned to duty as an E-1, and worked in dorm management support from September 2005 to December 2006. His security clearance was revoked in November 2006. (GE 2, 3; Tr. 37-41)

Applicant worked under a review commander after his release from the brig. The commander initiated processing to have Applicant administratively discharged. Applicant testified that the commander did not trust him because he had not had a chance to work with Applicant in the past. Applicant went before an administrative discharge board, which granted the discharge. Applicant was administratively discharged, with a characterization of Under Other than Honorable Conditions, in December 2006. (GE 2; Tr. 41-42)

In his Answer to the SOR, Applicant noted that his decision to accept a bribe was a "bad choice in the spur of the moment." He "forfeited over 20 years of my life due to this one lapse." He had never been in trouble up to that point or since then. Finally, he stated that "...I was locked up for 14 months, in the brig at [base] and although I made it through without the need for additional disciplinary actions, I would never, ever put myself in that situation again." (AE A)

Guideline F, Financial Considerations

Applicant has had financial difficulties in the past. In 1999, he filed a chapter 13 bankruptcy petition. The petition lists 18 creditors, with claims totaling \$45,057. Applicant explained that the debts resulted from the loss of his wife's income when they were transferred overseas while he was on active duty. After Applicant complied with the established payment plan, the petition was discharged in March 2003. Applicant incurred debts when he lost significant income after being reduced in rank from E-6 to E-1 as a result of his 2004 court-martial conviction. After his discharge from the Air Force in December 2006, Applicant moved in with his brother and his family. He

worked as a car salesman, but was unable to both meet his expenses and pay past-due debts. (GE 2, 4, 5; AE A Tr. 19-20)

Before working for his current employer, Applicant was employed by Company B from September 2007 to February 2009. He worked in Iraq, earning \$176,000 annually. His son had medical problems that required him to leave his job in Iraq and return to the United States. He was unemployed for about eight months. In October 2009, he began his current position, with a starting salary of \$95,000; he now earns \$102,742 annually. His monthly net income is \$5,114, with monthly expenses and debt payments of \$4,062. He pays \$519 per month in child support. He bought an SUV in February 2011 for \$38,000, with payments of about \$700 monthly. In April 2012, he traded it in and leased a Cadillac, with payments of \$672 per month. As of April 2012, his monthly net remainder was \$166. However, he estimated that, as of the hearing date, his net remainder is about \$800, and it would decrease to approximately \$600 in about September 2012. (GE 1; Tr. 25-28, 55-58, 62-65)

The SOR debts appear in Applicant's credit reports of November 2010 and March 26, 2012. The debts, as listed in the SOR, total \$60,800. He provided documentation showing he has paid two debts totaling \$2,105. After deducting these two debts, and the taxes which Applicant is paying, the unresolved SOR debt is \$47,349. The status of the SOR debts follows. (GE 2, 5)

Timeshare (\$9,009) - In September 2007, Applicant started his job with Company B in Iraq. He expected to be employed by Company B for several years. In November 2008, while traveling in Mexico, he purchased a timeshare there. He admits this was not a sound financial decision. In February 2009, he resigned from Company B because of his son's medical issues. He was unemployed, and was unable to pay the timeshare debt. It remains unresolved. (GE 2; AE A; Tr. 45-46)

Rent (\$500; \$1605) - After returning from Iraq in 2009, he rented an apartment in State A. When he obtained employment in another state, he broke his lease in State A. Applicant provided documentation showing that on June 5, 2010, he paid both debts, which together total \$2,105. (GE 2; AE B, C; Tr. 46-48)

Credit card (\$23,363) - Applicant used this credit card to pay for his expenses after he lost income when he was reduced from E-6 to E-1. His ex-wife also charged to the account for living expenses for herself and the children. After his discharge, he could not afford the payments. Applicant has not taken any steps toward resolving this debt. (GE 2; AE A; Tr. 48-49)

Medical (\$14,977) - Applicant did not have health insurance while he was unemployed in 2009. During that period, he was hospitalized twice. Since then, he has paid several smaller medical debts that amount to approximately \$400. During his January 2011 security interview, he stated that, because he was employed, he would

contact the hospital to set up a payment plan. The debt remains unpaid. (GE 2; AE A; Tr. 49-50)

State income taxes (\$11,346) - Applicant owes back taxes to the State A department of revenue for tax year 2008. He received erroneous information from his tax advisor. He was informed that he did not have to pay state income tax because he did not reside in the state while he was employed in Iraq from 2008 to 2009. His original liability was \$6,000, but with interest and penalties, he owed back taxes of \$11,346, as of September 8, 2011. He paid \$1,500 in September 2011, and then set up a payment plan of \$400 per month to be automatically deducted from his checking account starting in October 2011. Applicant testified that he does not owe back taxes to the federal government. (GE 2; AE A; Tr. 50-55)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent adjudication policy in the AG.¹ Decisions must also consider the “whole-person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an Applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy governing the grant or denial of access to classified information. In this case, the pleadings and the information presented require consideration of the security concerns and adjudicative factors addressed under Guideline E (Personal Conduct) and Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest² for an applicant to either receive or have continued access to classified information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, then the applicant must refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.³ A person who has access to classified information enters a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and

¹ Directive at § 6.3.

² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³ See *Egan*, 484 U.S. at 528, 531.

trustworthiness to protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

The Guideline E allegations implicate the following disqualifying conditions under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing. . . .

While serving as an enlisted member of the Air Force, Applicant accepted a bribe of \$50,000 to ensure that a certain company was awarded a contract. Applicant characterizes his action as a one-time lapse of judgment. However, his actions took place over a period of months—from the moment he agreed to the plan, to the time when he was arrested. There is no record evidence that Applicant reconsidered his decision, alerted authorized personnel or security about the situation, or ended the crime at any point before his arrest. During this time period, Applicant was vulnerable to coercion because of the damage to his career, reputation, and security clearance if the crime were discovered. He was convicted of bribery, spent 14 months in confinement, and was ultimately discharged under Other than Honorable conditions. His actions cast serious doubt on his judgment, trustworthiness, and willingness to comply with the law. AG ¶ 16(c) and (e) apply.

Under AG ¶ 17, the following mitigating conditions are relevant:

(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

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

Applicant's involvement in bribery, and his subsequent court-martial, occurred eight to nine years ago. Distance in time can provide some mitigation. Although Applicant was vulnerable to coercion while the bribery was hidden, it is not a current security concern because, once his command became aware of the true facts, his secret was no longer a source of exploitation.

However, the nature of Applicant's conduct outweighs this mitigation. Over a period of several months, Applicant hid the fact that he made an agreement with X, accepted an initial payment, ensured the award to X's company, and accepted cash from X's contact in the United States. Moreover, his crime was revealed not through his own positive steps, but because police accidentally discovered the cash. Applicant's conduct showed not only a lack of good judgment, but a blatant disregard for the trust that the Government had placed in him. Passage of time and the current lack of vulnerability do not outweigh his willingness to engage in criminal conduct that breached the Government's trust. AG ¶ 17(c) and (e) do not apply.

Guideline F, Financial Considerations

AG ¶ 18 expresses the overall security concern about financial considerations:

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....

I have considered all of the disqualifying conditions under AG ¶ 19, and especially the following:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

Applicant has a history of financial difficulties. He filed a chapter 13 bankruptcy petition in 1998, which was successfully discharged in 2003. Subsequently, he accumulated additional debts, and as of the hearing date, owed more than \$58,000 in delinquent debt. For several years, he failed to take substantive steps to resolve his financial obligations. In addition, Applicant engaged in illegal activity by accepting \$50,000 to ensure that a contract was awarded to a particular company. The evidence supports application of disqualifying conditions AG ¶19(a), (c), and (d).

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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 filed a Chapter 13 bankruptcy petition in 1997, under which he was required to repay his legitimate obligations to his creditors. The bankruptcy is old, and it was successfully discharged in 2003. However, Applicant has accrued more recent debts for the last several years, and a substantial debt load of more than \$47,000 remains unpaid. Applicant's inattention to his debts, despite his substantial salaries since 2007, indicates that delinquencies may continue in the future. His willingness to accept money in exchange for a benefit to a company, as well as his ongoing debts, raise serious doubts about his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect his ability to meet his financial obligations. Applicant stated that his loss of income when he was reduced from E-6 to E-1 affected his ability to meet his

obligations. However, that event was not beyond his control; it resulted from his own deliberate choice to accept a bribe. Moreover, it occurred in 2004, eight years ago. Since 2006, he has had only eight months of unemployment. Despite earning high salaries, he has not taken steps to resolve most of his past-due debts. AG ¶ 20(b) does not apply.

AG ¶ 20(c) and (d) require evidence that an applicant's debts are under control, and a demonstration of good-faith efforts to resolve them. Applicant has paid two debts, which total \$2,105. He also set up a payment plan with State A for his back taxes. However, he failed to deal with this tax debt until September 2011, more than two years after the taxes became delinquent. Since 2009, he has earned between \$95,000 and \$107,000 per year, and he has a monthly remainder of between \$600 and \$800. Yet he has taken no documented steps to resolve delinquent debts that total more than \$47,000. He has made poor financial decisions. While owing the \$23,000 credit card debt, he purchased a \$9,000 timeshare, and bought a \$38,000 SUV with a \$700 monthly payment, which he traded for a Cadillac with monthly payments of \$672. During his 2011 security interview, he stated he would set up a payment plan for his hospital debt of almost \$15,000, but as of the hearing date, he had not done so. AG ¶ 20(c) cannot be applied because his debts are not under control. However, Applicant receives partial mitigation under AG ¶ 20(d) for resolving two debts, and initiating a payment plan for his State A income taxes.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant did not provide character references or performance evaluations. However, in evaluating the whole person, I considered that he was married for almost 20 years, and placed strong emphasis on his son's well-being by returning from his overseas job to help with his son's difficulties in school. He provided 19 years' service to the Air Force, and before 2003, showed no evidence of problems. I found his testimony that he sincerely regrets his crime to be credible.

On the other hand, Applicant engaged in a serious violation of trust when he deliberately chose to place his own desire for financial gain above the Government's need for honest dealing. His actions resulted in a conviction at general court-martial, and his administrative separation from the Air Force. Engaging in criminal activity demonstrates extremely poor judgment and willingness to break the law. Applicant also failed to demonstrate any concrete plan to deal with his substantial delinquent debt, despite apparently having the funds to do so. Applicant has not mitigated the security concerns about financial considerations and personal conduct. Overall, his conduct raises doubts about his suitability for access to classified information. Such doubts must be resolved in favor of the national security.

Formal Findings

Paragraph 1, Guideline E	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant
Subparagraph 1.b	For Applicant ⁴
Paragraph 2, Guideline F	AGAINST Applicant
Subparagraphs 2.a – 2.b	Against Applicant
Subparagraphs 2.c – 2.d	For Applicant
Subparagraphs 2.e – 2.f	Against Applicant
Subparagraphs 2.g – 2.h	For 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 access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

⁴ The two allegations under Guideline E describe two Air Force's actions in response to the same criminal act. Because subparagraphs 1.a and 1.b stem from the same conduct, it is redundant to find against Applicant on both subparagraphs.