



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-05854

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

10/16/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On November 22, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated April 27, 2012, to Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. These actions were 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 (DoD) on September 1, 2006. Applicant acknowledged receipt of the SOR on May 4, 2012.

Applicant answered the SOR in an undated response received at DOHA on May 21, 2012. He admitted ten and denied three (SOR 1.c, 1.h, and 1.l) of the allegations under Guideline F. He did not provide an answer to the allegation under Guideline E. Applicant did not initially request a hearing, but subsequently requested a hearing on June 12, 2012. The Government was ready to proceed on July 17, 2012, and I was assigned the case on July 31, 2012. DOHA issued a Notice of Hearing on August 1, 2012, scheduling a hearing for August 16, 2012. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified, and offered eight exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through H. I left the record open for Applicant to submit documents. Applicant did not submit any documents. DOHA received the transcript of the hearing (Tr.) on August 29, 2012.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 54 years old, and has been a security supervisor for a defense contractor since April 2010. He served on active duty with the Marines from June 1978 until June 1981. He received a meritorious service medal and good conduct medal during his active duty tour. He has been married since 1979, over 33 years, and has five children. Two of the children are still at home. He was working for the same defense contractor when he deployed to Kuwait from January 2006 until June 2007. (Tr. 10-23; Gov. Ex. 1, e-QIP, dated November 17, 2010)

Credit reports (Gov. Ex. 4, dated January 14, 2011, and Gov. Ex. 5, dated January 19, 2012), and Applicant's answers to the interrogatories (Gov. Ex. 2, and Gov. Ex. 3, dated February 16, 2012), show the following financial actions and delinquent debts: a mortgage foreclosure in 2010 (SOR 1.a); a gasoline credit card account in collection for \$786 (SOR 1.b); a personal loan account in collection for \$887 (SOR 1.c); a personal loan account in collection for \$13,175 (SOR 1.d); a medical account in collection for \$575 (SOR 1.e); a credit card account in collection for \$538 (SOR 1.f); a medical account in collection for \$765 (SOR 1.g); an insurance account in collection for \$62 (SOR 1.h); a medical account in collection for \$570 (SOR 1.i); \$2,649 past due on a personal loan (SOR 1.j); a rent account in collection for \$1,859 (SOR 1.k); an account in collection for \$518 (SOR 1.l); and an account in collection for \$153 (SOR 1.m). The total debt in the SOR is approximately \$22,000.

Applicant stated that his present annual income is \$31,000. His wife recently started working and her annual income is approximately \$20,000. After all expenses are paid, his monthly remaining discretionary funds are approximately \$300. (Tr. 56-59) In the past, especially when he was stationed in Kuwait, Applicant's income was substantially higher. His annual income when working in Kuwait was approximately

\$85,000. He was unemployed from June until August 2007 after returning from Kuwait. He was also laid off from employment with the defense contractor from October 2009 until April 2010 and his only income during the unemployment period was unemployment compensation of \$320 weekly. (Tr. 23-37) Applicant attributes his financial problems to losing his house and being laid off in 2009. (Tr. 30-31) Applicant has contacted a debt consolidation company but has not completed any arrangement or enrolled with them. He has not received any formal financial counseling. He is also hoping to get part-time employment shortly. (Tr. 54-56)

Applicant purchased a house for \$158,000 in June 2007 shortly after returning from Kuwait. He was unemployed for three months after returning from Kuwait but was able to purchase the house and make the mortgage payments. He was hired in August 2007 and was making \$25 per hour. He was the only source of income for the family. He was able to continue to pay the mortgage of \$1,300 monthly until he was laid off in October 2009. The delinquent debt at SOR 1.a reflects the mortgage foreclosure. Applicant noted that his mortgage lender did little to help him stay in the house after he was laid off. (Tr. 32-41, 63-70)

The delinquent debt at SOR 1.b for \$786 is for a gasoline credit card. He admits to having the credit card and that it was suspended by the creditor. He made some payments but they were only minimal payments. The debt is still unpaid. (Tr. 41-42)

The delinquent debt at SOR 1.c is debt from a self-storage company. Applicant stored his household furniture at the facility when his home was foreclosed. He paid the monthly fee while his furniture was in the facility. After a few months, he found a place to live, notified the company he no longer needed the facility, and removed the furniture. He left the key in the key return slot. He received a letter from the storage company that he owed a debt but he did not respond since he did not believe he owed them a debt. He has not received any recent correspondence from the storage company concerning the debt. (Tr. 42-44)

The \$13,175 debt at SOR 1.d is the amount that has increased on a personal loan Applicant opened in 2008 for approximately \$6,000 to \$7,000 to consolidate some debts. The loan became delinquent in 2009 after he was laid off. He has not had any contact with the creditor. The creditor is a large national finance company. The branch office he originally worked with has closed. He has not contacted any other office. (Tr. 44-45)

Applicant admits the medical debts at SOR 1.e, 1.g, and 1.i. He believes they were the result of ambulance transportation to a hospital emergency room for severe stomach pains in 2009. He has no knowledge of the charges and has not made inquiries about them. (Tr. 45-49)

Applicant admits the credit card debt at SOR 1.f. He remembers having a credit card but is unsure of the creditor. He has not inquired about or paid this debt. (Tr. 47-48)

Applicant denied the insurance company debt at SOR 1.h. He never dealt with a company by this name. He has not inquired about the debt. (Tr. 48-49)

Applicant admitted the personal loan debt of \$2,649 at SOR 1.j. Applicant opened a revolving personal loan account in 2007 for approximately \$1,500. He made many payments of \$130 a month but kept borrowing on the account. It went into default when he was laid off in 2009. (Tr. 49-50)

The delinquent debt at SOR 1.k is rent for an apartment. Applicant rented an apartment in 2009 for approximately \$700 a month. He was a few months behind in rent when the landlord evicted him and his family. He refused to pay the \$1,859 past due rent because the landlord evicted him. (Tr. 50-52)

The debt at SOR 1.l is for a cell phone account early termination fee. Applicant terminated the account early when he received a cell phone from his employer. He has not paid the account or inquired about it from the phone company. (Tr. 52)

The delinquent debt of \$153 is for a personal loan account. Applicant had been paying the account but he did not complete the payments. He does not know why he did not pay the entire amount due. He promised to pay the account soon. (Tr. 52-53)

Applicant stated his intent to pay his debts. He considered debt counseling or working with debt consolidation companies. He has only made some preliminary inquiries and has not finalized any arrangements. He received settlement offers from some of the creditors, but he has not acted on any of these offers. Applicant was offered the opportunity to present information after the hearing of his efforts to pay or resolve his debts. He provided no additional information. (Tr. 60-63)

The first time that Applicant completed a security clearance application was in November 2010 when he completed Government Exhibit 1. He handwrote the answers and then gave the hand written completed form to the security personnel. He believes the form must have been typed and completed by the security office staff. Applicant did not read the form closely. He was in a hurry to complete the form and rushed through it. He was not pressured by supervisors to rapidly complete and submit the form. He created his own pressure to complete the form as soon as possible. He just wanted to complete the paperwork as rapidly as possible. He did not look at his credit reports and he was not thinking or focusing on his debts. Applicant responded "no" to all financial questions on the security clearance application. He does not know why he responded no to the financial questions. His house had recently been foreclosed, but he did not consider it a foreclosure because of the bank's role in the mortgage frauds. He did not believe the foreclosure was his fault. (Tr. 23-23, 63-70)

Applicant presented a letter from his senior facility officer who has known Applicant for over a year. He finds Applicant to have an outstanding reputation and character. He conducts himself with honesty and integrity. (App. Ex. A, e-mail, dated August 15, 2012) He also presented a letter from the assistant security officer who states he has known Applicant for over 18 months. Applicant is conscientious, thorough, and dependable. He has good knowledge, understanding, and experience in security matters. He recommends that Applicant be granted access to classified information. (App. Ex. B, Letter, dated August 15, 2012). Applicant presented Certificates of

Completion for security courses he took under the auspices of the Army. (App. Ex. C to H, Certificates, various dates)

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 must be considered 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, these guidelines are applied 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

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 overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by credit reports and his admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debt when he was laid off from his job for approximately eight months and could not manage his debts. He has been steadily employed for over two years, but he has not paid any of his delinquent debts. The evidence indicates both an inability and an unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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); and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Applicant incurred delinquent debt caused by periods of unemployment. His work history indicates good steady employment except for only two periods of unemployment, three months in 2007, and eight months from 2009 to April 2010. He has been steadily employed since April 2010.

Applicant has not shown that he acted responsibly under the circumstances to resolve these debts. Applicant did not contact some of the creditors, and he has not paid any of his delinquent debts listed in the SOR. He failed to establish that he could not pay his delinquent debts through circumstances beyond his control, even when he has been steadily employed. Some of the debts are small, and could be paid with minimal impact. His finances are not under control because he has not taken the reasonable and necessary steps to resolve his past delinquent debts by contacting creditors, paying debts he could pay from his discretionary funds, and making or reaching settlement agreements to resolve the debts. Applicant has not established that he acted responsibly towards his debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith

effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant has not shown an established plan to pay and resolve his past delinquent debts. He made little or no effort to contact some of the creditors to settle and pay his debts. He has not shown payment of any of his past debts. His lack of a meaningful track record of paying delinquent debts shows he has not been reasonable and prudent in adhering to his financial obligations. His past delinquent debts reflect adversely on his trustworthiness, honesty, and good judgment.

I also considered AG ¶ 20(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 stated he did not know the circumstances or origin of some of the debts. He has not presented any documentation about inquiries on the debts or other attempts to resolve the disputes. Based on all of the financial information available to include the information provided by Applicant, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's responses to financial questions on his e-QIP. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On his e-QIP application for a security clearance, Applicant responded no to all financial questions. His failure to list any delinquent debts or adverse financial information could raise a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification by failing to list derogatory financial information. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant stated he completed the form rapidly and did not pay strict attention to the questions. However, his house had recently been foreclosed and he realized he had delinquent debt. While he may not consider that the debts or foreclosure were his fault, he still knew of them. Applicant's statement that he rapidly completed the security clearance form and did not think about his answers to the financial questions is not credible. At the time he completed the application, he had financial problems and he knew it. His home had recently foreclosed and he was receiving correspondence concerning delinquent debts from some of his creditors. He completed the form in draft and it was typed by the security personnel. He had an opportunity to review his answers before the form was finalized for submission but chose not to do so. He did not want to alert security investigators to his poor financial status. I find Applicant deliberately failed to provide correct and accurate financial information on the security clearance application. I find against Applicant as to personal conduct.

Whole-Person Analysis

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

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant's financial problems may have been caused by being laid off in 2009 as a circumstance beyond his control. However, he has been employed full-time since April 2010 but has not paid or resolved any of his delinquent debts. He has not been in contact with many of the creditors to resolve or settle the debts. He has not paid any of the delinquent debts listed in the SOR. He stated intent to pay, resolve, or dispute the debts, but he has not taken steps to implement his intentions. Applicant's promises to act in the future

are not considered a good-faith effort to resolve delinquent debts. In addition, Applicant deliberately did not provide full, accurate, and complete information concerning his financial status on the security clearance application. Applicant's lack of good-faith efforts to pay and resolve his past financial obligations, and his deliberate failure to provide financial information on his security application indicates that he may not be concerned, responsible, and careful regarding classified information. 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 that Applicant has not mitigated security concerns arising from finances. He has not mitigated security concerns for his personal conduct. His access to classified information is denied.

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.m:	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.

THOMAS M. CREAN
Administrative Judge