



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



In the matter of:)	
)	
)	ISCR Case No. 11-06480
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 1999. He presented no documentary evidence of efforts to resolve his delinquent debts. The evidence fails to establish Applicant’s financial responsibility in the resolution of his delinquent debts. He does not have a viable plan to resolve his delinquent debt, and he is not in control of his financial situation. Moreover, he falsified his November 2011 security clearance application. The record evidence fails to convince me of Applicant’s eligibility and suitability for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 5, 2010. On May 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ Applicant answered the SOR on June 27, 2012, and requested a hearing before an administrative judge.

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the

The case was assigned to me on September 18, 2012. DOHA issued a notice of hearing on September 20, 2012, scheduling a hearing for October 17, 2012. At the hearing, the Government offered exhibits (GE) 1 through 7, which were received without objection. (GE 7 was marked and made part of the record, but it was not admitted.) Applicant testified, and submitted no documentary exhibits. (Tr. 21) DOHA received the hearing transcript (Tr.) on October 22, 2012.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.i, 1.m through 1.r, and 1.t through 1.v. He denied SOR ¶¶ 1.j through 1.l and 1.s. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 50-year-old security guard employed with a government contractor. He served in the U.S. Army from 1985 until September 1989, achieved the rank of sergeant (E-5), and received an honorable discharge. Applicant was awarded a Bachelor of Theology degree in 1995, a Master of Divinity degree in 1997, and a Doctor of Divinity degree in 2012. (Tr. 6-7) He has been a pastor for 29 years.

Applicant married in December 1986, separated in 2006, and divorced in May 2007. He has two sons, age 25 and 21, and a daughter, age 23. Applicant remarried in April 2011. He and his spouse share financial responsibilities in their household.

Applicant worked in different capacities for numerous government contractors from 1999 to present, including security officer from February 2001 until January 2002; lead installer (Internet and telephone services) from January 2002 until November 2003; and project manager for a large corporation from January 2003 until November 2006. Applicant was terminated from his project manager position because of unprofessional conduct. The government contractor categorized Applicant as ineligible for rehire. (GE 6) Applicant denied knowing that he was terminated from his employment or that he was deemed ineligible for rehiring.

Applicant worked as a senior project requirements analyst from November 2006 until November 2007, and as senior information technology manager from January 2008 until October 2008. Applicant was unemployed from November 2007 until January 2008, and from October 2008 until November 2009. He worked as a network administrator from November 2009 until December 2009 (temporary position). He also worked as a security officer supervisor for a company from November 2009 until July 2010. While in this last job, Applicant received a written reprimand for viewing unauthorized and inappropriate material on the company's computer in July 2010.

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Apparently, he interfered with the company's internal investigation when he appealed the reprimand outside of his company, and he was terminated from his position. (Tr. 32-34)

Applicant has been employed as a security enforcement officer with a government contractor since July 2010. He was earning approximately \$4,800 a month (\$21 hourly rate). He has been on medical leave since July 11, 2012. Applicant explained that he is a disabled veteran with a 10 percent disability rating. He is currently receiving medical treatment through the Veterans' Administration.

Applicant possessed a security clearance at the secret and top secret levels with access to sensitive compartmented information (SCI) from 2001 until 2008. There is no evidence to show that he has compromised or caused others to compromise classified information. Outside of the security concerns alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern. He testified that he always passed his lifestyle polygraph examinations.

Applicant submitted his SCA in November 2010. Section 13 of the SCA, asked Applicant to disclose whether in the last seven years he had been fired from a job; quit the job after being told he would be fired; left a job following allegations of misconduct, unsatisfactory performance, or under unfavorable circumstances; or whether he had been laid off by an employer. Applicant was also asked whether he received a written warning, or was officially reprimanded, suspended, or disciplined for misconduct in the work place.

Applicant answered "No" to all the above questions and failed to disclose that he was terminated from his job in 2006. He also failed to disclose that in July 2010 he received a written reprimand, and was terminated from his position. Applicant explained that he did not disclose his 2006 termination because he was not aware he was terminated or declared ineligible for rehire by his employer.

Applicant was interviewed by a government investigator in April 2011. During the interview, he was asked whether he had any employment issues with any of his numerous employers, and to state the reasons why he left his jobs. Applicant told the investigator he never had any employment issues, and that he always left his jobs seeking better employment conditions and opportunities. Applicant failed to disclose that he was terminated from his job in November 2006, and that he received a reprimand and was terminated from another job in July 2010. Applicant denied he was terminated from his employment in 2006, or that he had any issues with that employer. During the interview and at his hearing, Applicant claimed he was unaware that he is considered ineligible for rehire by that employer.

After he was confronted with his 2010 termination, Applicant admitted he received a written reprimand for watching unauthorized and improper material on his company's computer during work. He was later terminated for improper use of the computer and for interfering with the company's internal investigation. Applicant denied

any wrongdoing. He believes he was treated unfairly and unprofessionally by that company, and that he was not allowed to defend himself. He told the investigator that he did not disclose his written reprimand and termination because he did not know how to list his employment issues in his SCA. He also believed he did not engage in any misconduct, so he did not disclose it. (GE 2)

In his answers to the November 2010 SCA financial questions, Applicant stated that in the last seven years he had financial problems that included property repossessed, defaulting on a loan, bills turned over to collection agencies, and credit cards suspended or cancelled for failing to pay as agreed. He also disclosed he was evicted from rental apartments for his failure to pay rent, and that he was currently over 90 days delinquent on some debts.

The subsequent background investigation revealed the 22 delinquent debts alleged in the SOR, totaling approximately \$24,800. Applicant denied SOR ¶¶ 1.j through 1.l, and 1.s (totaling \$1,060), because he did not recognize the creditors. He never contacted the creditors to determine if those debts were valid.

Applicant explained that his financial problems were the result of a contentious divorce in 2007, and his periods of unemployment and underemployment. After his divorce, he was left with large legal fees and a past-due child support obligation that he was required to pay in a lump sum. He did not have sufficient income to pay for his day-to-day living expenses, child support obligations, and his legal fees.

Applicant was unemployed from around December 2008 until November 2009. He was laid off from a job paying \$85,000 a year when his employer lost some contracts. (Tr. 47) He received unemployment benefits, but the \$800 a month he received was not sufficient to pay for his child support obligations and his day-to-day living expenses. His car was repossessed, he was evicted, and other debts became delinquent. He then worked a temporary position as a network administrator from November 2009 until December 2009. When he could not support himself, Applicant relocated to another state and moved in with his parents trying to save money and to find a job to pay his debts.

Applicant's credit reports show that he was carrying numerous delinquent debts before he separated from his wife and before he was unemployed. (GEs 3, 4, and 5) In November 2011, Applicant purchased a used 2007 Lexus ES 350. His current spouse drives a 2007 vehicle purchased in 2012. During his November 2010 interview, Applicant told the investigator that he had taken a credit counseling class. He also said that he had started to contact his creditors to inform them of his financial problems, and that he was planning on filing bankruptcy protection in July 2011.

In his responses to the August 2011 DOHA interrogatories, Applicant stated he intends to resolve his delinquent debts by filing for bankruptcy protection. He has not filed bankruptcy because he does not have the money to pay the bankruptcy legal fees. (Tr. 57) Applicant has been on medical leave (not working) because of health problems

since July 2012. Applicant did not present documentary evidence of any payments, contact with creditors, or of any efforts to resolve his delinquent obligations before or after receipt of the SOR. He failed to pay relatively small debts under \$200. He stated that he was working at an hourly rate of \$21 an hour. His income was not sufficient for him to pay for his day-to-day living expenses and to pay his debts.

Applicant testified that he takes his job and his obligations to the Government seriously. He admits responsibility for his mistakes. He acknowledged that he has had financial problems for many years, but believes that his financial problems were caused by circumstances beyond his control. Applicant acknowledged that he needs to improve his decision-making process. He believes that he will have trouble paying his debts on his current salary. He would like to resolve his debts, but it will take time to do so. He promised that as long as he is employed he will continue to pay his debts.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. He is punctual and knowledgeable. He also considers himself to be a loyal American and a good worker. He would like to continue his service to his country and to resolve his delinquent financial obligations. He needs his security clearance to retain his job, and more importantly to find a better paying job that will give him the ability to pay all of his delinquent debts.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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)

Applicant has a history of financial problems that date back to 1999. His financial problems continue to present as evidenced by the 22 delinquent debts alleged in the SOR, totaling about \$24,800. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's evidence fails to fully establish the applicability of any mitigating condition. His financial problems are ongoing, he has extensive delinquent debt, and the evidence fails to show that he acted responsibly in the resolution of the debts, or that he acquired the debt under circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's divorce, medical disability, and his periods of unemployment and underemployment may be considered as circumstances beyond his control that contributed to, or aggravated, his financial problems. Notwithstanding, Applicant's evidence failed to show that he acted responsibly in the acquisition of his debts or in his efforts to resolve his debts. He presented no documentary evidence of payments made, contacts with creditors, or of any efforts to resolve his delinquent debts. AG ¶ 20(b) applies, in part, but does not mitigate the financial considerations concerns.

AG ¶ 20(c) applies because Applicant participated in financial counseling. However, it does not mitigate the financial considerations concerns. Considering the number of debts, the small value of some of the debts, the aggregate total of the debts, and his lack of efforts to resolve his debts, I cannot find that there are clear indications that his financial problems are being resolved or under control.

Questions remain about Applicant's current financial situation and his ability and willingness to resolve his delinquent debts. Considering that Applicant has been employed since July 2010, and that he receives some disability payment, he failed to provide a reasonable explanation for his failure to address even his smallest debts. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility. AG ¶¶ 20(d) and 20(e) do not apply because Applicant failed to submit documentary evidence of efforts to resolve his debts, or to dispute the legitimacy of his debts. The remaining mitigating condition (AG ¶ 20(f)) is not applicable to the facts of this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant falsified his November 2010 SCA when he deliberately failed to disclose that he was terminated from his employment in 2006 and 2010, and that he was issued a written reprimand for work-related misconduct in 2010. He also made false statements to a government investigator when he told the investigator that he never had any employment issues, that he was never reprimanded for misconduct, and that he was never terminated from his employment.

Applicant's false statements and falsifications trigger the applicability of the following disqualifying conditions under 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(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.

Applicant claimed that he was not aware he was terminated and declared ineligible for rehire by his employer in 2006. After he was confronted by the government investigator, he admitted he received a written reprimand and was terminated from his job in 2010. He explained that he omitted his 2010 reprimand and termination because he was not involved in any wrongdoing. He believes he was treated unfairly and unprofessionally, and he was not allowed to defend himself. Additionally, he claimed he did not know how to report such employment issues in the SCA. Having observed his demeanor while testifying and analyzed his testimony in light of all the evidence available, Applicant's claims of lack of knowledge and honest mistake are not credible.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns. Considering the record as a whole, I find that none of the Guideline E mitigating conditions apply. AG ¶ 17(a) does not apply because he did not correct his falsifications before he was confronted with the facts. AG ¶ 17(c) does not apply

because making a false statement is a felony in violation of 18 U.S.C. § 1001. The remaining mitigating conditions are not raised by the facts and are not applicable.

Applicant's false statements and falsifications show lack of judgment, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations. His behavior raises questions about his reliability, trustworthiness, and ability to protect classified information.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant honorably served four years in the Army. He is a technically proficient, punctual, and dedicated employee. He has significant experience working for government contractors while possessing a security clearance. Except for the current security concerns, there is no evidence of any problems or concerns while he possessed a security clearance. He is a good father, husband, and practicing pastor of 29 years.

Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the resolution of his delinquent debts. Because of his extensive experience working for federal contractors and years holding a security clearance, Applicant knew or should have known about the importance of maintaining financial responsibility and about the requirement to be honest and truthful in his answers to the SCA questions. Applicant's financial problems and his deliberate failure to disclose relevant and material information on his 2011 SCA adversely affects his credibility and evidence of extenuation and mitigation.

Considering the record as a whole, Applicant does not have a viable plan to resolve his delinquent debt, and he is not in control of his financial situation. Moreover, because he falsified two SCAs, Applicant demonstrated a lack of suitability for a security clearance.

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.v:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 1.a-1.e:

Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge