



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



In the matter of:)	
)	
)	ISCR Case No. 11-08405
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 2007. He failed to establish financial responsibility in the resolution of his delinquent debts. Moreover, he falsified his December 2009 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 December 20, 2009. On August 1, 2012, the Department of Defense (DoD) 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 (undated), and requested a hearing before an administrative judge.

¹ DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

The case was originally assigned to another administrative judge on October 22, 2012, and reassigned to me on December 20, 2012. The Defense Office of Hearings and Appeals (DOHA) issued the first notice of hearing on November 19, 2012, scheduling a hearing for December 6, 2012. The hearing was postponed and a second notice of hearing was issued on December 3, 2012, scheduling the hearing for January 18, 2013. At the hearing, the Government offered exhibits (GE) 1 through 8, which were received without objection. Applicant testified and submitted two exhibits, marked AE 1 and 2. AE 2 was received post hearing. DOHA received the hearing transcript (Tr.) on January 29, 2013.

Findings of Fact

In his Answer, Applicant failed to admit or deny most of the SOR allegations. At his hearing, Applicant admitted the factual allegations in SOR ¶¶ 1.c, 1.k, and 1.l. He denied SOR ¶¶ 1.a, 1.b, 1.d through 1.j, and 2.a. 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 46-year-old employee of a government contractor. He attended college for approximately two years during 1986-1987, but he did not complete a degree. Applicant married in October 2004, and divorced in September 2007. He has two children, a daughter age 18, and a son, age 16.

Applicant worked for a private company as an engineer from June 1994 until August 2009, when he was laid off. He started working for his current employer, a government contractor, in August 2009. This is his first application for access to classified information.

Applicant submitted his SCA in December 2009. Section 26 of the SCA (Financial Record), asked Applicant to disclose any financial problems within the last seven years. In his answers, Applicant only disclosed that in June 2008, he had some property repossessed or foreclosed. Applicant denied any other financial problems including having delinquent debts, judgments, liens, and wage garnishments. The subsequent background investigation revealed the 10 delinquent debts alleged in the SOR, totaling \$51,771, which are supported by GEs 3 through 6, and AE 2. The status of the alleged delinquent debts is as follow:

SOR ¶ 1.a – This is a \$1,737 collection for a credit card account that became delinquent in January 2009. In his July 2012 response to DOHA interrogatories, Applicant claimed this credit card was awarded to his ex-wife by the divorce court and that it was her responsibility to pay it. Notwithstanding, Applicant's credit report shows this account as his individual account. (AE 2) Applicant disputed the account through the Equifax Credit Bureau, and apparently the dispute was resolved against him. He paid the debt through a garnishment of wages in December 2011. (AE 2, GE 5)

I note that Applicant explained that after the divorce, his ex-wife filed for bankruptcy protection and her responsibility for numerous debts was discharged. The creditors then started collection actions against Applicant. He believes that this credit card should have been his ex-wife's responsibility. (GE 2)

SOR ¶ 1.b – This is a \$8,166 judgment filed against Applicant in November 2007. (GEs 3, 4, and 5) In February 2010, Applicant told a government investigator that the creditor told him the debt was delinquent, and he did not pay it. Applicant was required to appear in court, and a judgment was filed against him. Applicant told the investigator that he believed the debt was for a loan taken by his ex-wife. He explained that his name appeared in the loan documents because his father (deceased) cosigned for his ex-wife's loan. He and his father had the same name, and Applicant claimed he did not cosign the loan.

Applicant claimed he disputed the debt and the dispute was resolved in his favor. He presented no documentary evidence to show he disputed the debt, or that the dispute was resolved in his favor. Notwithstanding, the debt is no longer reflected in his January 2013 credit report. (AE 2)

SOR ¶ 1.c – In July 2010, the Internal Revenue Service (IRS) filed a \$17,178 lien against Applicant for income tax owed for tax years 2006, 2007, and 2008. Applicant claimed he started making payments in 2009. However, the only documentary evidence of payments starts in July 2011. As of July 9, 2012, he made six payments totaling \$1,500, and he owed a total of \$18,280. Applicant claimed he only owes \$9,780, but the documents he submitted show he owes over \$18,000.

SOR ¶ 1.d – Applicant claimed that he and his then wife purchased a vehicle together. During the divorce, she was awarded the vehicle, and according to Applicant, she was made responsible for the loan payment. Notwithstanding Applicant's claims, his January 2013 credit report (AE 2) indicates this was Applicant's individual account, and not a joint account. In February 2010, Applicant told a government investigator that in 2006, he received a letter from the creditor stating that the car was repossessed and collecting an outstanding balance of \$13,000.

In his answer to the SOR, Applicant claimed he had an upcoming court date to determine whether he or his ex-wife were responsible for the debt. He claimed he instructed his attorney to establish a payment plan if his dispute failed. Applicant presented no documentary evidence to support any of his claims.

SOR ¶¶ 1.e and 1.f allege delinquent medical debts. The debts became delinquent in October and November 2008. (AE 2) During his June 2010 interview with a government investigator, Applicant stated he believed these debts were for medical services provided to his son.

In his July 2012 response to DOHA interrogatories, Applicant claimed he contacted the creditor and made arrangements to pay these debts in full. In his Answer

to the SOR, he stated these were his ex-wife's debts, but that he had contacted the creditor to pay them. He claimed that the creditor did not provide him the documentation he requested to pay the debts. Applicant also claimed that he disputed the debts and they were removed from his credit report. Applicant presented no documentary evidence to show these were not his debts, or that he contacted the creditors. Applicant's January 2013 credit report (AE 2) shows both debts as delinquent and it does not indicate Applicant disputed either debt.

SOR ¶ 1.g alleges a delinquent child support obligation totaling \$5,197. GE 3, 4, and 5 indicate that Applicant acquired the obligation in December 2008. Applicant's January 2013 credit report (AE 2) shows that he was first delinquent in January 2009, and that he paid the arrearages in December 2012. Thus, Applicant was in arrearages on his child support obligation from January 2009 until December 2012. He has been paying his child support obligation through a garnishment of wages. As of his hearing date, he was current on his child support obligation.

At his hearing, Applicant repeatedly claimed he was never late on his child support obligation. However, in February 2010, Applicant told a government investigator that in November 2008, he received a letter from the state's child support and family services organization stating that he was in arrears on his child support obligation. Applicant also told the investigator that his wages were garnished in February 2009 to pay his back due child support obligation. Applicant's employer's letter indicates that as of March 2013, his wages were being garnished to ensure payment of his child support obligation. (AE 2)

Concerning the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.j, Applicant claimed he has no knowledge of these debts. He averred he asked his attorney to look into the validity of these debts. He failed to present documentary evidence to support a dispute of his responsibility for these debts.

Concerning SOR ¶ 1.k, Applicant explained that in 1990, he issued a check that was not cashed for six months. By the time the check was presented for payment, he had closed his bank account and moved away. The check was returned for lack of funds, and the state issued a warrant for his arrest. Applicant apparently paid the returned check on July 2011 through payroll deduction. (Tr. 52-53, GE 2)

Regarding SOR ¶ 1.l, Applicant explained that in 2000, he had a business and a client paid him with two stolen checks. He deposited the checks in his account, and when they were returned as fraudulent checks, Applicant was charged with forgery, receiving stolen property, and theft. Apparently, the fraudulent checks were covered by a check guarantee company. Applicant paid restitution, established that he had no knowledge the checks were stolen, and the charges against him were dismissed. (Tr. 53)

Section 26 of Applicant's December 2009 SCA (Financial Record), asked him to disclose whether in the last seven years he had defaulted on a loan; had bills turned

over to collection agencies; had credit cards suspended or cancelled for failing to pay as agreed; had failed to pay federal taxes and had a tax lien filed against him; had judgments filed against him; had been delinquent on child support payments; had his wages garnished or attached; had been over 180 days delinquent on any debts; was currently over 90 days delinquent on any debt; and was currently delinquent on a federal debt.

Applicant answered “No” to all the above questions and he deliberately failed to disclose the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d through 1.h. When asked why he failed to disclose the required information at his hearing, Applicant explained that he was not aware of some of the debts, did not recall the judgments, and that he believed he was not delinquent on some debts because he had established payment plans with the creditors and was current on his payments. Considering the evidence as a whole, Applicant’s explanations are not credible.

Applicant explained that his financial problems were the result of his 2007 divorce, the passing of his father, and a short period of unemployment in 2009. He claimed that most of the alleged SOR debts were his ex-wife’s individual debts, or accounts that were assigned to her by the divorce court during the division of the marital assets and liabilities. He claimed that when he submitted his December 2009 SCA, he was unaware of most of the alleged delinquent debts. Applicant failed to present documentary evidence to show the delinquent debts were his ex-wife’s responsibility. Moreover, the available documentary evidence show most of the debts were his individual debts. Applicant’s own statements established he was aware of the delinquent debts, the judgments filed against him, and the garnishment of wages. Although Applicant was aware of his debt to the IRS, I note that the lien was not filed until after he submitted his SCA.

Applicant retained an attorney to help him dispute the alleged delinquent debts. He claimed he prevailed on some of the disputes, that the debts were removed from his credit reports, and that resolution of other disputed debts was pending. Applicant promised to provide documentary evidence to support these claims, but he failed to do so.

Applicant submitted little documentary evidence of payments, contact with creditors, or of efforts to resolve his delinquent obligations. I note that he presented documentary evidence that a small claims court suit against him (collection action) was dismissed (without prejudice) because he was now a resident of another state. (AE 1) He also presented documentary evidence that he has been paying both his child support obligation and his debt to the IRS through garnishment of wages, and that he paid another debt through a wage garnishment.

Applicant testified that he likes his job and he takes his job and his obligations to the Government seriously. He acknowledged that he has had some financial problems, but believes that his financial problems were caused by circumstances beyond his control. Applicant believes that with the assistance of his attorney, he will be able 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 also considers himself to be a loyal American and a good worker. He would like to resolve his delinquent financial obligations. He needs his security clearance to retain his job, and more importantly to have 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 2007. His financial problems continue to present as evidenced by the 10 delinquent debts alleged in the SOR, totaling over \$51,000. Considering the record as a whole, I find that the debts alleged in the SOR are Applicant's debts as established by the credit reports and Applicant's testimony. Applicant claimed many of the alleged debts were not his delinquent debts, and that he had disputed them. He failed, however, to present documentary evidence to show that the debts did not belong to him. Although he disputed some of the debts, he also failed to establish a reasonable basis to support his disputes. Applicant paid the debt alleged in SOR ¶ 1.a through a garnishment of wages. He is current on his child support obligation (SOR ¶ 1.g), which was paid through a wage garnishment.

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 and his short period of unemployment 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 his efforts to resolve his debts. He presented little documentary evidence of payments made, contacts with creditors, or of efforts to resolve his delinquent debts, except for disputing some debts. The available evidence show that most of the payments Applicant made were through garnishment of his wages. AG ¶ 20(b) applies, in part, but does not mitigate the financial considerations concerns.

AG ¶ 20(c) applies in part. Applicant did not present evidence that he participated in financial counseling; however, he retained the services of an attorney to help him resolve some of his financial problems. Notwithstanding, it does not mitigate the financial considerations concerns. Considering the number of debts, the value 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. Applicant has been employed from 1994 to present, except for a short period of unemployment after he was laid off in August 2009. Applicant's SCA indicates he started working for his current employer in August 2009 and he has been fully employed thereafter. Considering that he was divorced in 2007, he failed to provide a reasonable explanation for his failure to address his debts. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility. AG ¶ 20(d) does not apply because Applicant failed to submit documentary evidence of good faith efforts to resolve his debts.

AG ¶ 20(e) applies, in part, but does not fully mitigate the financial concern. Applicant's evidence shows he disputed many of his delinquent debts, but he failed to establish that he had a reasonable basis 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 December 2009 SCA when he deliberately failed to disclose that in the last seven years he had defaulted on a loan; had bills turned over to collection agencies; had failed to pay taxes; had judgments filed against him; had been delinquent on child support payments; had his wages garnished or attached at least three times; had been over 180 days delinquent on debts; and was currently over 90 days delinquent on some debts.

Applicant's falsification triggers 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 of some of the debts, did not recall the judgments, and that he believed he was not delinquent on some debts because he had established payment plans with some creditors and was current on his payments. 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.

Applicant claimed that most of the alleged SOR debts were his ex-wife's individual debts, or accounts that were assigned to her during the division of the marital assets and liabilities. He claimed that when he submitted his December 2009 SCA, he

was unaware that those debts assigned to his ex-wife were delinquent. Applicant failed to present documentary evidence to show the delinquent debts were his ex-wife's responsibility. On the contrary, the available documentary evidence show most of the delinquent debts were his individual debts. Moreover, Applicant's prior statements establish that before he submitted his 2009 SCA, he was aware of the delinquent debts because collectors were calling him, he had judgments filed against him, and his wages had been garnished. Applicant was also aware of his debt to the IRS, however, I note that the IRS tax lien was not filed until after he submitted his SCA.

Applicant also claimed that he disputed some debts, prevailed on the disputes, and the debts were removed from his credit reports. Applicant promised to provide documentary evidence to support these claims, but he failed to do so.

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 make good-faith efforts to 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, and not a minor offense. The remaining mitigating conditions are not raised by the facts and are not applicable.

Applicant's falsification shows 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 likes his job and he takes his job and his obligations to the Government seriously. He acknowledged that he has had some financial problems, but believes that his financial problems were caused by circumstances beyond his control. Applicant believes that with the assistance of his attorney, he will be able to resolve his debts.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. 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. This is his first security clearance application, and he needs his security clearance to retain his job, and more importantly to have the ability to pay all of his delinquent debts.

Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the resolution of his delinquent debts. Moreover, Applicant failed to be honest and truthful in his answers to the 2009 SCA questions. Applicant's

financial problems and his deliberate failure to disclose relevant and material information on his 2009 SCA adversely affects his credibility and evidence of extenuation and mitigation. Considering the record as a whole, 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.g, 1.k, and 1.l:	For Applicant
Subparagraphs 1.b-1.f, 1.h-1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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