



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



In the matter of:)	
)	
)	ISCR Case No. 11-11233
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 14, 2011. On January 11, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On March 10, 2013, Applicant provided a notarized answer to the SOR. A separate one-page document containing his answer to the Guideline E allegation and

his request for a hearing was marked and entered in the record as Hearing Exhibit (HE) 1. The case was assigned to me on May 2, 2013. I convened a hearing on May 29, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through Ex. 4 and entered in the record without objection. Applicant testified and introduced 13 exhibits, which were identified and marked as Applicant's Exs. A, B, B-1, and C through L. Applicant's exhibits were entered in the record without objection. DOHA received the hearing transcript (Tr.) on June 6, 2013.

Findings of Fact

The SOR contains 35 allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.ii.)¹, and one allegation that raises security concerns under Guideline E, Personal Conduct (SOR ¶ 2.a.). The financial delinquencies alleged in the SOR total approximately \$23,575. In his Answer to the SOR, Applicant admitted 26 of the Guideline F allegations (SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.i., 1.j., 1.k., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., 1.v., 1.w., 1.y., 1.z., 1.aa., 1.dd., 1.ee., 1.hh., and 1.ii.) He denied the SOR allegations at ¶¶ 1.g., 1.h., 1.l., 1.m., 1.x., 1.bb., 1.ff., and 1.gg. He neither admitted nor denied the allegation at ¶ 1.cc.² He denied the Guideline E allegation at SOR ¶ 2.a. Applicant's admissions are entered as findings of fact.

Applicant, a high school graduate, is 52 years old. He married for the first time in 1984, and he and his wife divorced in 1998. In 2001, Applicant married for a second time. He has been separated from his second wife since 2007, and he intends to divorce her. At present, he is living in a spouse-like relationship with a woman he hopes to marry at a future date. Applicant has one adult biological child and three adult stepchildren. (Ex. 1; Tr. 36-38, 41.)

Applicant suffers from a chronic health condition which requires expensive medication. He cannot afford health insurance to treat his illness, and at his hearing, he stated he was suffering from stress and losing weight. (Tr. 41-42.)

Applicant has been steadily employed as a security officer with his current employer since 2004. He was first awarded a security clearance in 2005. When he was interviewed in March 2011 by an authorized investigator from the U.S. Office of Personnel Management (OPM), Applicant acknowledged debts that were several years old and remained unsatisfied. He stated that he would contact his creditors to obtain more information and to make payment arrangements. (Ex. 1; Ex. 4; Tr. 64-65.)

¹ The debts alleged on the SOR include 29 in collection status, five in charged-off status, and one 120 days past due.

² At his hearing, Applicant admitted the debt, stated he had not contacted the creditor, and acknowledged that it was unpaid. (Tr. 60.)

In October 2012, Applicant acquired the services of a law firm specializing in debt consolidation and repayment. When he concluded that the firm was not paying his delinquent debts in a timely fashion, Applicant dismissed the firm and hired another debt consolidation group in January 2013. At his hearing, he provided documentation showing that the debts identified at SOR ¶¶ 1.a. (\$1,162), 1.j. (\$1,990), 1.n. (\$2,137), 1.r. (\$1,300), 1.v. (\$2,362), and 1.bb. (\$791) were in a repayment plan managed by the second debt consolidation firm. According to documentation in the record, Applicant pays the group a monthly fee to pay or settle these debts.³ (Ex. A; Ex. B; Ex. B-1; Ex. C; Tr. 32, 46-47.)

Applicant provided documentation corroborating that \$125 had been deducted from his checking account in May 2013. He stated that the debt consolidation firm had credited the \$125 against the \$1,162 debt alleged at SOR ¶ 1.a. (Ex. D; Ex. 4; Ex. K; Tr. 43-45.)

At his hearing, Applicant also provided documentation corroborating payment or settlement of the following debts: SOR ¶¶ 1.g. (\$32); 1.h. (\$680); 1.x. (\$98); 1.ff. (\$50); and 1.gg. (\$54). (Ex. B; Ex. E; Ex. F; Ex. G; Ex. H; Ex. I; Tr. 48-49, 57, 61.)

Applicant asserted he had made arrangements to pay several of his debts in the future. He identified the debts as those alleged at SOR ¶¶ 1.b., 1.c., 1.f., 1.i., 1.k., and 1.w. Applicant also acknowledged that he had not established plans to pay or settle the debts alleged at SOR ¶¶ 1.d., 1.e., 1.o., 1.p., 1.s., 1.t., 1.u., 1.y., 1.z., 1.aa., 1.dd., 1.ee., 1.hh., and 1.ii. (Tr. 47, 53-55, 57-58, 60-61.)

Applicant stated that he had disputed the \$429 debt alleged at SOR ¶ 1.l. He provided documentation showing that the debt had been deleted from his credit report. Applicant also asserted that the debt alleged at SOR ¶ 1.m. was not on his most recent credit report. However, he failed to provide documentation corroborating his assertion. The debt is listed on his credit report of October 2012. (Ex. B-1; Ex. 3; Tr. 50-52.)

Applicant also asserted that the delinquent debt alleged at SOR ¶ 1.q was a duplicate of the delinquent debt alleged at SOR ¶ 1.r. However, the debts have different account numbers on Applicant's credit report of October 2012. He failed to provide documentation establishing the two debts were one and the same. (Ex. 3; Tr. 53-54.)

At his hearing, Applicant stated that he was willing to pay his creditors and resolve his delinquent debts. He said his many unpaid debts occurred when he "let things get out of hand." (Tr. 32.)

³ The amount paid each month by Applicant to the debt consolidation firm is ambiguously reported. In a letter dated February 27, 2013, the firm states: "As per their signed contract they are to draft \$250 on the 8th and 22nd of every month." Applicant presented a copy of his bank statement showing a \$125 deduction made by the firm at the beginning of May 2013. It would appear that the monthly deductions total \$250 and not \$500. (Ex. A; Ex. K.)

Applicant's take-home pay is \$1,100 a month. The take-home pay of his current partner is \$1,200 each month. He is unable to afford the medication he needs for his chronic medical condition. (Tr. 65-67.)

When Applicant completed and certified his e-QIP on February 14, 2011, he was asked to respond to Section 26 by answering questions about his financial record over the past seven years. Question 26m asked: "Have you been over 180 days delinquent on any debt(s) [in the past seven years]?" Question 26n asked: "Are you currently over 90 days delinquent on any debt(s)?" Applicant responded "No" to Question 26m and Question 26n. He did not disclose the information in SOR ¶¶ 1.a. through 1.ii. The SOR alleges at ¶ 2.a. that Applicant's failure to disclose this information was a deliberate falsification.

In his answer to the SOR, Applicant denied he deliberately falsified his answer to SOR ¶ 2.a. He stated that he did not understand Question 26m and Question 26n. (Answer to SOR; HE 1.)

At his hearing, Applicant stated that he did not understand what was meant by the two questions asking about his delinquent debts. He acknowledged, however, that he knew he had many debts that were overdue for a long time. (Tr. 62-63.)

In describing his feelings and his response to the two questions, Applicant stated: "Like I said, I answered, yes. . . in the beginning, but then I was afraid to say yes, and then I was afraid, and I said, 'Well, I'm going to say no.' And I didn't understand the question." Applicant acknowledged that he had completed security clearance applications in the past. He recalled completing two security clearance applications before the e-QIP he completed in 2011. (Tr. 64.)

Applicant's supervisor provided a letter of character reference for the record. The supervisor noted that he had supervised Applicant for five years. During that time, the supervisor stated, Applicant demonstrated sound moral judgment, dedication to the organization and its mission, and, in addition, possessed a positive work attitude. (Ex. L.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "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 and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. For several years, Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant has a history of financial difficulties and inattention to his financial responsibilities. While his debts arose in the past, many of them are ongoing, and they occurred under circumstances that are likely to recur. Applicant has been steadily employed since 2004. While he has a chronic medical condition, it has not resulted in his unemployment.

To his credit, Applicant has sought financial counseling from two debt consolidation firms. He provided documentation showing he had set up a payment plan to address six of the larger debts alleged on the SOR, and he provided evidence of one payment of \$125 under the plan. He also provided documentation showing he had paid or settled debts of \$32, \$680, \$98, \$50, and \$54. He stated that he had disputed the debt alleged at SOR ¶ 1.1., and he noted that it was no longer listed on his credit report.

Many of Applicant's attempts to resolve his debts occurred relatively recently, from October 2012 to the present. He asserted that he planned to pay six of his delinquent debts at a future time, and he acknowledged that he had not contacted 14 of his creditors to make payment arrangements. What is missing from Applicant's record is consistent payment of his debts over time. He has not established a track record that demonstrates that he can be relied upon to allocate his limited financial resources to satisfy his many financial delinquencies.

I conclude that while AG ¶¶ 20(b), 20(c), 20(d), and 20(e) have partial applicability in this case, AG ¶¶ 20(a) does not apply in mitigation.

Guideline E, Personal Conduct

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

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.

When Applicant completed and certified his e-QIP in February 2011, he failed to provide truthful answers to queries about his debts that were delinquent for 180 days in the last seven years and his debts that were currently over 90 days delinquent. The SOR alleged that Appellant's "No" responses to Questions 26m and 26n in Section 26 of his e-QIP were deliberate falsifications. Applicant denied the falsifications; he stated that he did not know what was meant by the two questions.

DOHA's Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant completed two security clearance applications before he completed his e-QIP in February 2011. As a government contractor, he was first entrusted with protected information in 2005. As a person previously entrusted with access to protected information, he had reason to know that he was required to answer all questions on the e-QIP truthfully. He knew that his financial problems were serious and long-standing, and he also knew that when he applied for a security clearance as a government contractor, his background would be investigated thoroughly.

Applicant asserted that he did not intentionally falsify his answers to Questions 26m and 26n. He then explained that he did not understand the questions. However, he went on to explain that because he was afraid to answer “Yes” in response to the two questions, he therefore answered “No.” If he did not understand the questions, his response may have been bewilderment or confusion, but it is doubtful that the questions would have caused Applicant to experience fear.

Applicant’s explanation lacks credibility, especially when viewed against his age, work experience, and history of being entrusted with protected information. He knew, or should have known, the importance of telling the truth to the Government. Moreover, Applicant’s statements that fear caused him to falsify his answers on his e-QIP raise concerns about his judgment, reliability, and trustworthiness. The interests of the Government in protecting classified information are not well-served when individuals entrusted with security clearances cannot be relied upon to be honest in reporting their financial status.

Applicant’s intentionally false answers raise a security concern under AG ¶ 16(a), which reads: “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.”

Several Guideline mitigating conditions might apply to the facts of this case. Applicant’s disqualifying personal conduct might be mitigated under AG ¶ 17(a) if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” If “the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process” and “[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely,” then AG ¶ 17(b) might apply. If “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," then AG ¶ 17(c) might apply.

AG ¶ 17(d) might apply if "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." AG ¶ 17(e) might apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant falsified material facts on the e-QIP that he executed and certified as true in 2011. Nothing in the record suggests that he took prompt good faith action to correct the omissions, concealments, or falsifications before he was confronted with the facts. Nothing in the record suggests that his failure to report his 35 financial delinquencies was caused or significantly contributed to by improper or inadequate advice specifically about the security clearance process from authorized individuals or legal counsel. (AG ¶ 17(b).) When he executed his security clearance application, Applicant knew or should have known that he had a record of financial delinquency. As a mature adult, he knew that his financial problems could seriously impact his eligibility for a security clearance. (AG 17(c).) Applicant failed to provide documentation that he obtained counseling or had taken other positive steps that might alleviate the circumstances that caused his unreliable conduct and, as a result, such behavior was unlikely to recur. (AG ¶ 17(d).) Nothing in the record suggests that Applicant took positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress that his behavior caused. (AG ¶ 17(e).) I conclude, therefore, that none of the applicable personal conduct mitigating conditions applies to the facts of Applicant's case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature person of 52 years. His supervisor regards him as a valued employee. His financial problems began several years ago and are ongoing. His efforts to address his financial delinquencies are recent. He does not have a reliable history of timely and consistent payment of his financial obligations. Despite a steady income for several years, he has failed to budget his income to satisfy his many debts. Moreover, Applicant was aware of his many financial delinquencies, and he deliberately concealed this information from the Government when he completed his e-QIP in February 2011.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies and personal conduct.

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
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. - 1.f.:	Against Applicant
Subparagraphs 1.g. - 1.h.:	For Applicant
Subparagraphs 1.i. - 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraphs 1.m. - 1.w.:	Against Applicant
Subparagraph 1.x.:	For Applicant
Subparagraphs 1.y. - 1. ee.:	Against Applicant
Subparagraphs 1.ff.- 1.gg.:	For Applicant
Subparagraphs 1.hh. - 1.ii.:	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.

Joan Caton Anthony
Administrative Judge