



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



In the matter of:)	
)	
)	ISCR Case No. 11-11459
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2013

Decision

LYNCH, Noreen A., Administrative Judge:

On December 12, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). On March 20, 2013, an amended SOR was issued under Guideline E (Personal Conduct).¹ The action was taken 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), implemented in September 2006.

Applicant timely answered both SORs and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated April 17, 2013.² Applicant received the FORM on May 8, 2013. He did not submit additional information. I received the case assignment on June 21,

¹Applicant submitted a 5-page attachment with his answer to the amended SOR.

²The Government submitted eleven items in support of its case.

2013. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations under Guideline F, ¶¶ 1.a through 1.i. with explanations. He admitted the allegations under Guideline E, ¶¶ 2.a and 2. b. (Item 4).

Applicant is 37 years old. He is an employee of a defense contractor. He graduated from high school, and received his undergraduate degree in December 2000. He married his second wife in 2004. He has a son, age 6, and 2-year-old twin daughters. (Item 5) Applicant has been employed with his current employer since April 2010. On May 26, 2011, he completed a security clearance application. (Item 5) Applicant has held a top secret security clearance since July 2006. (Item 10)

The SOR lists nine delinquent debts including two student loans, and collection accounts. The total amount is approximately \$31,135.00. The credit reports at Items 7-9 confirm them. Applicant did not disclose any adverse information concerning his finances on his May 2011 security clearance application. (Item 5) When interviewed by DOD investigators about any debts either currently 90 days delinquent or 180 days overdue within the last seven years, Applicant responded "No". When the investigator confronted Applicant with a June 2011 credit bureau report listing 13 delinquent debts on the report, Applicant stated that the accounts became delinquent in 2007 or 2008. He explained that he was struggling financially due to the birth of his first child and having to reduce expenses and give up his previous life style. Applicant stated that he intends to pay his creditors.

Applicant admitted to the investigator that he did not list the delinquent debts on his security clearance application or respond correctly to the investigator about any delinquent debts due to fear that the adverse information would negatively affect his existing clearance. On the answer to the amended SOR, Applicant admitted that he falsified material facts on his security clearance application and in his 2011 interview. (Item 11) He stated that he was remorseful and the falsification of facts concerning his financial record was a mistake that he deeply regrets.

Applicant completed DOHA 2012 interrogatories and provided documentation that he was addressing the delinquent accounts in SOR 1.a through 1.g in a debt settlement program, and the two student loans, allegation 1.h and 1.i, were under a forbearance until March 7, 2013. At that time, he would begin making payments on the student loans.

Applicant's March 2013 credit report reflects six creditors that were owed a total of approximately \$26,218.00 for delinquent debt. This did not include his two student loan accounts that had just been released from forbearance status. (Item 9) The two student loans total about \$102,000.

Applicant submitted documentation that in November 2012, he obtained the services of a debt settlement program to settle the delinquent accounts alleged in SOR 1.a through 1.g. The seven delinquent debts are in the process of being settled by the company. Applicant pays \$431 each month. The term is for 43 months. He submitted documentation that he paid the necessary amount in December 2012. He did not provide evidence of any payments made after that date. It is not clear from the record which, if any, accounts have actually been settled.

Applicant stated that the two student loans (SOR 1.h and 1.i) total \$102,000. He has scheduled monthly payments with a Direct Loan Program. The monthly payment is \$1,031.11. He did not provide any documentation that he started payments. His personal financial sheet lists a monthly payment of \$568. Since March 2013, the two student loans were removed from forbearance status, there is no record of any actual payments.

Applicant stressed that he and his wife paid non-SOR delinquent debts from 2007-2011. He acknowledged his mistakes and realizes that he has a way to go, but he has provided for his family and managed to pay or settle some delinquent debts

Applicant is current with his mortgage. Applicant is current with his car payment. Since 2008, he has not accrued any additional unsecured debt.

Applicant has a monthly net income of approximately \$5,435.08. After deducting total monthly expenses of \$4,985, he has a net monthly remainder of approximately \$449.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

protect classified information.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts of approximately \$31,135.00. Two student loans totaling about \$102,000 are also part of his debt. His admissions and credit reports confirm these debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties since 2008 make it difficult to conclude that it occurred “so long ago.” Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant did not provide information to prove that the delinquencies were beyond his control and that he acted responsibly. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant produced some evidence that he obtained the services of a debt settlement company and provided documentation that he paid or settled 13 creditors from 2008 to 2011. However, the record is not clear as to how much was paid. He provided proof of a monthly payment to the debt settlement company from December 2012, but there is no further information. He did not present evidence that he received financial counseling, but as part of the debt settlement program, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem) applies. I find that there are no clear indications that his financial problems are being resolved and are under control.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

(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, or (2) while in another

country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Applicant admitted that he lied about his delinquent debts when he completed his May 2011 security clearance application. At the time he was in possession of a top secret security clearance. He also admitted that he lied during his interview with an authorized investigator. It was only after Applicant was confronted with his credit bureau report that he admitted that he wanted to hide the delinquent debts due to fear of its effect on his security clearance. AG ¶¶ 16(a) and (b) apply.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) 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 clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) 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;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's

reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant displayed a recent pattern of questionable judgment, lack of candor, dishonesty, and or unwillingness to comply with rules and regulations. The repeated falsification is not mitigated. He has not presented any other information to persuade me that he has mitigated personal conduct concerns. I have doubts about his judgment and reliability. After considering the mitigating conditions outlined in AG ¶ 17, I conclude Applicant has not mitigated the security concern under personal conduct.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 37 years old. He is an educated man. He has worked for his current employer since 2010. Applicant has held a security clearance since 2006. He is married and provides for his wife and three children.

However, Applicant accrued delinquent debt beginning in 2008. He claims that he has paid delinquent debts since 2008 through settlements. The record does not provide details. Applicant still has delinquent debt of approximately \$31,000 and two outstanding student loans. He entered a debt settlement program recently, but there is evidence of only one monthly payment. He receives partial credit for some good-faith efforts. However, he did not produce sufficient documentation to prove that he has the ability to pay the debts given his small monthly net remainder, as indicated from his budget. He has not completed financial counseling. He has not mitigated the financial considerations security concern.

More troubling is the fact that Applicant did not disclose his adverse financial information on his 2011 security clearance application. He denied any financial problems to the investigator. It was not until he was confronted with a recent credit report that he admitted that he amassed delinquent debt from 2007 or 2008. He admitted in his answer to an amended SOR that he falsified his application and lied to an investigator. He is remorseful about his actions. He realizes his grave mistake. This is recent behavior. However, Applicant failed to mitigate personal conduct security concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. A denial of his security clearance does not necessarily indicate anything adverse about an applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to classified information. Clearance 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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge