



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



In the matter of:)	
)	
)	ISCR Case No. 11-11796
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On June 5, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 24, 2013, and requested a hearing before an administrative judge. The case was assigned to me on September 30, 2013. Due to

the Federal Government shutdown scheduling a hearing was delayed. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 30, 2013. I convened the hearing as scheduled on December 4, 2013. The Government offered exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant and two witnesses testified. He did not offer any documentary evidence. DOHA received the hearing transcript (Tr.) on December 12, 2013.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, and 2.c. He denied the remaining SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He earned an associate's degree in 1994. He has been employed by the same federal contractor since 2007. He married in 2000 and divorced in August 2013. He has two children, ages 21 and 15 years old.

On his security clearance application (SCA) dated January 20, 2011, Applicant reflected his employment history from 2002 to 2007 to include periods of unemployment from October 2005 to December 2005. During this period, he used his vacation time and sick leave he had earned to support himself until he found another job. He was also unemployed from May 2006 to August 2006. Applicant testified that he was unemployed for 18-months, which is inconsistent with the information he provided in his SCA. He indicated he did not receive unemployment benefits during the periods he was unemployed. Applicant indicated he was underemployed at some of the jobs he held.¹

While employed with his present employer, Applicant has had work assignments overseas and received overtime payments. He estimated in 2007, 2008, and 2009, he earned between \$70,000 and \$90,000. His salary was reduced in 2010 due to less overtime. His current salary is approximately \$55,000. In 2010, he began having financial problems due to his pending divorce. He stated he was required to pay his wife's lawyer's fees. He estimated the cost was about \$10,000. He was also responsible for child support and his child's school tuition. He stated he was paying \$1,600 a month for these expenses. Sometime in 2010 his child support payment was reduced to \$1,000 a month. He is now paying \$1,197 a month in child support for his 15-year-old daughter. He indicated he intends to seek a modification of the amount because he is no longer working overtime and is not being paid as much because he is not traveling overseas. His wages were garnished to satisfy his child support arrearages.²

Applicant's wages have been garnished for child support, unpaid federal taxes and unpaid state taxes. He stated that the child support was garnished because his

¹ Tr. 31, 64; 69; GE 1.

² Tr. 21-27, 48; GE 1, 2 at pages 6, 13.

daughter was on public assistance in State A and his home, State B, was reimbursing the other state. State B used garnishment as the means of reimbursement.³

Applicant admitted he did not file his state income tax returns for 2005, 2006, and 2007 because he did not believe he had sufficient income that required him to file. He admitted he failed to file his federal income tax returns for 2004 and owed approximately \$8,308. He attributed this failure to his wife being responsible for filing their taxes. His wages were garnished to satisfy the state and federal tax liens issued against him. He indicated he worked with a law firm to help him resolve his tax debts. The debts are satisfied.⁴

Applicant obtained student loans in approximately 1990. He defaulted on his student loans. He admitted that from 1994 to 2011 he made some payments, but could not recall when or how much. He had no explanation for why he defaulted on his student loans. His wages were garnished to satisfy his student loans, and they were satisfied in 2011.⁵ Applicant stated that from 2007 to 2009 when his wages were being garnished he increased the payment so he could pay the debts off early. He did not provide documents to substantiate his statements.⁶

The debt alleged in SOR ¶ 2.a (\$460) is a debt for communications services that became delinquent in 2006.⁷ Applicant's credit report shows the debt was still delinquent in 2011. Applicant provided a document dated July 9, 2013, from the creditor indicating the account has a zero balance and was closed. It is unclear when the debt was paid. It is resolved.⁸

The debt in SOR ¶ 2.b (\$197) is a collection account for a credit card that became delinquent in 2010. Applicant provided a document dated June 18, 2013, confirming the debt was paid in full.⁹

The debt in SOR ¶ 2.c (\$734) is a collection account from a bank. It was charged-off by the original creditor in 2006. It remained in collection status in 2011.

³ Tr. 60-63.

⁴ Tr. 51-56; 60, 64.

⁵ The garnishment of Applicant's wages to repay his federal and state income taxes, child support payments, and delinquent student loans were not alleged in the SOR. I have not considered these issues for disqualifying purposes. I will consider these facts when analyzing the "whole person" and making a credibility determination.

⁶ Tr. 56-60, 65.

⁷ GE 4.

⁸ Tr. 30-33; GE 4, 5; Answer to SOR, Exhibit C.

⁹ Tr. 30-33; GE 5; Answer to SOR, Exhibit D.

Applicant settled the debt with the collection company and made his final payment in July 2012. He provided documents to show the debt is settled.¹⁰

The debt in SOR ¶ 2.d (\$10,371) is for a car loan Applicant cosigned for his wife. The car was purchased in 2002, and the original loan was for approximately \$18,000. The car was repossessed in 2005 for failing to make the payments. Applicant stated his wife was supposed to make the payments and failed to do so. The car was sold by the creditor, and the deficiency amount owed was \$5,000. Applicant stated he contacted the creditor and was presented a settlement offer for \$3,000. Applicant indicated the statute of limitations has run on the debt and it has now been written off by the creditor. He indicated that his divorce decree states he cannot seek payment from his ex-wife for the debt. He recently attempted to find the creditor, but has been unsuccessful. Applicant indicated he is willing to repay the debt. He was told by the creditor it would be providing him an Internal Revenue Form 1099c for the cancellation of a debt.¹¹

The debt in SOR ¶ 2.e (\$9,669) is a car loan. Applicant obtained the loan in 2005 for \$17,000. He could not pay the loan because he lost his job. He attempted to return the car and the creditor refused it. The creditor has agreed to accept a \$4,000 payment and \$500 a month. Applicant offered to pay \$2,500 and \$500 a month. The creditor refused the offer and indicated he still owes \$9,000. Applicant intends to pay the debt. Applicant indicated the statute of limitations has run on this debt. He admitted he did not currently have the \$2,500 to make the payment he offered, but he did at the time.¹²

Applicant suffered the loss of several family members over the past several years. In 2009, his brother passed away. In 2010, another brother passed away. In 2011, his mother passed away. In 2012, his sister and a niece passed away. In 2013, his nephew passed away. He contributed some money to help pay for the expenses associated with his relatives' passing.¹³

Applicant provided a personal financial statement (PFS) when he completed government interrogatories, dated July 16, 2013. He indicated he had approximately \$326 remaining at the end of the month. At his hearing, he indicated his monthly remainder has increased to \$500 or \$600 due to a pay increase. His PFS reflected he had approximately \$800 in his checking account and no savings. Applicant's fiancé has been living with him for about two and half years. She has a job and contributes to the household expenses. She also provides support for her daughter and her child. Applicant and his fiancé maintain a budget and their priority is to pay their monthly expenses. Applicant stated he has attended credit counseling classes, and he checks

¹⁰ Tr. 30-33; GE 4, 5; Answer to SOR, Exhibit E.

¹¹ Tr. 32-37, 70-79.

¹² Tr. 37-40, 70-79.

¹³ Tr. 40-43.

his credit report annually. He also used a law firm to help him negotiate settlements on some of his other delinquent debts.¹⁴

Applicant was terminated from his job in 2005 due to improper timekeeping. Applicant worked 40 hours a week. Some days he worked more than eight hours, other days he worked less than 8 hours. He listed on his time sheet that he worked 8 hours each day, instead of accurately reflecting how many hours he worked each day. He believed it all evened out. He stated in his answer to the SOR that he was unaware that he was supposed to put the exact hours he worked. He also indicated he was unaware of the correct way to record his weekly hours.¹⁵

In 2007, Applicant used his company issued credit card to purchase a laptop computer for personal use. He indicated he was unaware this action was prohibited by his employer. He stated he was never informed about the proper use of the credit card by his new employer. He explained that his previous employer permitted the use of a company credit card for personal use as long as the bill was paid. He was confronted by his employer because he was not permitted to use the company credit card for personal use. He initially stated he paid the card off right away, but then admitted it took three months to pay it. He was unsure why it took three months because he had the funds. He continues to hold a company credit card.¹⁶

A former supervisor of Applicant's testified on his behalf. Applicant worked for him about 14 months ago. He considered Applicant's performance professional and positive. He trusted Applicant to run the team and perform the work required. He described Applicant as having a good work ethic. He does not believe Applicant could be subject to coercion.¹⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

¹⁴ Tr. 27-28, 49-51.

¹⁵ Tr. 17-19.

¹⁶ Tr. 19-21, 44-48; GE 2.

¹⁷ Tr. 81-86.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and has the ultimate burden of persuasion 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 safeguard 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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. 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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; 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 activities which, if known, may affect the person's personal, professional, or community standing.

Applicant was terminated from a job due to improper timekeeping. He also misused his company credit card when he purchased a laptop for personal use. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

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

Applicant admitted his timekeeping mistake from 2005, and there has not been a recurrence of problems. He also admitted to misusing the company credit card six years ago, because he was unaware of the policy, which was different from his previous employer. He repaid the amount owed. No other work-place incidences have occurred. It has been over five years since these infractions occurred. A sufficient period of time has elapsed, and Applicant has not been involved in similar conduct. He acknowledged his behavior and has been careful to abide by the rules. His actions were infrequent and do not cast doubt on his reliability, trustworthiness, or good judgment. The above mitigating conditions apply.

Guideline F, Financial Considerations

The security concern 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had five delinquent debts, totaling approximately \$21,431 that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established because Applicant has two debts that are still unpaid and unresolved. Applicant attributed his history of financial problems to his lengthy divorce and attorney's fees, periods of unemployment and underemployment, and family tragedies that he contributed money to help his family. These things were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been employed with the same company since 2007. From 2007 through 2009, he was working overseas and working overtime. His two largest debts have been delinquent since 2005. He paid the three small debts alleged in the SOR, but it was not until after they went into collection and after he applied for a security clearance that he began addressing them. Applicant has had several years to begin addressing the two large car loan debts. There is no evidence he did anything to address those debts until after he applied for a security clearance. He indicated that these debts are barred by the statute of limitations and are no longer on his credit reports. One creditor offered to settle the debt, but Applicant is unable to meet the terms. The other debt he believes he will receive an IRS Form 1099c cancellation of debt. Applicant has not acted responsibly in addressing his two largest delinquent debts. AG ¶ 20(b) partially applies.

Applicant has paid, settled or resolved the delinquent debts alleged in SOR ¶¶ 1.a, 1.b and 1.c. AG ¶ 20(d) applies to those debts. He ignored for many years his two large car loan debts, and they are not resolved. At this juncture, there are not clear indications Applicant's financial problems are being resolved and under control. AG ¶¶ 20(c) does not apply.

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. I have incorporated my comments

under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 41 years old. He had two infractions with employers that occurred eight and six years ago, respectively. The personal conduct concerns regarding these issues are mitigated. Applicant has a long and significant history of financial problems. He had his wages garnished for repayment of federal and state tax liens, delinquent student loans, and child support payments. Applicant paid the three small debts alleged in the SOR, but not until they were in collection status and years old. He has not paid the two large delinquent car loans. He indicated the statute of limitations had run on these two debts and they are no longer on his credit report. Applicant's financial history reflects his unwillingness to pay legitimate debts. The Government had to intervene and involuntarily garnish his wages to pay valid legitimate debts. He ignored his large car loan debts for so long that the statute of limitations has run on them. His actions do not represent a responsible person who is willingly addressing his valid debts. He has been employed with the same company since 2007. For several years he was earning a substantial salary and he could have made some attempt to begin a payment plan to pay his delinquent debts, but he did not. Applicant's finances remain a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the personal conduct guideline, but failed to the security concerns under the financial considerations guideline.

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 E:	FOR APPLICANT
Subparagraphs: 1a-1.b:	For Applicant
Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Subparagraphs 2.d-2.e:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge