



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



In the matter of:)	
)	
)	ISCR Case No. 11-14712
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The six charged-off or collection accounts totaling approximately \$14,000 have yet to be resolved. He relied on inappropriate advice when completing his Electronic Questionnaires for Investigations Processing (e-QIP), mitigating the personal conduct security concern. However, his unpaid financial delinquencies pose a financial considerations security concern. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 25, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On March 26, 2013, Applicant answered the

¹ 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 on September 1, 2006.

SOR and requested a hearing. On May 16, 2013, I was assigned the case. On May 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on June 10, 2013. I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibits A through C, without objection. Applicant testified at the hearing and called no additional witnesses... The record was held open to allow Applicant to submit additional information. No additional material was received. On June 20, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, Applicant admitted the debts and denied any falsification. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 44-year-old fire lieutenant who has worked for a defense contractor since June 1990. (Ex. 1, Tr. 31) He has been divorced three times and has two children, an eight-year-old daughter and a 21-year-old son. (Ex. 1) He submitted a 2003 thank-you letter from the President and two letters of character. (Ex. A, B, C) His supervisor and a coworker state Applicant has an excellent work record and a proven track record for reliability and dependability. (Ex. A, B) They believe he is honest and trustworthy.

Applicant's September 2011 credit bureau report (CBR) lists a repossession and four collection accounts: a \$768 credit card debt (SOR 1.a),² a \$64 medical debt (SOR 1.d), a \$94 auto parts store debt (SOR 1.e), and an \$83 telephone service account (SOR 1.f). (Ex. 4) Applicant asserts he never made a purchase from the auto parts store. (Tr. 26) The \$64 medical bill was reported in September 2010, and the auto parts store debt was reported in June 2008. The other two collections accounts were reported in September 2011. A \$186 collection debt (SOR 1.c) was a medical debt for care received by Applicant's daughter. (Tr. 26)

In September 2011, when Applicant completed his e-QIP he answered "no" to the financial question asking if any debts had been turned over to a collection agency. (Ex. 1) At the time he completed the form, he knew he owed an amount following the voluntary repossession of his truck. In completing the form, he was unaware of some other smaller debts that remained unpaid. He asserts he was directed to answer "no" by his supervisor, who had recently gone through the security process seeking a clearance, because any credit report he had and the one the investigator would later rely upon when questioning him would be different. (SOR Answer, Tr. 33, 51) He believed the investigator would ask him about his finances, and he could explain the truck repossession then. He said he was not trying to hide anything. When questioned by the investigator, he stated he knew about the repossessed truck, but did not know about the other five smaller debts. (Ex. 2)

In January 1994, Applicant divorced and received custody of his son. All property and liabilities were divided equally. (Ex. 2) In September 1995, he remarried and

² Applicant's January 23, 2013 CBR indicates this debt was "current" from April 2011 through December 2012. (Ex. 3)

divorced in March 1998. There were no children of the marriage and all property and liabilities were equally divided. In June 2005, he remarried and divorced in September 2010. There were no children of the marriage and all property and liabilities were equally divided. (Ex. 2) He does pay child support for his daughter and is current on that support.

In late 2004, the interest on Applicant's mortgage increased from 6% to 17% causing his monthly payments on his home to increase from \$650 to \$1,100. Unable to make his payments, he voluntarily surrendered the home to the mortgage company. In June 2007, he purchased a \$20,000 2007 pickup truck for his wife under a special zero-down, zero-interest-rate promotion. (Ex. 4) Three weeks after the purchase, his wife did not like the truck's seat because it hurt her back, so the truck was returned to the dealership. (Tr. 24) Because the vehicle had been purchased with the special zero-down, zero-interest-rate promotion, the dealership would not allow it as a trade-in on any other vehicle. (Tr. 24) At that time, the car salesman said Applicant would probably owe approximately \$4,000 if he voluntarily returned the truck. (Tr. 25)

Following the repossession, the truck sold for \$8,000, which left Applicant with a \$12,000 debt. From 2007 through January 2010, Applicant made \$50 monthly payments on the debt. (Ex. 2) After separating from his wife in 2010, he made no further payments on the debt. In November 2011, during a personal subject interview, Applicant stated he intended to contact the lender to set up a repayment plan. (Ex. 2) He has not made any recent payments on this debt.

Applicant considered taking money from his 401(k) retirement plan to pay the debt, but cannot because he previously obtained a loan from his retirement plan to replace a failed home air conditioner. (Tr. 39) His retirement plan allows him to have only one loan at a time.

When Applicant was asked about his finances during a personal subject interview, he stated he was making \$55,000 a year and paying \$10,000 annually in child support and paying \$2,000 annually for his son's tuition. His monthly mortgage was \$1,250 and his monthly car payment \$717. (Ex. 2) He purchased a \$43,000 truck that is scheduled to be paid off in August or September 2013. (Tr. 25) In January 2013, when he answered financial interrogatories, he stated his monthly net income was approximately \$2,800, his rent had decreased to \$600, his net monthly expenses were \$1,600, and his monthly debt payments, including his \$717 car payment, were \$755, which left a net remainder of \$441. (Ex. 3) He indicated he had \$53,000 in bonds. At the hearing, he claims his current annual income is just under \$60,000. (Tr. 42)

In November 2011, during Applicant's personal subject interview, he stated he intended to contact each of his other creditors (SOR 1.a, \$768; SOR 1.c, \$186; SOR 1.e, \$94; SOR 1.f, \$83) by December 2011 to determine the validity of the obligations and would then either pay the debts or dispute them. (Ex. 2) He also stated during the interview that he knew he had some bad credit, but did not know exactly what was listed on his credit report. He indicated he decided to follow his supervisor's advice and not report the debts on his e-QIP, but to discuss them when brought up during his interview. (Ex. 2)

When he contacted the automobile finance company in 2011, they wanted full payment on the debt, which he was unable to pay. (Tr. 28) He has not contacted the creditors of the other debts. (Tr. 27)

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 must be considered 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 ¶ 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 Government's security interests 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 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 (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant owes approximately \$14,000 on six past-due obligations. Four of Applicant's debts are under \$200 each and remain unpaid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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;

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

(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.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts. He has received no credit or financial counseling, has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. In November 2011, when he was questioned about his delinquent accounts, he stated he would contract the creditors by December 2011 and either pay the debts or dispute them. He has done neither.

In the year and a half since Applicant's November 2011 personal subject interview, during which he was questioned about his delinquent debt, he has made no payments on the debts. The largest debt (SOR 1.b, \$12,656) was incurred in 2007 on which he made \$50 monthly payments until 2010. This large debt was incurred when his then wife did not like the new truck's seat, claiming it hurt her back. The voluntary repossession of the truck resulted in a \$12,000 obligation. This debt remains unpaid. His unpaid debts cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant divorced in 1994, 1998, and 2010. He indicated, following his most recent divorce, he was unable to continue making the \$50 monthly payments on the truck repossession debt. He failed to demonstrate how his divorces prevented him from addressing the other five debts, which totaled approximately \$1,200. Applicant has not acted responsibly in addressing these past-due obligations. AG ¶ 20(b) does not apply.

Applicant has not received any financial counseling and the debts are not being resolved. AG ¶ 20(c) does not apply. In the 19 months since being questioned about his delinquent debts, he has not contacted his creditors, has made no payment on the debts, has not established a good-faith effort to repay the overdue creditors, or otherwise resolve debts. AG ¶ 20(d) does not apply.

In Applicant's SOR answer, he admitted owing the six delinquent debts. He said he did not do business with the one auto parts dealer (SOR 1.e). Merely failing to recognize a debt is not the same as disputing the debt and providing documented proof to substantiate any basis of the dispute or providing evidence of actions to resolve the debts. AG ¶ 20(e) does not apply.

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.

AG ¶ 16 provides a condition that could raise a security concern and may be disqualifying in regard to falsification of Applicant's security clearance application:

(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.

Some of the five additional debts may not have been in collection when he completed his e-QIP. The January 2013 CBR indicates the \$768 credit card account was current as of September 2011, when Applicant completed his e-QIP. The \$83 telephone bill was listed as a collection the same month the e-QIP was completed. The repossession was in 2007, the \$64 medical debt went to collection in September 2010 and the \$94 car parts store debt, which Applicant denies doing business with, went to collection in June 2008.

When Applicant completed his September 2011 e-QIP, he should have listed all of his delinquent debts. He knew about the truck and was unsure of other debts. During his subject interview, he said he had no information about the five smaller debts. The small size of these other debts makes his response plausible.

Applicant's failure to list the repossession and other debts on his e-QIP does not prove he deliberately failed to disclose information about these debts. He denied any intentional falsification of these debts. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Deliberate omission, concealment, or falsification is a security concern. But not every inaccurate statement is a falsification. It is unlikely he was aware of the three small collection debts due to their nature and size. Failing to list these debts was not a falsification.

Applicant knew the truck had been repossessed in 2007 and knew he was making payments on the \$12,000 debt until 2010. He should have disclosed the repossession, and that the debt remained delinquent. He failed to disclose this debt because his supervisor told him to answer "no" to the financial questions and explain his answer during his personal subject interview. His supervisor was not an "authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process."

Even though Applicant's supervisor was not an authorized person, Applicant's omission was due to improper or inadequate advice. Applicant did not review the Directive as to the definition of an "authorized" individual before completing his e-QIP. He knew the truck had been repossessed, assumed it would appear on his credit report, that he would be asked about it when interviewed, and he followed his supervisor's advice. I find this approach, though flawed, was reasonable. He lacked specific intent to deceive the Government about his delinquent debts.

Having observed Applicant's demeanor and listened to his testimony, I find his failure to list the truck repossession was not a deliberate omission, concealment, or falsification. I find for him as to 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 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 returned a new truck shortly after it was purchased because his then wife found the seat uncomfortable. He assumed this would result in a \$4,000 debt based on what the salesman told him. However, the actual debt was \$12,000. He has not made a payment on this debt since 2010. He has made no payments on any of his six delinquent debts since being questioned about them in November 2011. Three of the debts are under \$100 each and a fourth debt is under \$200. His failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not

recommended. In the future, if Applicant has paid the delinquent accounts, established compliance with a repayment plan, or otherwise substantially addressed his delinquent obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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 has mitigated the personal conduct concerns; however, he has not mitigated the security concerns arising from his financial considerations.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For 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.

CLAUDE R. HEINY II
Administrative Judge