



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-03150
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)
Applicant for Security Clearance)

Appearances

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

01/02/2013

Decision

HOWE, Philip S., Administrative Judge:

On January 10, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 24, 2012. He answered the SOR in writing on August 23, 2012, and requested a hearing before an administrative judge. DOHA received the request on August 27, 2012. Department Counsel was prepared to proceed on October 9, 2012. The case was originally assigned to another administrative judge on October 15, 2012, and reassigned to me because of caseload considerations on October 31, 2012.

DOHA issued a Notice of Hearing on November 15, 2012, and I convened the hearing as scheduled on November 29, 2012. The Government offered Exhibits 1 through 7, which were received into evidence without objection. Applicant testified and submitted Exhibits A through C, without objection.

DOHA received the transcript of the hearing (Tr.) on December 7, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations in ¶¶ 1.c to 1.h, 1.j, 1.k, 1.m to 1.q, and 2.c to 2.f. Applicant denied the factual allegations in ¶¶ 1.a, 1.b, 1.i, 1.l, 2.a, and 2.b of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 46 years old, divorced, and has two children, ages 21 and 18. He is the president of a growing defense contractor in the information technology business. Applicant served in the U.S. Marine Corps from 1986 to 1992. He has a college degree. He started his business in 2005. While in the Marine Corps and working for his previous employer on government contracts, he held security clearances until about 2006. (Tr. 17-24; Exhibits 1 and C)

The SOR alleged that Applicant has 17 delinquent debts. They total \$63,524 plus the amount of his unpaid mortgage, which is about \$84,000. Applicant began to have financial difficulties in 2006 when he gave his brother \$30,000 to try to save his construction business in Tennessee. His brother did not repay him and Applicant did not expect to be repaid. If Applicant retained those funds and did not make the gift, he would have had sufficient funds to pay his mortgage, motorcycle and car loans, and his other debts. (Tr. 23-27, 60; Exhibits 1-7)

Applicant owed \$629 to a dentist (Subparagraph 1.a). This debt was reduced to a judgment. Applicant paid this debt on August 20, 2012. This debt is resolved. (Tr. 33, 71; Exhibits 2-5, 7, A; Answer attachment)

The SOR contains a duplicative listing of Applicant's motorcycle loan for \$6,588 (Subparagraphs 1.b and 1.i). Applicant stopped making payments on the loan in 2006 and the bank never repossessed it. Applicant settled the debt for \$6,000 on August 21, 2012. This debt is resolved. (Tr. 33, 34, 40; Exhibits 2-5, 7, B)

Applicant owes \$1,095 to U.S. Bank (Subparagraph 1.c). He does not know for what purchase or purpose this debt was incurred. He has not paid it. The debt is unresolved. (Tr. 35; Exhibits 2-5, 7)

Applicant owes a \$325 cable television debt (Subparagraph 1.d). He does not think he owed this debt. Applicant claimed he had an installment payment agreement

with the collector, but had no proof of payment or evidence that he disputed the debt. This debt is unresolved. (Tr. 35; Exhibits 2-5, 7)

A debt to Midland MCM for \$7,272 is not resolved (Subparagraph 1.e). Applicant has done nothing to try to repay this debt. The amount owed has now increased to \$7,920. (Tr. 37; Exhibits 2-5, 7)

Wells Fargo Bank wants to be repaid the \$2,344 Applicant borrowed on a loan. (Subparagraph 1.f). The credit reports show the debt is now \$4,022. Applicant states he does not know anything about this debt. It is not resolved. (Tr. 38; Exhibits 2-5, 7)

Applicant owes LVNV Funding \$1,114 on a credit card debt (Subparagraph 1.g). This debt is unpaid and unresolved. (Tr. 38, 39; Exhibits 2-5, 7)

Applicant owes another debt to LVNV Funding in the amount of \$1,123 on a Dillard's Department Store credit card (Subparagraph 1.h). This debt is unpaid and unresolved. (Tr. 39; Exhibits 2-5, 7)

Applicant owes \$7,300 to CitiFinancial (Subparagraph 1.j). The amount owed is now \$7,449. This debt is unpaid and unresolved. (Tr. 40; Exhibits 2-5, 7)

AT&T is the creditor on a \$1,048 debt (Subparagraph 1.k). Applicant states he does not know the origin of this debt. It is unpaid and unresolved. (Tr. 44, 45; Exhibits 2-5, 7)

Applicant owed a \$26 medical debt (Subparagraph 1.l). He paid this debt and it is resolved. (Tr. 46; Exhibits 2-5, 7)

Applicant has not paid his home mortgage since 2006 (Subparagraph 1.m). He lives in the house at the present time and has since purchasing it. He sent the U.S. Bank a partial payment of 75% of the arrearages two years ago. The bank, according to Applicant, returned his check. He spent the money instead of saving it to make future payments. His mortgage was foreclosed in 2009. He claimed he did not know about the foreclosure and sheriff's sale. Yet Applicant's documents resulting from his discussions with the Consumer Credit Counseling Service (CCCS) in 2011 show he knew about that action in 2011, before he completed his e-QIP. His acknowledgement of the debt is documented in paperwork from the CCCS he consulted to resolve his delinquent debts. Applicant testified he thought his mortgage was undergoing a loan modification process, but had no documents to support his contention. A sheriff's sale of his home was ordered in 2009 but never took place. Applicant owes \$84,000 to U.S. Bank on his mortgage. This debt is unresolved. (Tr. 27-32, 41-43, 46, 60; Exhibits 2-5, 7)

Applicant owes Wells Fargo Bank \$27,129 on a car loan (Subparagraph 1.n).. The car was not repossessed by the bank. Applicant claims he is trying to negotiate a settlement. He did not submit any proof that such attempts were being made. Applicant

stopped making payments on the car in September 2007. This debt is unresolved. (Tr. 46, 47; Exhibits 2-5, 7)

Applicant owes \$203 on his car insurance from 2008 (Subparagraph 1.o). This debt is unpaid and unresolved. (Tr. 48; Exhibits 2-5, 7)

Applicant denies knowing the nature of the WFF Cards debt for \$1,361. (Subparagraph 1.p). He has not contacted the creditor. This debt is unpaid and unresolved. (Tr. 49; Exhibits 2-5, 7)

The final SOR debt is a medical account in the amount of \$1,451 (Subparagraph 1.q). Applicant's Answer stated the debt would be paid by September 30, 2012. At the hearing he stated he is not certain about the status of the debt. This debt is unpaid and unresolved. (Tr. 49; Exhibits 2-5, 7)

Applicant established an installment payment agreement with CCCS that required an initial payment of \$1,369 and subsequent payments of \$2,339 monthly for four years. Applicant did not start those payments because he decided to repay the debts in larger amounts and faster than provided in the agreement. But Applicant has paid only three debts to date and claims ignorance of the other delinquent financial obligations listed in the SOR. Applicant discussed his debts with CCCS in 2011 before he completed his e-QIP. He did not obtain his own credit report until February 2012, after he submitted his security clearance application on January 10, 2012. He had his background investigation discussion with a government investigator in February 2012. (Tr. 51-55; Exhibits 2-5, 7)

Applicant denied any delinquent debts, judgments, collection actions, charged-off credit card accounts, payment delays, or repossessions in his answers to Question 26 on the e-QIP. He claims ignorance of those debts at the time he completed that document. At the hearing he denied knowing about 14 debts listed and found to be unpaid and unresolved. He admitted he deliberately falsified his answers to Question 26 in Subparagraphs 2.c to 2.f of the SOR. He again denied he knew about his mortgage foreclosure, but the CCCS document proves he discussed it with the counselor in 2011 (Exhibit 2 at 240). He also denied reading the CCCS document thoroughly. Applicant also denied knowingly falsifying his answers, even though his SOR Answer admits the allegations of four deliberate falsifications on the e-QIP. His explanations regarding his denials of falsifications on Subparagraphs 2.a (judgments) and 2.b (foreclosures) are not persuasive based on the evidence in the record. Applicant is a college-educated president of a company doing business with the government. His denials of knowledge of the \$58,144 of debts (deducting from the original \$63,524 listed in the SOR the \$7,217 of debt paid) and his mortgage foreclosure, are not credible or persuasive. (Tr. 41-43, 54-78; Exhibits 2-5, 7)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are useful 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 (AG ¶ 2(a)). 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. Likewise, I have avoided drawing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Four conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated \$63,524 in delinquent debt from 2006 to the present time that remains unpaid. His unpaid mortgage debt is \$84,000. Applicant has 17 delinquent debts listed in the SOR. Two debts were duplicates, so there were actually 16 delinquent debts. Applicant has done nothing to pay his mortgage since 2006, or his motorcycle and car loans. He denied knowledge of all but three of the original debts listed in the SOR. He took no action to pay or resolve the debts in the past six years or in the past 11 months since he submitted his e-QIP. His spending was irresponsible and he has no realistic plan to repay the debts. Applicant spent beyond his financial means, demonstrated by his excessive indebtedness and high debt-to-income ratio after having given his brother \$30,000 to help him from his financial difficulties.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. The following conditions may be 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant consulted a consumer financial counseling service in 2010 and 2011. That service, CCCS, tried to help Applicant arrange a consolidation and payment plan for his debts. It discovered the status of his home mortgage. Applicant took no action regarding the installment payment plan CCCS suggested. He has not paid his mortgage debt. AG ¶ 20(c) has limited application. Although Applicant obtained credit counseling for his problem, he failed to implement the plan or establish a different plan to successfully resolve all delinquent debts. There are no indications that his problems are under control or being solved. He continues to deny knowledge of most of his debts and has taken no action to resolve most of his debts.

Applicant paid three debts in 2012. He paid the dentist debt for \$626, the motorcycle loan for \$6,000, and the medical debt for \$26 (Subparagraphs 1.a, 1b, and 1.l). AG ¶ 20(d) has partial application as applied to these three debts.

Applicant's debts are recent and continuing. AG ¶ 20(a) does not apply.

Applicant's debts were not beyond his control and he has not acted responsibly in attempting to resolve them. He denies knowing the origins of several of the debts. He had four months since the issuance of the SOR and nine months since his interview with the government investigator to resolve debts or establish installment payment plans. He did nothing about the majority of the debts. AG ¶ 20(b) does not apply.

Applicant did not have a reasonable basis to dispute the legitimacy of any of the debts. Therefore, AG ¶ 20(e) does not apply.

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. 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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One condition applies:

(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.

Applicant provided untruthful answers in response to four subsections of Question 26 on his e-QIP. He denied falsifying the first two subsections of Question 26, but his denials are not credible. He did not list any financial debts, charge off of credit cards, repossessions, foreclosure of his mortgage, or any tardiness in paying his debts. This disqualifying condition applies.

AG ¶ 17 provides seven conditions that could mitigate security concerns. None of these conditions apply to Applicant:

(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.

I considered each of the mitigating conditions. Applicant did not correct his omissions or falsifications. No one advised him that he should not disclose his debts and other financial failings. Applicant has not taken any positive steps to eliminate or reduce his vulnerability to exploitation or duress. The first five mitigating conditions do not apply. The last two mitigating conditions are not relevant under the facts of the 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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 facts and circumstances surrounding this case. Applicant has taken no action to resolve 14 delinquent debts. He is an educated business executive who displayed an alarming lack of knowledge of his finances, debts, and the mortgage on his house. The behavior of failing to repay his mortgage and his delinquent financial obligations is ongoing and is not likely to change in the future. He clearly does not know how he spends his money. There is no indication that his financial situation will change.

Applicant knowingly falsified his six answers to Question 26 on his e-QIP. He did not list any financial debt or adverse collection actions. His pleas of ignorance about his debts are not credible. He consulted CCCS before he filled out the e-QIP and could have obtained a credit report before he completed the e-QIP.

Overall, the record evidence leaves me with serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his Financial Considerations and his Personal Conduct. I conclude the whole-person concept against Applicant.

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.b, 1.i, 1.l:	For Applicant
Subparagraphs 1.c to 1.h, 1.j, 1.k, 1.m to 1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.f:	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.

PHILIP S. HOWE
Administrative Judge