



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



In the matter of:

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) ISCR Case No. 14-00071
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Applicant for Security Clearance

Appearances

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

10/28/2014

Decision

MASON, Paul J., Administrative Judge:

Applicant settled one of nine delinquent accounts. His claim of making seven payments on his seven delinquent student loans is undocumented. His omissions and falsifications of relevant information from his security form were not caused by oversight or inadvertence, but were deliberate efforts to conceal and falsify relevant information about his employment history to improve his chances of obtaining a security clearance. Applicant has not mitigated the security concerns generated under the financial considerations and personal conduct guidelines. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on July 15, 2013. He was interviewed by an investigator from the Office

of Personnel Management (OPM) on August 27 and August 30, 2013. The interview summaries appear in Government exhibit (GE) 2, Applicant's interrogatory answers, dated April 21, 2014.

On May 13, 2014, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on June 30, 2014. DOHA issued a notice of hearing on August 15, 2014, for a hearing on September 10, 2014. The hearing was held as scheduled. Five Government exhibits (GE 1-GE 5) were admitted in evidence without objection. Applicant testified and his nine exhibits (AE A-AE I) were admitted into evidence without objection. The hearing record remained open until September 25, 2014, to allow Applicant an opportunity to submit additional documentation to support his testimony. No supplemental evidence was received. The transcript was received and the record closed on September 25, 2014.

Rulings on Procedure

GE 2, which specifically identifies Applicant's August 27 and August 30, 2013 OPM interview summaries in the interview verification section of the exhibit, and contains his six-page April 21, 2014 explanatory response to inaccuracies in the summaries, was initially admitted into evidence without the August 27 and August 30, 2013 interview summaries (19 pages in length) included in the exhibit. The summaries were discovered missing during the course of cross-examination of Applicant by Department Counsel. Applicant initially objected to the summaries being included in the exhibit because they were not listed in the exhibit. He added that the summaries contained misspelled names, an incorrect date as to when he reentered the United States, and several erroneous incorrect statements that the investigator did not summarize correctly. A recess was ordered to give Applicant an opportunity to review the summaries. After the second recess, Applicant indicated he had no objection to the summaries being included in the exhibit (GE 2). It is noted that his detailed six-page letter to DOHA addressing his disagreements and proposed changes to the August 2013 summaries, which is a part of GE 2, demonstrates that he had ample time to review the summaries. Accordingly, the two interview summaries are placed into GE 2 and the entire exhibit is received in evidence. (Tr. 15, 56-64)

Findings of Fact

The SOR alleges nine delinquent accounts under the financial considerations guideline. The total amount of debt is \$19,395. One of those accounts belongs to a department store and is now a judgment. Seven accounts are student loans. One account is an apartment rental account that became a judgment in January 2007. Applicant admitted all delinquent debts and judgments. The SOR also presents three allegations under the personal conduct guideline. Two of the allegations refer to incorrect or omitted information in Applicant's July 15, 2013 e-QIP concerning why he left a job in May 2012, and why he did not disclose his employment and termination from another job in 2007. The third allegation refers to an August 2013 interviews when he failed to supply a full account of his employment and unemployment between 2000 and 2007.

In his August 2013 interviews, his April 21, 2014 six-page reply to the interviews (cited above in Rulings on Procedure and a part of GE 2), his June 2014 answer to the SOR, and at the September 2014 hearing, Applicant characterized the omissions and falsifications in his e-QIP and the interview summaries as oversights. He considered his termination while in a probationary status with the SOR 2.a employer did not have to be disclosed because he was not a full-time employee. He opined that his omission of his entire seven-year employment with another employer was an oversight under SOR 2.b. The inaccurate employment dates he entered on the form regarding the SOR 2.b employer, and the cited unemployment dates were also oversights under SOR 2.c. (GE 2, April 21, 2014 letter at 1; Answer to SOR)

Applicant is 40 years old. He married in October 2007 and has two children, five and two years old. He obtained his associate's degree in May 2005 and his bachelor's degree in May 2008. He has been employed as a security officer by a defense contractor since July 2013. Applicant's previous employment included accounting and security officer positions. He seeks his first security clearance.

Financial Considerations

Applicant explained that several issues arose between 2002 and 2008 that contributed to his financial problems. He was a full-time student and working at the same time. In addition to raising a family, he had health issues, and was unemployed for varying periods of time, most recently between June 2012 and June 2013. He believed that his finances are headed in the right direction as demonstrated by his recently acquired credit card and auto loan statements showing timely payments being made. The delinquent accounts will be discussed in the order they appear in the SOR.

SOR 1.a, **Settled**. The delinquent amount of the delinquent store credit card account was \$2,213. It was transferred to a collection agency and a judgment was filed in October

2008. On June 26, 2014, Applicant and the collection agency worked out a settlement to pay \$616 by June 30, 2014, and \$616 by July 30, 2014. Applicant provided documentation showing that he furnished the second installment on July 23, 2014, and he was officially notified on July 31, 2014, that the account was settled. (AE A, B, F)

SOR 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i, **Unresolved**. These seven accounts are grouped together because they are all student loans handled by the same creditor. The accounts became delinquent in November 2010. In his June 30, 2014 answer to the SOR, Applicant indicated he worked out an agreement with the creditor to pay \$116 a month and was waiting on the paperwork from the creditor to show that an agreement had been reached. He was unable to obtain the paperwork online. At the hearing, he testified that he had made seven payments under the plan, four payments of \$58 and three payments of \$240, toward his objective of qualifying for a loan rehabilitation program and have the derogatory student loan information deleted from his credit report. However, Applicant offered no copies of checks or receipts, bank statements, or paperwork to substantiate his claim that he had made payments under the plan. The loan rehabilitation terms form sets forth the conditions of an offer that Applicant could become eligible to qualify for loan rehabilitation. However, the two-page document does not represent an agreement. (GE 3, 4; AE D; Tr. 33, 44-46)

SOR 1.f, **Unresolved**. This account is a judgment filed in January 2007 by a rental management company. Applicant claims he sent the management company notice that he was vacating the premises. The company indicated that judgment was filed because they did not receive notice. Applicant has not taken any action to resolve the judgment because it no longer appears on his credit report. (GE 2 at 16; Tr. 35, 44)

Applicant believes that his financial situation has improved recently. Because he is making regular payments on his new credit card, the first credit card he has used in nine years, the credit card creditor has increased his credit limit. He provided documentation showing that he has been making regular payments on his automobile loan. He has arranged to settle an unlisted delinquent rental debt, but there is no documentation of settlement as with SOR 1.a. Though no proof was provided, he indicated he joined a debt consolidation and counseling organization that taught him to seek settlements over payment plans in resolving debts. He stated he has a monthly budget though none was entered into evidence. (AE D, E, G; Tr. 41-43)

Personal Conduct

SOR 2.a. On July 15, 2013, Applicant certified and signed an e-QIP. He answered “no” to question 13A asking whether his employment from January to May 2012 had ended under any of four adverse circumstances, including being fired. He was terminated from this employment for performance issues. As noted above in his answer to the SOR, he did

not think the question applied to him because of his probationary status, even though he was counseled in April 2012 for performance issues. He considered the omission an oversight. Applicant also included the following additional reasons for the e-QIP inaccuracies: (1) transitioning from unemployment to employment; (2) completing the e-QIP in several locations; (3) lack of preparation; (4) restive period when Applicant was completing the e-QIP; and (5) change of residence two or three times during the period. (Answer to SOR; Tr. 37, 51-53, 78-82)

SOR 2.b. In response to question 13A of the same July 2013 e-QIP, Applicant was asked to list all employment, unemployment and self-employment, "beginning with the present and going back 10 years." Applicant did not disclose his employment as a security officer from December 2000 to February 2007, and termination from the job. In his answer, Applicant blamed oversight for not entering this seven-year employment on his security application. He indicated he had no intention of concealing this information. (GE 2 at 3; Tr. 37, 66, 69-70)

SOR 2.c. During interviews on August 27 and August 30, 2013, Applicant claimed that he was employed by the SOR 2.b employer from 2000 to 2003, and that he was unemployed from July 2003-April 2005. In his answer to the SOR, he attributed the incorrect information to oversight. During his August interviews, he was initially unable to supply a reason for not revealing his SOR 2.b employment from 2000 to 2003. Then, he claimed that he did not need to disclose the employment because it was outside the 10-year period requiring disclosure of past employment activity. Later in his interview, he admitted he intentionally did not disclose the SOR 2.b employment from 2000 to 2007 because he was fired for sleeping on the job. He also admitted he was not unemployed from July 2003 to April 2005, as he had told the OPM investigator. (GE 2 at 5-6; Tr. 67-70)

Applicant wants to be judged on the truthfulness and honesty he has demonstrated as an usher at his church and the strength of character he shows in his day-to-day life, rather than on the mistakes and oversights he made in his July 2013 e-QIP and interviews. Though not alleged in the SOR, Applicant made several oversights (by providing either incorrect information or omitting information entirely) in his responses to other employment and financial questions in his e-QIP. A few of them will be addressed. He listed his firing from the May 2012 employment in his e-QIP as "downsizing" because he had learned in a resume writing class that the word "downsizing" carried the same meaning as "laid off" or "fired." He did not reveal his 20 hours of part-time work at the university. He failed to list that he owned and operated a photography business. He left blank the e-QIP question of whether he had financial accounts over 120 days delinquent. He only believed he had one student loan with the creditor cited in the SOR that is handling seven delinquent student loans. (GE 2 at 4, 5, 16; Tr. 66-76, 82-84)

The aforementioned e-QIP falsifications or omissions related to his previous employment or financial obligations are not alleged in the SOR and cannot be considered evidence in support of the SOR allegations, but can be considered in assessing Applicant's overall credibility and may be construed as evidence under the whole-person analysis.

Character Evidence

An apartment property manager indicated by letter on June 7, 2014 that Applicant is very respectful of other tenants. Applicant pays his rent promptly every month. (AE H)

In a letter dated April 7, 2014, Applicant's pastor stated that Applicant has been a member of the pastor's church since January 2005. He is an usher. He is active in other church organizations. The pastor opined that Applicant is dependable, trustworthy, and dedicated to his faith. (AE I)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. 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 the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient evidence to show that an applicant's failure to pay his voluntarily incurred financial obligations raises questions about his reliability, trustworthiness and judgment. Based on the credit reports, Applicant's e-QIP, his interview summaries, his interrogatory answers, and the record transcript, AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) are applicable. Between January 2007 and May 2014, he accumulated \$19,395 in delinquent debt. Two of the nine debts are judgments.

Four mitigating conditions under AG ¶ 20 are potentially applicable: 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); AG ¶ 20(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 AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Though Applicant is credited with providing documentary proof that he settled the SOR 1.a judgment for \$1,233, he still owes over \$17,000 to the student loan creditor and property manager. Applicant's undocumented testimonial claim of making seven payments on the student loans is weakened by his poor credibility. He had over two months to obtain the paperwork showing that an agreement was struck with the student loan creditor. He could have substituted his bank statements for the missing paperwork to support his claim of having made payments. Though he was unemployed from June 2012 to June 2013, he has been continuously employed since July 2013. He had an opportunity to buttress his

testimony about financial counseling and other negotiating techniques, but presented nothing. Even if the SOR 1.e judgment is not listed in his credit report, resolution of the judgment, regardless of its age, remains his responsibility. While AG ¶¶ 20(b) and 20(d) have limited application, AG ¶ 20(a) is not applicable because Applicant still owes more than \$17,000. AG ¶ 20(c) is inapplicable due to the lack of documentary support of his counseling claims. There is insufficient evidence to conclude his delinquent accounts are being resolved or under control. Applicant receives only limited mitigation under AG ¶ 20(d) for resolving SOR 1.a, but he has not overcome his history of not meeting his financial obligations.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 15. 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 contains two disqualifying conditions that are potentially applicable: AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . to . . . determine security clearance eligibility or trustworthiness. . . .); and AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official fiduciary representative*).

An applicant must demonstrate honesty and forthrightness during all steps of the security clearance process. If he conceals relevant and important information about his past, e.g., employment record, or a criminal record, the Government cannot make an informed decision about his security qualifications. A deliberate effort to falsify a security clearance application depends upon the surrounding facts and circumstances of a particular case. The number of omissions or falsifications of relevant information as well as the explanations provided for the omissions may be relevant to a determination of deliberateness. Omissions or falsifications may not be disqualifying when the omissions result from haste, inadvertence, neglect, or failure to understand the question asked. The aforementioned reasons for not providing accurate information on an e-QIP are not applicable in this case because Applicant deliberately failed to disclose relevant information about his employment history on his security clearance application.

Applicant's falsification of relevant information in response to question 13A of his July 2013 e-QIP was not the result of being unprepared to fill out the security form, or transitioning from unemployment to employment, or believing that being laid off was the same as being fired. I conclude Applicant deliberately falsified his e-QIP because he did not want the Government to know he had been terminated from employment in May 2012. (SOR 2.a) His deliberate falsification falls within the scope of AG ¶ 16(a).

Applicant provided several explanations for not disclosing his employment on his e-QIP. (SOR 2.b) Initially, he claimed the employment was outside the ten-year period of review of the July 2013 e-QIP. After trying several other explanations, Applicant finally indicated to the OPM investigator that he deliberately concealed the employment because he was fired. AG ¶ 16(a) applies.

AG ¶ 16(b) applies to Applicant's deliberate falsifications of relevant facts during his interviews with the OPM investigator in August 2013. (SOR 2.c) Applicant admitted he was employed by the SOR 2.b employer from 2000 to 2007 rather than 2000 to 2003. He admitted he was employed, not unemployed, from April 2003 and April 2005.

There are three mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are: AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts*); AG ¶ 17(c) (*the offense was 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*); and AG ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*).

After a careful evaluation, I conclude that none of the mitigating conditions apply. AG ¶ 17(a) does not apply because Applicant continues to believe his deliberate omissions and falsifications were oversights. AG ¶¶ 17(c) and 17(d) do not apply because Applicant continues to deny he falsified his e-QIP and interviews, thereby raising substantial security concerns regarding his trustworthiness and reliability.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations and personal conduct guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: 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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 40 years old, and married with two children. He has received an associate's and a bachelor's degree. He has been working for his current employer for a year and two months, but with no character evidence from his employer, I am unable to reach any conclusions about his job performance. Applicant's minister believes he is committed to the church. His apartment manager indicates that Applicant pays his rent on time.

Weighing against the foregoing positive evidence is the negative evidence of Applicant's deliberate falsifications of his July 2013 e-QIP and August interview summaries. Though given an opportunity to admit his deliberate falsifications at the hearing, he continued to refer to them as oversights. Applicant does not seem to comprehend that honesty and trustworthiness are the foundation of the security clearance process. Applicant has presented insufficient evidence to mitigate the security concerns associated with the financial considerations guideline. Having weighed and balanced the entire record with the specific conditions and general factors of the whole-person concept, Applicant has not met his ultimate burden of persuasion under the guidelines for financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 (Guideline F):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.i:	Against Applicant
Paragraph 2 (Guideline E):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge