



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02656

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

08/03/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to mitigate personal conduct security concerns under Guideline E and financial considerations security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On August 27, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 23, 2013. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 17, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct under Guideline E and financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on November 12, 2014. He denied two of the delinquent debts contending that they were duplicate debts. (SOR 1.a and 1.h) He attributed 11 of the debts to his wife writing insufficient fund checks without his knowledge. (SOR 1.b to 1.f, 1.l to 1.p and 1.s) He admitted the remaining six debts. (SOR 1.i, 1.j, 1.k, 1.m, 1.q, 1.r) He denied the falsification allegation at SOR 2.a. He elected to have the matter decided on the written record. (Item 2)

Department Counsel submitted the Government's written case on February 3, 2016. Applicant received a complete file of relevant material (FORM) on February 9, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely replied to the FORM on March 3, 2016, noting only that the name mentioned in line 1 of the FORM is his nephew's name and not his name.¹ He also reiterated that he has no access to classified information contained in safes, on computers, or in files. The only purpose of his job is to calibrate and maintain the test equipment used in secure areas. (Item 6) I was assigned the case on June 9, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as it was not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not comment on the admissibility of the PSI when he replied to the FORM. Applicant waived any objection to the admissibility of the PSI summary by not providing any comments on admissibility when responding to the FORM. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 46 year old high school graduate. Applicant served on active duty in the Navy from August 1988 until August 1991, and received an honorable discharge. He attended a community college from August 1995 to January 1997 but did not receive a degree. He has worked for the same defense contractor as an electronic technician from February 1997 until June 2005, and as a calibration technician from June 2005 to

¹ This is merely an administrative mistake and has no bearing on the case.

present. He married in November 1990 but is now separated. He has two step children. (Item 3, e-QIP, dated September 3, 2014; Item 4, PSI, dated September 23, 2013)

The SOR alleges financial security concerns as raised in a credit report totaling \$16,558. (Item 5, dated September 13, 2013) The financial security concerns include a judgement (SOR 1.a), 11 debts based on checks returned for insufficient funds and placed for collection (SOR 1.b, 1.c, 1.d, 1.e, 1.f, 1.i, 1.j, 1.l, 1.o, 1.p, and 1.s); a past due credit card debt in collection (SOR 1.g); a vehicle repossession debt (SOR 1.h); a credit card debt in collection (SOR 1.k); a service debt in collection (SOR 1.m); an apartment rental account in collection (SOR 1.n); a utility debt in collection (SOR 1.q); and a telephone account debt in collection (SOR 1.r). The SOR also alleges that applicant deliberately failed to disclose on his e-QIP in response to a financial question that he had a judgement entered against him, had debts in collection, accounts cancelled or charged off, or debts more than 120 days delinquent (SOR 2.a).

The debts at SOR 1.a and 1.h are for an account listed in collection for the same credit union. SOR 1.a is a judgement resulting from a car repossession, and SOR 1.h. is cited as the balance due on a car repossession. In his response to the SOR, Applicant alleges these are the same debt. The amount listed for the debts are similar and the timing contemporaneous. I find that SOR 1.a and 1.h are duplicates. Applicant alleges he does not owe either debt because the creditor wrote the debt off. Applicant did not present any information that the debt was in any manner paid or resolved except for being written off.

Applicant alleges that the checks returned for insufficient funds were written by his former wife without his knowledge. He claims not to know about the returned checks until confronted by the security investigator. He did not present any additional evidence to explain the returned checks and his lack of knowledge of them. As to the remaining debts, he simply forgot about them. Applicant was confronted with all of his debts by the security investigator in September 2013. In response to questions from the security investigator, Applicant denied any knowledge regarding the accounts, collections, and judgment. He told the security investigator that he intends to research the debts to learn if they belong to him. If they are his accounts, he intends to pay them. He has not presented any information on steps taken to inquire about the debts or attempts to resolve them.

Applicant stated he does not have a checking account or a credit card. He uses his debit card for all purchases. He reported that he has not had a service account for years with the telephone provider for the debt at SOR 1.r. He has not had an account with the credit union creditor for the debts at SOR 1.a and 1.h for years. The debt was written off by the credit union and sent to a collection agency. A credit union representative informed him that they do not have a debt listed for him. He did not present any evidence to verify his statements. He believes his financial status is good and he is able to meet his financial obligations. (Item 4, PSI, dated September 3, 2013, at 10 and 11)

Applicant denies intentional falsification of his e-QIP for not listing any debts in response to financial questions. Applicant believes the debts were incurred more than seven years ago and outside the requirement to report them. He told the security investigator in the PSI that he owns his mobile home, and received a vehicle loan in January 2013 without issue. In addition, he does not believe he needs a special access clearance. He applied for the clearance because he was asked to apply by his company. He does not access classified information. He requires access only to the laboratory to calibrate the equipment.

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 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 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.

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 for obtaining 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.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debt as shown by a credit report, answers to the financial questions on the e-QIP, and responses to financial questions from the security investigator. The information raises security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. The debts were incurred in the normal course of everyday living. Most of the debts were from credit cards, utility bills, or repossession. The fact that the credit union wrote off the repossession debt and sent it to a collection agency does not affect the security clearance significance of the delinquent debt. The debts from insufficient funds checks may have been caused by conditions beyond Applicant's control because the checks were issued by his wife without his knowledge. As a joint account holder with his wife, Applicant is also responsible for checks written on the account that are returned for lack of sufficient funds. Applicant has not presented evidence of any action he has taken to pay or resolve the returned check debts since he learned about the debts.

Applicant has not established that he has acted reasonably and responsibly under his financial circumstances. Applicant knew of the delinquent debt as early as September 2013. At that time, he indicated he would take steps to resolve the debts. He has not presented any documentation to show that he has taken any steps to resolve or repay any of the SOR debts. Applicant has also not indicated or presented evidence that he received financial counseling.

Applicant has not established a good-faith initiative to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. The facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy debt in a timely manner must be considered. Applicant has not established a plan to pay the debts and has not shown a meaningful track record of debt payment. He has not presented documentation to show any contact with the creditors or any payments he made on the debts.

There are security concerns about Applicant's lack of action about his delinquent debts. Applicant's debts have not been paid, and Applicant has not presented a reasonable plan to resolve his financial problems. Applicant has not shown that he

acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control, that Applicant is not managing his personal financial obligations reasonably and responsibly, and that his financial problems are not behind him.

Applicant's lack of documented action is significant and disqualifying. There is ample evidence of irresponsible behavior, lack of good judgment, and unreliability because Applicant failed to document payment of any of his delinquent debts. Based on the identified debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant did not provide any derogatory financial information on the e-QIP. As noted in the SOR and the credit reports, Applicant had significant delinquent debts. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentionally falsifying the financial part of the e-QIP. He stated he had no knowledge of delinquent debt until confronted with the debt by the security investigator in the PSI. While there is a security concern for a deliberate omission,

concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. The debts consisted of a judgment, repossession, insufficient funds checks, credit card debts, and utility debts.

Based on the number and type of debts, Applicant had to have received notices of the delinquencies. He had to know he had some type and number of delinquent debt. The insufficient funds checks were returned by the bank to the merchants that accepted them for payment from Applicant's wife. Applicant would have received notice from both the bank and the merchants about the insufficient fund checks. He may not have been aware of all of the debt, but he knew he had debt. I find that Applicant knew he had delinquent debt when he completed his e-QIP. Since he had this knowledge, the only reason not to disclose the financial information was to deceive security adjudicators of the true state of his finances. Applicant deliberately failed to provide correct and accurate financial information on the security clearance application.

I considered the following mitigating condition under AG ¶ 17:

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

These mitigating conditions do not apply. Failure to provide full and complete information in response to questions on a security clearance application is not a minor offense. This failure to provide accurate information was recent and frequent. Applicant failed to provide accurate information in reference to his finances on his security clearance application in September 2013 and again in response to questions from the security investigator when he denied the debts and told the investigator that his finances were good and his debts current. He has not yet provided correct financial information.

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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):

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant knew he had delinquent debt when he completed his e-QIP and he deliberately failed to provide full and accurate information concerning his finances. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his personal conduct.

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:

Subparagraphs 1.a -1.g: Against Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1. l – 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge