



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



In the matter of:)
)
) ISCR Case No. 07-08925
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

April 25, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On June 30, 2006, Applicant submitted a Security Clearance Application (e-QIP). On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 14, 2007, Applicant answered the SOR in writing, attached exhibits (AE), and elected to have the case decided on the written record in lieu of a

hearing. On February 5, 2008, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items, along with a Motion to Amend the Statement of Reasons, and mailed Applicant a complete copy on February 8, 2008. Applicant received the FORM on February 15, 2008, and had 30 days from its receipt to file objections and submit additional information. On March 12, 2008, Applicant submitted additional information and exhibits, along with a Motion to Amend the Electronic Questionnaires for Investigation Request and a Motion to Suppress Evidence. On March 19, 2008, Department Counsel filed her Reply to Applicant's Motion to Suppress and objected to Applicant's additional submissions. On March 27, 2008, DOHA assigned the case to me.

Procedural and Evidentiary Rulings

Motion to Amend the SOR

Department Counsel included in its FORM a Motion to Amend the SOR by adding an additional allegation to Paragraph 2 that states as follows:

2.b. You falsified material facts on a Questionnaire for National Security Positions, signed by you on June 30, 2006, when you answered "No" in Response to the following questions: "*Section 27: Your Financial Record -b. In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?*" By answering "No" to this question, you deliberately failed to disclose that you purchased a vehicle in March 2000, which was thereafter repossessed, in approximately 2004 or 2005, due to your inability to make payments.

Applicant objected to the Amendment and denied the allegations, offering an explanation in his Response to FORM, dated March 12, 2008. In accordance with the Directive E3.1.17, the Motion was timely filed and is based on evidence contained in the record. The Motion is granted.

Motion to Amend the Electronic Questionnaires for Investigation Request

Applicant filed this Motion, along with his Response to the FORM. The substance of the Motion is a request to update Section 8: *Citizenship* of the e-QIP by notifying the Government that on March 10, 2008, he obtained a U.S. Passport. The Government did not respond to the Motion; however, said Motion is not an appropriate pleading in this proceeding, and therefore is denied. But, Applicant's honest attempt to properly inform the Government of pertinent information is appropriate evidence to consider under the Whole Person Analysis of this Decision.

Motion to Suppress Evidence

Applicant seeks to suppress the introduction of two credit bureau reports (Items 6 and 7) and Department Counsel's written analysis of those reports. Applicant relies on

the Federal Rules of Evidence as the basis for his argument, specifically the rules pertaining to hearsay. Department Counsel cites DOHA's procedural rules and case law that permit the admission of hearsay in these administrative proceedings. According to Directive E3.1.19, "The Federal Rules of Evidence shall serve as a guide. Relevant and material evidence may be received subject to rebuttal, and the technical rules of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record." Using the Business Records Exception noted in Federal Rule 803(6) as a guide, the two credit bureau reports are admissible. The reports were prepared in the regularly conducted course of business and provide sufficient reliability and necessity to meet the test of admissibility under the Directive. The issues raised by Applicant go to the weight to be given to the evidence and not the admissibility. Department Counsel's statements contained in the FORM and Reply to Applicant's Motions are arguments and not evidence. Applicant's Motion is denied.

Findings of Fact

In his Answer to the SOR, dated December 14, 2007, Applicant admitted the factual allegations contained in ¶¶1.b, 1.d, and 1.o of the SOR. He denied all other allegations and provided explanations.

Applicant is 34 years old and divorced. He enlisted in the U.S. Army in May 1994 and was honorably discharged in September 1997, as a disabled veteran. (Response to FORM). He held a Secret clearance while in the Army. (Item 5 at 34). After leaving military service, he was unemployed from September 1997 to January 1998. He subsequently worked in various positions, but experienced another period of unemployment from March 2001 to May 2001. In addition to working, he attended college and earned a Bachelor of Science in Ocean Engineering. In May 2006, he began working for a federal contractor. (Item 5).

In June 2006, Applicant filed an e-QIP. In response to two questions under Section 28, regarding financial delinquencies, he disclosed that he had "been over 180 days delinquent" on a debt, and "over 90 days delinquent" on a debt. He noted that the \$8,000 debt became delinquent in approximately December 2001 and was owed to a specific revolving credit card. He attributed the debt to the periods of unemployment and the termination of a romantic engagement. (Item 5 at 35; Answer). In his Response to FORM, he claimed he entered a repayment plan with the creditor and was "in good standing." He did not submit a copy of that plan or evidence that he had made payments in accordance with it.

In response to two questions under Section 27, regarding his financial record, Applicant did not disclose a judgment that was entered against him in February 2005 related to a repossessed automobile. In 2001, he voluntarily surrendered a car he purchased because he could not afford the payments. He agreed to make payments on the loan, with the understanding that the surrender would not be recorded as repossession. According to Applicant, the "report of a repossession on the credit report information is a result of the court actions taken, in breach of contract" of an agreement

he made with the creditor. (Response to FORM at 8). Subsequently, the creditor obtained a judgment against him in February 2005 for non-payment. He did not disclose the judgment because the legal notice was mailed to his parent's address where he lived before he began attending college and they did not forward it to him. Consequently, he never learned of the final judgment order until he began the security clearance process, or that the voluntary surrender of his vehicle was subsequently classified as repossession. He began making monthly payments on that judgment in December 2007. (Answer; Response to FORM).

Based on a July 2006 and a July 2007 credit bureau reports (CBR), Paragraph 1 of the Amended SOR alleges 15 delinquent debts and one outstanding judgment. The total delinquent debt amount listed, excluding obvious duplicate debts, is approximately \$44,000. The status of those debts is as follows:

SOR ¶	Amount	Creditor	Status	Exhibit
a.	\$99	Medical	Denies debt; Unpaid	Item 7 at 11; No supporting documents were provided by Applicant
b.	\$156	Medical	Paid 12/13/2007	AE - B1
c.	\$1,342	Department store	Disputed—date unknown	Item 6
d.	\$1,025	Utility	Paid 3/3/08	Response to FORM-AE
e.	\$3,145	Department store	Denies debt; claims paid	Item 7 at 6; Item 6 at 2; No supporting documents provided by Applicant
f.	\$2,219	Charge card	Disputed 11/15/2007	AE – F1
g.	\$4,437	Department store	Duplicate of e.	Item 6 at 2
h.	\$754	Telephone	Account closed; 11/23/07	AE – H1
i.	\$753	Telephone	Same creditor as in h.	AE – H1
j.	\$22,000	Revolving charge card	Denies debt; attempted to contact creditor ¹	Item 6 at 1; Item 7 at 10; No supporting documents were provided

¹ Applicant disclosed in his June 2006 e-QIP that he owed approximately \$8,000 to a revolving credit card company. That debt was included in the July 2006 CBR and listed the amount as \$8,448. (Item 7 at 6). According to the July 2007 CBR (which references the same account number, listed on the 2006 CBR), the original debt was recorded as \$8,448, but increased to \$22,000, as alleged in the SOR. (Item 6 at 2). Applicant argued in his Response to FORM that these referenced items are not related to the original credit card debt, but offered no evidence to support his contention or explain the identical account

j.(sic)	\$1,342	Department store	Duplicate of c – disputed	Item 6
k.	\$257	Telephone	Disputed 11/16/07	AE – K1
l.	\$459	-----	Denies & disputes debt	Item 6 at 1; Item 7 at 7; No supporting documents were provided
m.	\$206	Telephone	Disputed 11/15/07	AE - M1
n.	\$931	Telephone	Disputed 11/14/07	AE – N1
o.	\$11,704	2/2005 Judgment on repossessed car	Admits debt; Began making monthly payments in 12/07; Paid to date: \$1,500;	7 Exhibits are attached to Response to FORM

In summary, Applicant admitted that he owes approximately \$12,900 in delinquent debt, of which he has paid approximately \$2,600. He asserted that he formally disputed about \$25,600 of the debt, (which appears to include the revolving charge card amount he previously admitted owing), but did not provide any documentary evidence to support those assertions. He provided documentation that he disputed five debts, totaling about \$5,000. Applicant began resolving his debts in November 2007.

In his Response to FORM, Applicant stated that he is gainfully employed and successfully managing his finances. He has paid off other debts and is current with his living expenses. He claimed he has not incurred additional delinquent debts since the early 2000's. He did not provide any documents to support his statements.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

numbers, other than to argue that Department Counsel "hallucinates" when she asserts a connection between the accounts. (Response to FORM at 4).

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, 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. 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.”

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.

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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant was unable to satisfy debts that began accruing after two periods of unemployment, some of which remain unresolved to the present day. The

evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation. The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant asserted that the debts arose several years ago. However, some of them remain unresolved today and others were only recently resolved. Hence, the evidence does not support this mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant attributes his financial problems to two short periods of unemployment and a failed relationship, both of which were conditions beyond his control. As there is no documentary evidence to indicate that he attempted to manage his obligations during those periods of time, this mitigating condition has partial application.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant did not present any substantial evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). After receiving the SOR in October 2007, Applicant began paying three delinquent debts that he acknowledged were his financial obligations. While that is some evidence of good-faith, his dilatoriness in resolving financial obligations that have been outstanding for several years, warrants only partial application of this condition. He produced documentation indicating that he disputed five debts, sufficient to trigger AG ¶ 20(e), which is applicable when “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.” AG ¶ 20(f) is not applicable to the facts in this case.

Guideline E, Personal Conduct

The security concern pertaining to the guideline for personal conduct is set out in 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.

The Government alleged in ¶¶ 2.a and 2.b of the Amended SOR that Applicant falsified his answers to two questions under Section 27. *Your Financial Record*, because he omitted information about a prior judgment order and repossession of an automobile. The Government contended that those omissions may raise a security concern and be disqualifying. The disqualifying condition alleged under AG ¶ 16 in this case is:

(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 denied that he intentionally omitted information about the judgment or repossession.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant explained that because he was unable to make payments on his car, he voluntarily surrendered it to the creditor in 2001. Subsequently, the creditor obtained a judgment against him in February 2005. He did not disclose the judgment in the June 2006 e-QIP because he was unaware that it had been entered in 2005, as the legal notice was mailed to his former home address and never forwarded to him. Nor was he aware that the voluntary surrender was subsequently recorded as repossession. Given his truthful and detailed disclosure about his delinquent financial matters under Section 28, I find these explanations plausible. The omission of the information was negligent and not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in his favor.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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) 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 is 34 years old, who served his country in the military service for four years, during which time he held a security clearance. In an attempt to be forthright in disclosing requested information to the Government, he recently notified the Department that in March 2008 he obtained a U.S. passport.

Applicant's financial problems seemingly began after he left the Army and encountered two short periods of unemployment and personal problems between 1997 and 1998, and in 2001. As a result of those setbacks, he started attending college and ultimately earned his bachelor's degree.

Applicant has taken some affirmative steps to resolve his financial obligations. The Amended SOR alleges that he owes approximately \$44,000 in delinquent debts. He admits owing about \$12,900, has paid \$2,600 on the amount owed, and has disputed about \$5,000 of the listed debts. Hence, he has resolved or is in the process of resolving about \$18,000 of the total amount alleged to be delinquent. Although he vehemently denies owing monies on more than half of the debts remaining, he did not produce any substantive evidence to support his claims that he is not responsible for those debts. I am particularly puzzled by the absence of any evidence to document the resolution of the original \$8,000 debt listed in the June 2006 e-QIP and delinquent since December 2001.

The Appeal Board noted in ISCR Case No. 06-12930, "that an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement that plan.' ISCR Case No.04-09684 at 2-3 (App. Bd. Jul. 6, 2006).” Without additional proof that Applicant has resolved all of his outstanding delinquent debts, along with an established budget and a track record of managing his finances, I am concerned that similar problems may occur in the future. Although he raised interesting arguments throughout his pleadings, he failed to carry his burden to produce evidence to substantiate his claims and denials, and to rebut or mitigate the concerns raised by

the Government. Consequently, I cannot conclude that he has taken “significant actions” as noted in the said case and based on his exhibits.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.j (sic) and 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m through 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge