



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 07-03852
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

June 9, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant's has substantial delinquent debt that he cannot afford to repay. He falsified information about his debts on his security clearance application. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on October 20, 2005. On August 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, E, and J. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on August 23, 2007. After being granted an extension of time to respond, he answered the SOR in writing on October 12, 2007, and requested a hearing before an administrative judge. On November 28, 2007, DOHA informed Applicant that he had failed to admit or deny the allegations in ¶¶ 2.a through 2.c of the SOR. Applicant responded again on January 17, addressing those allegations but failing to formally admit or deny either the falsifications alleged in those paragraphs or the criminal conduct aspect of them alleged by reference in SOR ¶ 3.a. Department Counsel was prepared to proceed on February 25, 2008, and DOHA assigned the case to me on February 28, 2008.

DOHA issued a notice of hearing on March 11, 2008, and Applicant acknowledged receiving it at least 15 days before the hearing. (Tr. at 12.) During a three-way telephone conference with Applicant and Department Counsel on March 19, 2008, I denied Applicant's verbal request for a 30-day continuance. He said he was scheduled to work on the day of the hearing, but would also be scheduled to work a month later, so he did not demonstrate good cause for the delay. He did not have difficulty arranging the time off to attend the hearing, and was ready to proceed. (Tr. at 16-17.) I convened the hearing as scheduled on March 27, 2008. Department Counsel offered Government Exhibits (GE) 1 through 9, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. I granted Applicant's request to leave the record open until April 10, 2008, in order for him to submit documentation supporting his claims to have made some payment arrangements and paid some of the alleged debts. DOHA received the transcript of the hearing (Tr.) on April 4, 2008. On April 7, 2008, Applicant submitted a note and copies of two pay record documents, one from each of his jobs, to Department Counsel. He did not submit any further evidence, and Department Counsel forwarded Applicant's submission without objection to its consideration on April 10, 2008. These documents were marked AE F, and the record was closed.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor, for whom he has worked, with a security clearance, for 32 years. He and his wife of twenty years were divorced in December 2003. They have three children, ages 22, 19, and 15. (GE 1 at §§ 2, 11, 13, 14(8-10).)

In his original Answer to the SOR, Applicant admitted each of the delinquent debts alleged in SOR ¶ 1, except for those listed in ¶¶ 1.h and 1.i. The 11 debts to which he admitted total \$105,115.38. Some of these debts became delinquent during each year from 2003 to 2006. They include a federal income tax debt of more than \$18,000, toward which he is making monthly payments of \$234, and a child support payment delinquency alleged in the amount of \$71,477 that had increased to \$75,353 by November 2007. His February 2008 credit bureau report (CBR) (GE 8.) showed an outstanding balance of \$69,068 in delinquent child support with monthly payments by payroll deduction. He testified that he formerly paid \$300 per month toward his tax debt,

but negotiated the lower amount because it was all he could afford. The only payment for which he submitted any evidence was one in February 2008. Neither a copy of his settlement agreement nor his current balance were provided despite a statement that he would do so. (AE C; AE D; Tr. at 44-47.)

The debt alleged in SOR ¶ 1.h resulted from the voluntary repossession of Applicant's former automobile. He was unclear about the details of this transaction, but recalled returning the vehicle to the dealer when he could not afford to make the payments. He testified that it was a used 1999 Chrysler Sebring convertible, and the dealer resold it soon after he turned it in. The record CBRs show that he borrowed \$23,219 to buy the car in February 2002. On September 14, 2004, his CBR reported that he was 60 days and two payments past due, in the amount of \$1,679, with an outstanding loan balance of \$21,541. (GE 2 at 1.) After the car sold, Applicant's outstanding balance due on the loan was \$12,648, which was eventually charged off in January 2005. (GE 3 at 2.) His reason for denying the debt in his Answer was that he was trying to settle the matter with the lender, and he supplied no evidence of any payment toward the debt.

Applicant claimed that he had paid the \$384 delinquent debt alleged in SOR ¶ 1.i, and provided a copy of an offer to settle the debt for \$230. (GE 6 at 21.) When questioned about proof of payment, he said it had been a money order and he had a receipt that he would provide. (Tr. at 57-59.) He did not provide any proof of payment, and his most recent CBR shows the debt as an unpaid collection item. (GE 8 at 1.)

Applicant's second Answer discussed his resolution of the one debt that he had listed as being delinquent more than 90 and 180 days in § 28 of his SF 86, but did not address his failure to list any of his other debts that had been or were so delinquent at that time. His September 2004 CBR reflects numerous delinquent debts that remained delinquent on his January 2006 CBR, including about \$44,000 in delinquent child support that grew to about \$58,000 during that period. (GE 2 at 4; GE 3 at 2.) These debts should have been listed when he completed his SF 86 in October 2005. When specifically asked, during the hearing, why he did not list the other delinquencies in § 28 of his SF 86, he stated:

Well, the reason why, because I thought I was meeting some of those obligations at the same - - at the time, you know. I was getting in contact with the peoples [sic] and I was trying to make arrangements to pay them. So it wasn't like I was trying to - - you know, I might have been delinquent on them but it wasn't I was trying not to pay them.

(Tr. at 62-63.) Applicant also responded "No" to the question in § 27 of his SF 86 asking whether any of his property had been repossessed during the past 7 years. He explained in his second Answer and in testimony at the hearing that he did not reveal the repossession of his car because he turned it in before it was repossessed and was told it would not be reported as a repossession. (Answer, dated Jan. 17, 2008, at 1; Tr. at 59-61.)

Applicant submitted a letter from his union president and another letter from his department Chief, both attesting to his consistent and trustworthy performance of his responsibilities. (AE A and B.) He also submitted a creditor list and proposed payment plan that was prepared for him by a credit counseling service and included eight debts totaling \$12,274. (AE E.) He testified that he had not implemented the proposed repayment plan because his available assets are consumed by payments toward his delinquent taxes and child support. (Tr. at 31, 36-37.) Finally, Applicant submitted pay records showing biweekly net pay of \$851 for Applicant's main job, and \$361 for his second job, which would average \$2,626 per month. His gross biweekly pay from these two jobs is \$3,662, but a combined \$1,400 is deducted from that for court-ordered child support payments, in addition to other taxes and dues. (AE F.) In his personal financial statement, he listed \$2,870 in regular monthly expenses, not including debt repayments. (GE 6 at 16.)

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 used to evaluate 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

AG ¶ 18 expresses the security concern pertaining to 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, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 82.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant has incurred at least 13 outstanding, SOR-listed delinquent debts totaling in excess of \$118,000. His monthly net income falls about \$240 short of being sufficient to pay his reported regular living expenses, which did not include any debt repayments. These debts became delinquent between 2003 and 2006, with the only demonstrated repayment being small amounts going toward his \$18,000 tax lien and roughly \$70,000 in delinquent child support. Substantial security concerns are raised under both AG ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The five potentially pertinent conditions are:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

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

Applicant's delinquent debts arose during the last five years, and a substantial number and amount remain delinquent at present. His family budget is such that he does not have the means to repay them, and is likely to incur additional delinquent debt. Applicant attributed his financial difficulties to his divorce, but that was more than 5 years ago and his situation has steadily worsened. Applicant offered no evidence that he followed the minimal financial counseling he sought, or that he has any comprehensive plan to address his debt. He has not contacted most of his creditors to arrange repayments despite statements of intent to do so. He said that he disputes the amount claimed after his car was repossessed, but showed no evidence that he followed through with the creditor about that liability. There is no indication in this record that his financial issues are either under control or likely to improve in the foreseeable future.

This evidence establishes minimal mitigation under AG ¶¶ 20(a) through (e). Applicant remains financially over-extended to a significant extent. He is well regarded at work, but that is insufficient to overcome other record evidence concerning his trustworthiness, reliability and good judgment.

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The disqualifying condition alleged in the SOR and raised by the evidence 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.

Given his level of financial and legal sophistication, Applicant testified credibly that he did not realize the voluntary surrender/repossession of his vehicle was a repossession that would meet that definition as used in § 27 of his SF 86. Accordingly, I conclude that his omission of that information was not a deliberate attempt to conceal or falsify relevant information. However, he obviously understood his obligation to report delinquent debts under parts a and b of § 28, since he did list one small debt. He provided no credible explanation for the omission of a very large number and level of delinquent debt. Based on the evidence, including his demeanor and testimony, I conclude that he deliberately omitted that information in an attempt to conceal it and deceive the Government about its existence. He has held a security clearance for decades, and neither asserted nor demonstrated ignorance of the security significance of his financial situation.

Two personal conduct mitigating conditions might apply to security concerns raised by this deliberate omission. AG ¶ 17(a) (“the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts”) does not apply in this case because Applicant made no effort to correct his omission of debt information. AG ¶ 17(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”) also does not apply, since the falsification occurred on the security clearance application currently under adjudication and it continues to create doubt about his reliability and trustworthiness. Given his 5-year history of significant delinquent debt, his willingness to falsify his SF 86 about that situation establishes significant concerns about his candor, judgment and willingness to follow rules and regulations. On balance, any mitigating effect supported by Applicant’s evidence is insufficient to overcome those concerns.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws,

rules and regulations.” AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying, including: “(a) a single serious crime or multiple lesser offenses;” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” 18 U.S.C. § 1001 states:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years...

Applicant’s deliberate omission and concealment of his substantial delinquent indebtedness, as discussed above, constituted a violation of this statute. This, as a felony, is a serious offense within the meaning of AG ¶ 31(a), and does call into question Applicant’s ability or willingness to comply with laws, rules and regulations. Applicant neither asserted nor introduced any evidence that would support application of any criminal conduct mitigating condition as set forth in AG ¶ 32.

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):

(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 common sense 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's conduct of potential concern involves substantial delinquent debts that he cannot afford to repay, and falsification about those debts on his security clearance application. Applicant is a mature, experienced adult who is accountable for his decisions and conduct. His debts arose over a lengthy period, and persist to date. There is ongoing potential for pressure, coercion, exploitation or duress since he remains financially overextended.

Applicant's good reputation at work and within his union is commendable, but insufficient in itself to mitigate security concerns arising from his conduct. His falsification concerning his debts took place on his present application for a clearance, and was done to conceal relevant negative information. His indebtedness is quite likely to continue in the foreseeable future. In light of his lengthy indebtedness and continuing financial over-extension, recurrence of attempts to conceal adverse matters was not shown to be unlikely.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness security concerns arising from his failure to satisfy debts, history of not meeting financial obligations, and falsification on his clearance application. Overall, the record evidence leaves substantial doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations, personal conduct, and criminal 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge