



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



In the matter of:)	
)	
)	ISCR Case No. 07-06938
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

September 23, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on November 30, 2006. On March 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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 June 5, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on June 26, 2008. The case was assigned to me on July 28, 2008. On July 31, 2008, a Notice of Hearing was issued, scheduling the hearing for August 25, 2008. The case was heard on that date. The Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. The Applicant offered one exhibit which was admitted as Applicant Exhibit (AE) A. Applicant also testified. The record was held open until September 22,

2008 to allow Applicant to submit additional documents. Applicant timely submitted a nine-page document which was admitted without objection. The transcript was received on September 11, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a – 1.n, but denies the allegations in ¶¶ 2.a and 2.b.

Applicant is a 47-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with his company for one year and 8 months. He has a bachelor's degree. He served on active duty, as a helicopter pilot, in the United States Army for 27 years. He retired at the rank of Chief Warrant Officer 5 on September 31, 2005. He is married and has two daughters, ages 10 and 15. (Tr at 5-6, 23-25,51; Gov 1)

On November 30, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing, (e-QIP), in conjunction with his employment with a department of defense contractor. He answered "No" in response to "Section 28(a) In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He also answered "No" in response to "Section 28(b) Are you currently 90 days delinquent on any debt(s)?"(Gov 1.)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$28 medical account placed for collection in May 2001 (SOR ¶ 1.a: Gov 4 at 11); an \$173 phone account placed for collection in May 2002 (SOR ¶ 1.b: Gov 4 at 10); a \$320 phone account placed for collection in June 2002 (SOR ¶ 1.c: Gov 4 at 11); a \$533 medical account placed for collection in October 2002 (SOR ¶ 1.d: Gov 5 at 2; Gov 6 at 2); a \$345 phone account placed for collection in November 2002 (SOR ¶ 1.e: Gov 4 at 8,10; Gov 5 at 2; Gov 6 at 2); a \$331 phone account placed for collection in November 2002 (SOR ¶ 1.f: Gov 4 at 8,10; Gov 5 at 2; Gov 6 at 2); a \$300 water bill placed for collection in April 2003 (SOR ¶ 1.g: Gov 4 at 11; Gov 5 at 1; Gov 6 at 1); a \$112 medical account placed for collection in April 2004 (SOR ¶ 1.h: Gov 4 at 10-11; Gov 5 at 1; Gov 6 at 1); a \$211 electric bill placed for collection in September 2004 (SOR ¶ 1.i: Gov 4 at 11); a \$1,000 credit card account that was charged off in June 2005 (SOR ¶ 1.j: Gov 5 at 1; Gov 6 at 1); a \$783 credit card account that was charged off in June 2000 (SOR ¶ 1.k: Gov 4 at 5); a \$1,006 account placed for collection in October 2005 (SOR ¶ 1.l: Gov 6 at 2); a \$17,129 balance owed for an automobile that was repossessed in April 2006 (SOR ¶ 1.m: Gov 4 at 5; Gov 5 at 2; Gov 6 at 2); and a \$929 account placed for collection in May 2006 (SOR ¶ 1.n: Gov 4 at 6).

In response to interrogatories, dated August 10, 2007, Applicant indicated that he was unaware of any of the delinquent accounts stated that he would research to see whether they are his accounts. (Gov 2.) In response to interrogatories, dated January

25, 2008, Applicant stated that he researched the accounts, and they are his debts. He was coordinating repayment arrangements with his creditors. (Gov 3.)

Applicant's wife handled the family finances. She did not tell him about several accounts that became delinquent. They divorced in September 2005. Applicant admits to being financially irresponsible during the period when he was on his own. He and his wife reconciled in January 2007. Applicant did not obtain a copy of his credit report when he completed his e-QIP questionnaire. He was not aware that he had delinquent debts over 90-180 days old until he was sent the financial interrogatories. He believed that he was answering his e-QIP questionnaire correctly when he stated that he had no debts over 90 days delinquent. (Tr at 49-55; Gov 2 at 9, 11.)

At hearing, Applicant testified that he has paid or resolved most of the delinquent accounts in the SOR. He was unable to locate the creditor for the \$28 medical account alleged in SOR ¶ 1.a. The government's evidence, a credit report, listed a \$29 debt for a medical account. The name of the creditor was not provided. (Tr at 22.) I find for Applicant regarding this debt because the pleading is too vague.

Applicant states that he contacted the creditor for the debts alleged in SOR ¶¶ 1.j, and 1.k. They have no records of an account and intend to remove the items from his credit report. (Tr at 40-41.)

Applicant agreed to pay \$500 per month towards the debt alleged in SOR ¶ 1.m. Applicant's car was repossessed in the Spring 2007. This is his largest debt. He set up an allotment through his bank account. (Tr at 44, 46, AE A, #4; AE B at 5,7,8.)

The debt alleged in SOR ¶ 1.n is the same as the debt alleged in SOR ¶ 1.l. (Tr at 42-43, 45.) I find for Applicant with respect to SOR ¶1.n.

Sufficient proof has been provided to conclude the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.g, 1.h, and 1.i have been resolved. (AE A; AE B.) Applicant claims that the debt alleged in SOR ¶ 1.c has been paid. (Tr at 31; AE A; AE B.) No documentation was provided supporting payment. Applicant used money from his savings account and \$8,000 received in special pay from his employer to pay the debts. (Tr at 63.)

Applicant's current financial position is stable. His net monthly take home pay is approximately \$6,000. He receives a monthly military retirement check of approximately \$4,000. His total net monthly income is \$10,000. He pays \$2,000 a month in rent. Other monthly expenses include: \$400 groceries; \$560 gas; \$400 clothing; \$400 utilities; \$120 car insurance; \$558 auto loan; \$350 truck loan, and \$320 medical. Total monthly expenses are approximately \$5,108. Applicant has approximately \$4,892 left over each month after expenses to pay towards other bills. He is current on federal and state taxes. (Tr at 59-63.)

During his military career, Applicant has deployed to Bosnia, Somalia, Afghanistan, and Iraq. (Tr at 25.) His awards and decorations included the Legion of

Merit, the Bronze Star, Meritorious Service Medal (3rd Award), Air Medal W/V Device, Army Commendation Medal (4th Award), Army Achievement Medal (4th Award); Valorous Unit Medal (2nd Award), Army Good Conduct Medal, National Defense Service Medal (2nd Award), Armed Forces Expeditionary Medal (2nd Award), Southwest Asia Service Medal with Bronze Service Star (3rd Award), Army Service Ribbon, Overseas Service Ribbon (3rd Award), UN Medal, Kuwait Liberation Medal (Saudi Arabia) Kuwait Liberation Medal (Kuwait), NATO Medal, USA Master Aviator Badge, and the Global War on Terrorism Service Medal. (Tr at 24-25; AE B at 2-4.)

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.

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 as to 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. From 2001 to 2007, Applicant incurred 12 delinquent accounts, an approximate total balance of \$22,243. The largest debt in the amount of \$17,129 relates to an automobile repossession in the spring 2007. Applicant’s income is sufficient to meet his expenses. The financial issues appear to be the result of neglect rather than an inability to pay debts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) applies. Applicant’s history of financial irresponsibility appears to have resulted from a break down in communication regarding certain bills with Applicant’s wife who handled the family finances. His divorce in September 2005 more than likely added further complications. Applicant resolved most of the accounts and entered into a payment plan pertaining to his largest debt. Although most of the payments are relatively recent, Applicant has sufficient income to meet his expenses.

FC MC ¶ 20(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) applies, in part. Applicant's September 2005 divorce played a part in his financial situation. He was unaware of the extent of his delinquent debts until he received interrogatories in August 10, 2007. After confirming the debts were valid, he took steps to resolve the accounts. He acted responsibly under the circumstances

FC MC ¶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) does not apply with respect to financial counseling. However, there are clear indications that the problem is being resolved. Applicant paid most of the debts. He entered into a repayment agreement for his largest debt. His income is sufficient to meet his expenses. This experience has taught Applicant to be more proactive in insuring that his financial responsibilities are met.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved the majority of his delinquent accounts, and entered into a repayment agreement with the creditor of the debt that has the highest balance.

Applicant has mitigated the concerns raised under Guideline F.

Personal Conduct

The security concern relating 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.

Personal conduct concerns are raised because Applicant failed to list his delinquent debts in response to sections 28(a) and 28(b) on his e-QIP questionnaire, dated November 30, 2006. The following Personal Conduct Disqualifying Condition (PC DC) potentially applies to Applicant's case: PC DC ¶ 16(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).

I find that it does not apply. Applicant was not aware of the delinquent debts until he was served interrogatories in conjunction with his background investigation on August 10, 2007. He states that his wife handled the family finances. Though he admits

that he neglected his finances when they were separated, he was not aware that he had delinquent accounts more than 90/180 days delinquent when he completed his security clearance questionnaire. I conclude his omission was not intentional.

I find for Applicant under the Personal Conduct concern.

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. I considered Applicant's 27 years of honorable service in the United States Army. Applicant's debts became delinquent as a result of neglect as opposed to a refusal or inability to pay. Applicant has taken steps to resolve his delinquent accounts. He earns sufficient income to meet his financial obligations and does not appear to live above his means. Applicant mitigated the concerns raised under financial considerations based on his efforts to resolve his accounts. Personal Conduct is found for Applicant because he did not intentionally omit his delinquent accounts on his e-QIP application.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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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 clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge