



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



In the matter of:)	
)	
)	ISCR Case No. 07-08303
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro Se*

August 26, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant submitted his Security Clearance Application (SF 86), on June 7, 2005. On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline 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 May 23, 2008 and June 20, 2008, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 26, 2008. The FORM contained documents identified as Items 1 through 9. By letter dated June 26, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 7, 2008. His response was due on August 6, 2008. He submitted one additional document within the required time period. Department Counsel did not object to Applicant's submission. On August 15, 2008, the case was assigned to me for a decision. After reviewing Applicant's submission, I marked it as Applicant's exhibit (Ex.) A and admitted it to the record in this case.

Findings of Fact

Applicant is 42 years old. He and his wife have been married since 1987, and they are the parents of two adult children. From 1984 to 2004, Applicant served on active military duty. Since 2004, he has been employed as a federal contractor. He has been employed by his present employer since 2005. He has held a security clearance since 1994. (Item 5.)

Applicant's yearly salary from his job as a federal contractor is approximately \$53,000. His bi-weekly net pay is approximately \$1,840. He receives about \$1,300 each month in military retirement pay. He has about \$12,000 in savings in a 401-K account. (Item 7 at 3, 5.)

The SOR contains 15 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.o.) and two allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 2.a. and 2.b.) The 15 delinquent debts alleged in the SOR total \$41,238. All 15 allegations of financial delinquency were identified and listed on Applicant's credit bureau reports of November 1, 2005 and April 15, 2008. In his Answer to the SOR, dated May 23, 2008 and June 20, 2008, Applicant admitted 11 of the Guideline F allegations (¶¶ 1.b. through 1.e. and ¶¶ 1.i. through 1.o.) The alleged debts admitted by Applicant total \$38,827. He denied four debts, totaling \$2,411 (¶¶ 1.a., 1.f., 1.g., and 1.h.) He admitted both Guideline E allegations. Applicant's admissions are admitted herein as findings of fact. (Item 1; Item 4; Item 8; Item 9.)

Applicant was interviewed by an authorized investigator from the Office of Personnel Management (OPM) in July 2006. In the interview, he told the investigator that in about 1997 he began to spend more than he earned and became financially overextended and overwhelmed with debt. He also reported that two vehicles he owned were voluntarily repossessed one in June or July 2004 and the second in late 2004 or early 2005. He had not contacted the creditors since the repossessions, and so he did

not know how much he owed on each vehicle. He was questioned about other delinquent debts but had very little specific information about what he owed and to whom. He told the investigator he planned to begin paying his past debts in January 2007. (Item 6.)

In response to a financial interrogatory from DOHA, Applicant provided a document from a creditor stating he had satisfied the debt alleged at SOR ¶ 1.d. He also provided an undated payment schedule indicating he was disputing the debts alleged at SOR ¶¶ 1.g. and 1.i. However, he provided no documentation to corroborate his dispute of those debts. Additionally, he provided a settlement offer from a creditor who had repossessed his automobile. He did not indicate whether he had responded to the settlement offer. (Item 7 at 6, 8, 9; Item 9 at 6.)

In response to the FORM, Applicant provided a letter stating he was participating in a credit assistance program in which he was receiving advice on addressing the debts alleged on the SOR. He expressed an intent to remain in the program until all of his debts had been settled. Nothing in the record suggests that Applicant has participated in consumer credit counseling. (Ex. A.)

Applicant completed and certified his SF-86 on June 7, 2005. Question 35 on the SF-86 reads: **“Your Financial Record – Repossessions In** the last 7 years, have you had any property repossessed for any reason?” Applicant responded “no” to Question 35. Question 38 on the SF-86 reads: **“Your Financial Delinquencies – 180 Days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Applicant responded “no” to Question 38.

When he was interviewed by an authorized investigator and asked why he denied any property repossessions and delinquent debts on his SF-86, Applicant did not provide a response. (Item 6 at 10.)

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, the administrative judge applies these guidelines 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. 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 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 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 provided credible documentation to corroborate his assertion that one of his debts had been satisfied. In his response to DOHA interrogatories, Applicant provided documentation to corroborate that he had satisfied a debt for \$620, alleged at ¶ 1.d, that had been charged off as a bad debt. The SOR allegation at ¶ 1.d is concluded for Applicant.

The Government alleged Applicant owed the debts alleged at SOR ¶¶ 1.a, 1.f, 1.g, and 1.h. The basis for the Government’s allegations was Applicant’s credit report of April 15, 2008. Applicant denied owing those debts. In the face of Applicant’s denial, the credit report is insufficient evidence to prove he owes the four debts. Accordingly, the allegations at SOR ¶¶ 1.a, 1.f, 1.g, and 1.h are also concluded for Applicant.

However, Applicant’s additional financial delinquencies demonstrate he accumulated substantial debt and was unwilling or unable to satisfy his creditors over a considerable period of time. This evidence is sufficient to raise security concerns under AG ¶¶ 19 (a) and 19(c).

The financial considerations guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20(d)) Finally, an applicant can offer in mitigation documentary evidence to establish that he or she has a reasonable basis to dispute the legitimacy of a past due debt and has taken action to resolve the issue. (AG ¶ 20(e).)

Applicant admitted that his financial problems began in 1997, when he spent more than he earned and consequently found himself enveloped in debt. His financial problems continued, and in 2004, two of his vehicles were voluntarily repossessed.

One of those repossessions was alleged at SOR ¶ 1.j. During the time of his financial problems, Applicant had steady employment in the U.S. military and as a government contractor. He offered no explanation for the significant debt which continues to the present day, a situation that raises concerns about his judgment and reliability.

Applicant has not contacted the majority of his creditors to arrange payment plans or to initiate settlement. In 2006 he told an authorized investigator that he would pay his financial delinquencies in January 2007. He has not done so. Recently, he sought professional help in identifying his debts and paying his creditors. Again, he stated an intent to satisfy his financial delinquencies in the future. I conclude that that none of the financial considerations mitigating conditions apply to the facts of Applicant's case.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

In June 2005, when Appellant answered "no" to Questions 35 and 38 on his SF-86, he had experienced two voluntary vehicle repossessions in 2004 and had a number of long-standing financial delinquencies. In his interview with an authorized investigator, he admitted that, since about 1997, he had been spending more than he earned. In his answer to the SOR, Applicant admitted falsifying material facts in his answers to Questions 35 and 38. This information raises a security concern under AG ¶ 16(a), which reads as follows: "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 have carefully reviewed all the applicable Guideline E mitigating conditions, and I have especially reviewed AG ¶ 17(a), which reads as follows: "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." The investigative record shows that Applicant falsified his answers to Questions 35 and 38 on the SF-86 he signed and certified on June 7, 2005. He did not make a prompt good-faith attempt to correct the falsifications. The falsifications were brought to his attention in his security interview in July 2006, more than a year after he had signed and certified his SF-86. When confronted with the facts, Applicant offered no explanation for his falsifications. I conclude that AG ¶ 17 (a) does

not apply to the facts of Applicant's case. I also conclude that no other Guideline E mitigating conditions apply.

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) the 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. Appellant is a mature person. He has held a security clearance since 1994, and knows the importance of telling the truth to the government. He accumulated over \$41,000 in delinquent debt and failed to arrange payment or satisfaction of the majority of those debts over a period of years. He offered no information that his financial delinquencies, especially over the last four years, resulted from circumstances beyond his control. Applicant's unwillingness to address his financial delinquencies suggests that they will continue. His financial over extension will likely recur.

Additionally, Applicant admitted that he falsified material facts in his responses to Questions 35 and 38 on his SF-86. He deliberately concealed facts about his automobile repossessions and his long-standing financial delinquencies. His failure to provide truthful and candid answers raises serious concerns about his reliability and trustworthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies and personal conduct.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f, 1.g, and 1.h:	For Applicant
Subparagraphs 1.i through 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against 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.

Joan Caton Anthony
Administrative Judge