



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-09265
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

July 24, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 16, 2006. On November 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on December 12, 2007. DOHA issued a notice of hearing on April 8, 2008, and the hearing was held on May 29, 2008. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government’s case. Applicant testified. In the time allowed for Applicant to submit additional documentation, he submitted AE A and AE B. AE A is an incomplete portion of his Chapter 7 Bankruptcy petition. AE B is a two-page ledger statement

regarding payments on his Internal Revenue Service (IRS) lien for tax years 1996 and 1997, and verification of a zero balance as of June 9, 2008. (AE B) DOHA received a copy of the transcript of the proceedings on June 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The SOR lists 21 debts under the financial considerations guideline. The second guideline (paragraph 2, personal conduct) lists two allegations. Applicant admitted all financial allegations except the IRS lien owed the federal government. He denied both allegations under paragraph 2. He thought the question in 2.a. of the SOR applied only to current debts. In defense of his "No" answer to the 2.b. allegation, he did not have a credit report when he answered the question.

Applicant is 53 years old. He has been employed as a security officer since August 2006. He seeks a security clearance.

Financial Considerations

In 1978, Applicant began working as a materials packer of trucks. In 1983, he seriously injured his back. He could no longer pick up heavy items. The injury led to a major deterioration of the discs in his back that he first discovered in 1993. The disc problem has limited the types of work he can perform.

Between 1993 and 1997, Applicant believed he was handling his finances suitably because he was earning about \$45,000.00 a year, and was building a house. Suddenly, his back flared up and marital problems surfaced due to his wife's worsening emotional problems. He incurred federal tax problems for tax year 1997 (SOR 1.u.) after his wife filed federal tax returns and kept the tax refund. In early 1998, their relationship became so intolerable that he left her to live with his mother for a while in another part of the Midwestern United States.

While living with his mother or in the same locale between 1998 and 2003, Applicant claims that an unemployment office official promised to finance his training to become a truck driver. (SOR 1.q, \$3,000.00)¹ Applicant successfully completed the course and tried to drive for several transport companies. Unfortunately, his back and/or his nerves prevented him from keeping the jobs for very long.

In 2003, Applicant settled in the area and began working for a national discount store. A hurricane hit the area in September 2005, and forced Applicant, his girlfriend at the time, and her disabled son, into a federal trailer for several months.

¹ Applicant provided no documentation showing the unemployment office responsible for the training.

In August 2006, Applicant began working for his current employer, but had to take medical leave for various health problems. The back problems continued, and dental pain/infection caused him to take a week off in October 2007 to have several teeth removed. Then, he had to take two weeks off to obtain a diagnosis and proper treatment for his eyes. Next, he discovered growths under his arms that had to be removed. Then, after discovering he had diabetes, he found out his body could only tolerate certain kinds of medication. After taking off work for another six weeks for surgical removal of gallstones, he started back to work in March 2008.² Applicant receives most of his treatment from the Veteran's Administration Hospital (VA) at the present time.

Applicant has grossed approximately \$11,000.00 since March 2008, even though his current earnings fluctuate. After subtracting his expenses from earnings, he has a net remainder of \$100.00 to \$200.00 a month. He allows his fiancé of 18 months to handle the finances. Applicant's participation in handling the finances entails turning over his check to his fiancé, and she pools³ his check with the \$1,100 she receives monthly in Social Security to pay the bills and medical accounts. She is concentrating on his medical bills from 2007 and early 2008. His fiancé did not assist him when he completed the SCA in October 2006.

The number of past due accounts listed in the SOR decreases by one with Applicant's payoff of the IRS tax lien in June 2008. (AE B)⁴ After subtracting \$1,600.00 from 10,188.00, he still owes 20 creditors approximately \$8588.00.

Personal Conduct

On October 16, 2006, Applicant filled out, certified, and signed a security clearance application (SCA). Based on entries in GE 2 and GE 3, he falsified question 28.a. (SOR 2.a. of his SCA by answering "No" to having debts over 180 days delinquent in the last 7 years), and by answering "No" to question 28.b. (over 90 days delinquent on any debt). He also answered "No" to question 27.d. (SOR 2.b., judgments in the last 7 years). Though he denied falsifying either question in his answer to the SOR, he testified that he knew he had debts over 180 days delinquent when he answered "No" to question 28.a. in October 2006. (Tr. 79) Regarding his negative response to question 27.d., I find he intentionally falsified his answer on the security form in October 2006 because he acknowledged the judgment in GE 4 and in his answers to the SOR.

² He stated he had his medical bills at home. He also was paying on these medical bills. No documentation was produced.

³ By combining her Social Security with his earnings, they should have a larger monthly remainder available to pay the past due debts than is reflected in GE 4.

⁴ AE B does not reveal what the amount of the original lien was and when the lien was filed. An amount of \$1,600.00 is determined to be the original amount of the lien based on subtracting the withholding amount (\$6,200.00) from the additional amount assessed (\$7,800.00) that appears on the first page of AE B.

Character Evidence

Applicant served honorably in the United States Marine Corps (USMC) from 1973 to 1976. On April 16, 2008, Applicant filed a Chapter 7 Bankruptcy and furnished the Schedule F list of his unsecured creditors. However, he did not provide a complete copy of the petition nor did he provide evidence of filing the petition. He also received a half day of required financial counseling in advance of filing his Chapter 7 Bankruptcy petition. Applicant likes his job because he does not have to put weight on his back.

Applicant's fiancé believes she and Applicant communicate well. She has found Applicant to be honest, and someone she would trust with her life. Even though she is paying on the current medical debt, she also tries to save about \$50.00 a month.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock

responsibility between an applicant and the federal government. 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.

Financial Considerations (FC)

A person who does not live within their means is at risk of engaging in illegal acts to generate funds.

Personal Conduct (PC)

Deliberately concealing information during the course of a security investigation demonstrates dishonesty while representing a serious security concern.

Analysis

Financial Considerations (FC)

18. *The Concern.* "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. 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."

On November 7, 2007 (date of the SOR), Applicant owed 20 creditors \$8588.00. He also owed IRS for a tax lien he incurred in 1996 and 1997. (SOR 1.u.) Having determined from AE B that the federal tax to be at least \$1,500.00, Applicant's total past due indebtedness was about \$10,000.00. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply because the debts still exist, and they have fallen delinquent at various times between 1997 (SOR 1.u, federal tax debt) and 2006. I have decided not to include FC DC 19.g. (*failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same*). There is insufficient evidence in the record to conclude Applicant tried to defraud the government. Rather, Applicant was experiencing relationship problems with his wife at the time that he could only rectify by leaving her, and obtaining a divorce.

The mitigating conditions have been evaluated. FC mitigating condition (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) does not apply as Applicant still owes for all the overdue accounts except SOR 1.u. The number, amount of the debt, and age of some of the listed accounts, continues to cast doubt on Applicant's current reliability, and judgment.

Applicant receives limited mitigation under FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control*). Since 1993, Applicant's back problems prevented him from performing jobs requiring use of his back. His medical problems were exacerbated by an array of other serious health problems that kept him from work, and required hospitalization for varying periods of time until March 2008. However, since March 2008, he has grossed about \$11,00.00. He could have applied some of his income to resolve smaller debt listed in the SOR. Alternatively, he could have submitted some documentation supporting his claims he was paying on the current medical debts. Without documentation that supports his claims of paying on these current medical debts, it is difficult to conclude he acted responsibly under the circumstances after he returned to work in March 2008.

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 under control*) receives limited favorable attention due to the fact he did not receive counseling until required to by filing his Chapter 7 Bankruptcy petition. Though the bankruptcy discharge in June 2008 may extinguish Applicant's immediate debts, there is insufficient evidence to show Applicant has the financial tools to manage an encounter with similar financial problems in the future.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. While he paid off the IRS in June 2008 (10 years after incurring the debt in 1997), Applicant still owes 20 creditors \$8,588.00. Though a Chapter 7 discharge is a lawful way of extinguishing one's debts when he cannot repay them, a discharge in this fashion does not receive the same level of mitigation because there is no sustained record of repaying debts. Rather, the debtor has his debts eliminated, and is given a fresh start while the creditor is left without legal recourse to recover the balance of a debt. The mitigation Applicant receives under FC MC 20.b., FC MC 20.c., and FC MC 20.d. does not meet his ultimate burden of persuasion under the FC guideline.

Personal Conduct (PC)

15. *The 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."

Applicant's "No" answers to both debt questions (28.a., 28.b.) of his SCA in October 2006 were deliberate falsifications of relevant facts as defined by PC DC 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*) Applicant knew that he was concealing information when he entered his "No" answers on the form.

I have carefully considered the following mitigating conditions to determine whether Applicant's intentional omissions are mitigated: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission or falsification before being confronted with the facts*); PC MC 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*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*)

PC MC 17. a. does not apply because Applicant did not disclose the falsification until after he was confronted at the hearing about his "No" answers to both questions on the security form. PC MC 17.b. (*the offense was so minor, or such time 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*) does not apply as Applicant attempted to conceal 20 debts less than two years ago. Finally, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*) applies in part as Applicant admitted he deliberately omitted his debts from the form. However, he has not presented enough mitigating evidence to confidently conclude his dishonesty is unlikely to recur. In sum, Applicant's evidence in mitigation falls short of overcoming the adverse evidence under the PC guideline.

Whole Person Concept (WPC)

I have weighed the circumstances of this case under the general factors of the whole person concept. Applicant was between 43 and 53 years old when he accumulated his overdue debt. Though he has taken a step in the right direction with a Chapter 7 discharge, there is a substantial lack of evidence indicating what his financial practices are except that when he gets his check, he turns it over to his fiancé. Also, he was advised that his claims of paying off certain medical creditors would be more credible if he supplied documentation. Considering the evidence as a whole, the absence of documentation showing that more than one out of 20 creditors has been completely or partially satisfied militates against Applicant's security clearance suitability. SOR 2.a. is also resolved against Applicant. While he denied and/or could not remember

the judgment (SOR 1.a.) at the hearing, he admitted the debt in his answer to the SOR, and he acknowledged the debt in his answers to interrogatories September 2007. (GE 4) Accordingly, the FC and PC guidelines are found against Applicant.

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 (Financial Considerations, 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
Subparagraph 1.n.	Against Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	Against Applicant
Subparagraph 1.s.	Against Applicant
Subparagraph 1.t.	Against Applicant
Subparagraph 1.u.	For Applicant

Paragraph 2 (Personal Conduct, 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.

Paul J. Mason
Administrative Judge