



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



In the matter of:)
)
) ISCR Case No. 14-04226
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

June 5, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was delinquent on six debts, in the total amount of \$106,995. He resolved three of them. He failed to document any effort to resolve the remaining three totaling \$106,698. Additionally, security concerns were raised because Applicant intentionally failed to disclose his debts on his electronic security clearance application (e-QIP). Applicant failed to mitigate the financial and personal conduct concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 26, 2012, Applicant submitted an e-QIP. On December 5, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations), and E (Personal Conduct). The action was taken under Executive Order (EO) 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 adjudicative guidelines effective September 1, 2006.

Applicant answered the SOR on December 16, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 6, 2015, scheduling the hearing for April 21, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 4. All were admitted without objection. Applicant testified on his own behalf and offered ten exhibits marked Applicant Exhibit (AE) A through J, which were admitted without objection from Department Counsel. DOHA received the transcript of the hearing (Tr.) on April 27, 2015.

Findings of Fact

Applicant is 36 years old. He served on active duty in the Marine Corps from 1997 to 2002, and received an honorable discharge at the pay grade of E-4. He worked for a government contractor from 2002 to 2006. He has been employed in his current position with a government contractor since April 2006. He is married to his second wife and has one minor child. (GE 1; AE E; Tr. 31, 53.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleged that Applicant is delinquent on six debts, in the total amount of \$106,995. In his Answer, Applicant admitted the debts alleged in SOR subparagraphs 1.a and 1.b. He denied the debts alleged in subparagraphs 1.c, 1.d, 1.e, and 1.f; and the e-QIP falsification concerning these debts alleged in subparagraph 2.a. The alleged debts were listed on credit reports dated May 5, 2012; February 11, 2014; and February 2, 2015. (Answer; GE 2; GE 3; GE 4.)

Applicant is indebted on a mortgage in the amount of \$101,160, as stated in SOR subparagraph 1.a. In March 2005 Applicant purchased a condominium for \$455,000. He financed the purchase with a primary loan of \$364,000 and a secondary loan of \$91,000. The secondary mortgage is the subject of this allegation. He claims he was lied to about the terms of both mortgages, which included balloon payments that made his payments increase from \$2,000 per month to \$4,000 per month in March 2007. He defaulted on both loans in March 2007. The home was foreclosed upon by the primary lender in January 2008. Applicant received a 1099-A from that creditor, which he submitted into evidence. He presented no documentation pertaining to the second mortgage, but claimed it was cancelled. He testified he only keeps financial records for three to four years. Applicant failed to meet his burden to show this debt is resolved. (GE 3; AE F; AE I; Tr. 32-33, 37-49, 54.)

Applicant is indebted on a delinquent vehicle loan in the amount of \$4,755, as alleged in SOR subparagraph 1.b. This was for a vehicle that was repossessed after his ex-wife failed to make payments on it. He testified that he was current on the payments until the time of their divorce. This vehicle loan was assigned to his ex-wife as part of their divorce settlement. He helped the creditor locate the vehicle so it could be

repossessed, but made no payments on this debt after the divorce. He presented a petition for divorce, but failed to present an order from the court showing the disposition of marital property. He understood that he could pay the debt himself and then seek a judgment against his ex-wife. He has chosen not to do so. (GE 3; AE G; Tr. 35, 49-53, 57-58.)

Applicant was indebted to a collection agent for a cellular phone company in the amount of \$132, as alleged in SOR subparagraph 1.c. Applicant initially contested this debt, but on December 15, 2014, he paid it. Applicant's February 2015 credit report reflects this debt as "paid collection." It is resolved. (GE 4; AE J; Tr. 34-35, 58-59.)

Applicant is indebted to a collection agent for a medical debt in the amount of \$783, as alleged in SOR subparagraph 1.d. This debt was incurred when Applicant required an ambulance ride in 2006. He believed the ride should have been paid for by his health insurance. He testified he called the collection agent and was told that the account was no longer active. He stated that the creditor was unwilling to accept payment on this charged-off debt. He failed to produce documentation from this creditor to substantiate his claims. (GE 2; AE D; Tr. 29-30.)

Applicant was indebted on two delinquent parking tickets in the amounts of \$36 and \$129, as alleged respectively in SOR subparagraphs 1.e and 1.f. These debts were incurred after Applicant sold the vehicle, but the title transfer was not properly recorded. Applicant repaid both debts in full on April 30, 2013, and May 22, 2013. He presented two letters from this creditor as evidence these debts were resolved. He also presented a letter from the vehicle's new owner acknowledging that she in fact incurred the debt, and repaid Applicant after he resolved the tickets. (AE H; AE I; Tr. 34.)

In Applicant's April 26, 2012 e-QIP, section 26 asked "Other than previously listed, have any of the following happened? In the past seven (7) years, you had bills or debts turned over to a collection agency? . . . In the past (7) years, have you been over 180 days delinquent on any debt not previously entered? [and] You are currently over 120 days delinquent on any debt?" He answered "No" to these questions, and failed to disclose the debts listed above. He testified that he was unaware of the parking tickets and he thought his other delinquent debts were older than seven years, so he did not need to disclose them. His testimony was not credible. (Tr. 36-37, 55, 62.)

Applicant has a credit score of 748 out of 818. He testified that he pays his debts in a responsible manner. He did not present a budget, account statements, or asset statements to further demonstrate his financial status. (AE A.)

Applicant's performance reviews show he is a valued employee. His supervisor and another manager wrote complimentary letters of support on Applicant's behalf, attesting to his dedication, quality of work, and ability to follow procedural guidelines. Among his decorations and medals awarded during his military service, Applicant was awarded the National Defense Service Medal, the Marine Corps Good Conduct Medal, the Navy Unit Commendation, and the Meritorious Unit Commendation. (AE B; AE C; AE D; AE E; Tr. 26-28.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was delinquent on six debts, in the total amount of \$106,995. The majority of his debt has been delinquent for over five years. He demonstrated both a history of not addressing debts and an inability or unwillingness to do so over a substantial period. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) under AG ¶ 20 are potentially applicable:

- (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 met his burden to show he acted responsibly and resolved three of the six debts, identified in SOR subparagraphs 1.c, 1.e, and 1.f. He failed to adequately address his three largest debts, identified in SOR subparagraphs 1.a, 1.b, and 1.d. The record evidence reflects these debts are recent and ongoing. There is no indication that the circumstances under which they arose have changed. He therefore failed to fully establish substantial mitigation under MC 20(a).

Applicant offered insufficient evidence to support significant mitigation under MC 20(b). He attributed the delinquencies to an unfair mortgage, a divorce, and a medical billing issue. His unwillingness to resolve the three remaining debts, and instead rely on the charge-off or cancellation of those debts, does not demonstrate responsible action under the circumstances.

Applicant presented no evidence of financial counseling. He failed to substantiate his claims that the creditors in SOR subparagraphs 1.a and 1.d are no longer collecting those debts. He is still liable for the debt in subparagraph 1.b. These facts preclude full mitigation under MC 20(c) or 20(d).

Applicant claimed to have a reasonable basis to dispute the legitimacy of his medical debt. However, he failed to provide documented proof to substantiate the basis of his dispute, or provide recent documentation of the actions he has taken to resolve those issues. MC 20(e) does not fully apply.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 failed to disclose the SOR-listed debts on his e-QIP. He clearly knew he had mortgage debts that were delinquent within the seven-year time frame. Yet, he willfully chose not to include them on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his SF 86. Falsifying material information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof for his personal conduct.

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 relevant 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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is respected by those that wrote letters on his behalf. He served honorably in the Marine Corps, and has successfully held a security clearance without incident in the past. However, Applicant has the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. Overall, he has not demonstrated that he has acted responsibly with respect to his finances. He was unable to support his claims with documentation. Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Further, his veracity and personal conduct are a concern. 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, Applicant has not mitigated the Financial Considerations or Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.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 national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge