



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



In the matter of:)	
)	
)	ISCR Case No. 14-04471
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

07/20/2015

Decision

DAM, Shari, Administrative Judge:

Since 2007 Applicant accumulated seven delinquent debts totaling about \$14,600. None of them are resolved or being resolved. He failed to disclose the debts in his security clearance application. Financial and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 26, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 17, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing 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 Adjudicative Guidelines (AG) effective within the Department of

Defense for SORs issued after September 1, 2006.

On October 13, 2014, Applicant answered the SOR (Answer), and requested a hearing. On February 25, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On March 10, 2015, DOHA issued a hearing notice, setting the case for April 1, 2015. The hearing was postponed and was rescheduled to May 19, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A and B into evidence. All exhibits were admitted. Applicant's wife testified. The record remained open until June 12, 2015, to give Applicant time to submit additional exhibits. He timely submitted two exhibits, which I marked as AE C and D, and admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on May 29, 2015.

Findings of Fact

Applicant admitted the seven allegations contained in SOR ¶¶ 1.a through 1.g. He did not answer the allegation contained in SOR ¶ 2.a, which is viewed as a denial. His admissions are accepted as factual findings.

Applicant is a 50-year-old employee of a defense contractor. He enlisted in the Navy in 1983 and received an honorable discharge in 1993. He was a third class petty officer, E-4, at the time of the discharge. He held a security clearance during those years of service and earned two Good Conduct Medals. He and his first wife were married in 1985 and divorced in 2009. They have four adult children, ages 29, 28, 24, and 23. He married his second wife in 2010 and has four step-children, ages 26, 15, 11, and 7. The youngest child has autism and lives with them. (Tr. 13-17, 37; GE 1.)

Since leaving the Navy, Applicant has worked primarily in the security field. He has been employed full-time except for two brief periods. (Tr. 20.) He started his current position in March 2011. Prior to this job, he worked in private industry since 2000. (GE 1.)

Applicant submitted a letter of recommendation. His manager stated that Applicant "is one of the most reliable officers on my account (we currently have 95)." (AE D.) He consults with Applicant about incidents that occur at work because Applicant is forthright in communicating his observations. He considers Applicant to be honest, trustworthy, and an important member of his team. (AE D.)

Financial Considerations

Applicant attributed his financial problems to issues involving his former wife and their divorce in 2009. (Tr. 19-20.) He said that while they were married she did not use their money to pay bills, but instead placed \$6,000 or \$7,000 into her personal savings account without his knowledge. (Tr. 29.) One of the terms of their divorce decree

required each of them to assume half of the outstanding debts. He said that she is responsible for five of the seven SOR-listed delinquent debts. He admitted that for personal reasons he has not contacted her about resolving the debts. (Tr. 30, 48; AE C.)

Applicant's annual salary is \$26,000. His net monthly income is \$1,800. His wife receives \$1,459 a month in social security disability. She has serious medical conditions that have prevented her from working for 13 years. (Tr. 54.) She does not receive child support. Their combined net monthly income is approximately \$3,240. Their monthly expenses, which include monthly medical bills for Applicant's wife and her autistic son, consume the remaining monthly income. (Tr. 22-23, 36, 49.) Applicant submitted documentation that in March 2015 he paid a \$500 credit card debt not listed on the SOR. (GE 4; AE B.)

Based on credit bureau reports (CBR), dated June 2014, and January 2015, the SOR alleged seven delinquent debts that totaled \$14,664, and became delinquent in 2007, 2009, 2010, 2011, or 2014. (GE 3, GE 4.) The largest debt is \$10,336 (SOR ¶ 1.g) and is owed for his former wife's vehicle that was repossessed in 2007. (Tr. 28-30.) The second largest debt for \$3,032 (SOR ¶ 1.a) is owed to an apartment complex where he and his former wife lived, and she continued to live after their 2010 divorce. He said she is responsible for half of all debts that accrued while they were married, which also included the debts alleged in SOR ¶¶ 1.d for \$328, 1.e for \$283, and 1.g for \$77. (Tr. 24-25.) He acknowledged that none of the seven alleged debts are resolved.

Since a personal interview in June 2014, Applicant has been aware that his delinquent debts created security concerns. He has not resolved any of the debts because he has not had sufficient money to pay them, given the expenses involved with his wife's disabilities and stepson's autism. (Tr. 37, 43.) He said he has not contacted any of the creditors because "I've just got serious stuff going on at home with two people that have disabilities." (Tr. 44.) He does not have any outstanding delinquent debts other than those discussed during the hearing. (Tr. 44.) The January 2015 CBR confirms that. (GE 3.)

Personal Conduct

The SOR alleged that Applicant failed to disclose in Section 26 of his March 2014 e-QIP seven debts alleged in the SOR. That section requested information about any type of delinquent account that accumulated "In the last seven (7) year." (GE 1.)

Applicant stated that when he completed questions relating to his financial record, he did not think that he had debts within the seven-year period. He was aware of the debts from his 2009 divorce, but he was confused as to whether they fell within the seven-year period of time, rather than a ten-year period as most sections in the e-QIP referenced. (Tr. 40.) He testified, "It never was my intent ever to like be (sic) not forthcoming with anything." (Tr. 42.) He said he rushed to complete it because he was

given 48 hours to submit the e-QIP and did not have a credit report to review before completing it. (Tr. 43, 56.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 "[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, "[t]he 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: "[a]ny 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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Between 2007 and 2014, Applicant accumulated seven delinquent debts that he has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

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

Applicant offered evidence that the financial problems arose as a result of his first marriage and subsequent 2009 divorce; ongoing expenses for his wife's and step-son's disabilities; and insufficient income. These were circumstances beyond his control.

However, he did not provide documentation that he attempted to address the debts while they were accumulating, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not document participation in credit or other financial counseling, or provide information that the alleged debts are being resolved. Thus, there is insufficient evidence to conclude that the debt problems are under control. However, he testified that he does not have any delinquent debts other than those alleged in the SOR. AG ¶ 20(c) has minimal application. He did not provide evidence that he made a good-faith effort to resolve any of the SOR debts. AG ¶ 20(d) does not apply.

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.

The SOR alleged in ¶ 2.a that Applicant falsified his March 2014 e-QIP because he failed to disclose delinquent accounts under several questions listed in Section 26. The Government contended that his omissions may raise a security concern and be disqualifying under AG ¶ 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.

Applicant asserted that he did not think he had debts within the seven-year period of time that required disclosure, but knew he had some within the past ten years. He stated that he had little time to complete the application because he was given 48 hours to submit the form and did not have a credit report to review prior to answering the questions. After listening to his testimony, I find that his explanation for the omission is not credible. While he may have rushed to complete the e-QIP, he knew he had delinquent debts from his 2009 divorce. Section 26 of the e-QIP repeatedly requests information "In the last seven (7) year," and does not mention ten years throughout the numerous inquiries. His confusion about the disclosure period is not credible. Hence, the evidence established the above disqualifying condition.

AG ¶ 17 includes two conditions that could mitigate security concerns arising under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Neither of the above two mitigating conditions apply. Applicant did not correct the omission until he spoke to an investigator during a personal interview in June 2014. Non-disclosure of requested information is not considered a minor offense, regardless of when it occurred.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 50-year-old employee of a defense contractor since 2011. His supervisor strongly recommends him for a security clearance based on his observations of Applicant's honesty and work. He honorably served in the Navy for ten years. Between 2007 and 2014 Applicant accumulated seven delinquent debts that remain unresolved and total \$14,664. Of that amount, Applicant's ex-wife is legally responsible for about \$7,028. Applicant is caring for and supporting his wife and her son, both of whom have significant disabilities, on a limited income. He said he is not accumulating new debts and there is evidence supporting that assertion. There is no other evidence in his background that raises additional security concerns.

While those facts weigh in favor of granting Applicant a security clearance, other persuasive factors outweigh them. In June 2014 a government investigator interviewed Applicant about delinquent debts and placed him on notice of the security concerns the debts raised. From that point up to the date of the hearing in May 2015, Applicant did not take steps to resolve any of the seven delinquent debts, including one for \$118 and \$77, both of which are his sole responsibility. His decision not to contact his former wife regarding the resolution of joint debts demonstrates a lack of responsible judgment. Applicant knew he accumulated debts before and subsequent to his 2009 divorce, which were unresolved at the time he completed the e-QIP. Instead of choosing not to disclose them, he could have informed the Government that he had old debts, but was unaware of the specifics.

Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. Applicant failed to meet his burden to mitigate the security concerns arising from financial considerations and personal conduct.

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
Subparagraphs 1.a to 1.g:	Against 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 clearly not consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge