



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



In the matter of:)
)
) ISCR Case No. 07-08038
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Department Counsel
For Applicant: *Pro Se*

July 28, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 21 past due accounts totaling approximately \$109,000. He paid five of the debts totaling approximately \$55,000, but failed to document payment of the remaining 14 debts totaling \$40,000. Applicant has failed to successfully mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on October 28, 2007, detailing security

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

concerns under Guideline F, financial considerations, based on a history of financial problems as shown by delinquent debts and Guideline E, personal conduct, for falsified material on a Questionnaire for National Security Positions.

On December 19, 2007, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated February 20, 2008. Applicant was sent a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On May 29, 2008, Applicant responded to the FORM. Department Counsel did not object to the material. Applicant's response was admitted into the record. On June 9, 2008, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant admitted with explanations the factual allegations in ¶¶ 1.b, 1.m, 1.n, 1.o, and 1.t. of the SOR. He denied the factual allegations in the remaining paragraphs of the SOR stating a number of the debts were duplicates of other listed debts. He also provided additional information to support his request for eligibility for a security clearance. The admissions are incorporated herein as findings of fact.

Applicant is a 51-year-old software engineer who has worked for a defense contractor since November 2006, and is seeking to obtain a security clearance.

Applicant's mother died of Hodgkin's lymphoma in 2001 and his father died of non-Hodgkin's lymphoma in 2002. Applicant was the primary care giver for his parents and moved in with them. During the same time period, Applicant was diagnosed with diabetes, which caused him to incur medical expenses. For most of 2002, Applicant left work and lived on his retirement savings, which resulted in tax penalties for early withdrawal of his retirement funds. Applicant was unemployed in 2003 before moving to another state to obtain a job. During the move, most of his financial records were lost and Applicant had difficulty in reconstructing his financial record.

Applicant hired a financial specialist to help him resolve his financial liabilities, judgments, and incorrect credit report entries. He also hired a tax specialist. Applicant's Federal and state tax liens were paid when he sold his rental property. Applicant believes that a number of the entries on his credit report are not his, but belong to another individual with a similar name. Other entries were inaccurate. (Item 5)

In response to the financial interrogatories, Applicant submitted copies of a residential loan application signed in August 2007. (Item 5) On page 3 of the form under "Liabilities" Applicant lists some of the same debts listed in the SOR. Specifically 11 SOR debts are listed: SOR ¶ 1. b, \$8,794 (\$8,700 listed on the form); SOR ¶ 1. d, \$18,211 (\$24,862 listed on form); SOR ¶ 1. e, \$1,836 (\$2,377 listed on the form); SOR ¶ 1. f, \$3,144 (listed twice on the form); SOR ¶ 1. g, \$538 (\$538 and \$3,287 listed on

the form); SOR ¶ 1. h, \$139; SOR ¶ 1. k, \$124; SOR ¶ 1. p, \$148; SOR ¶ 1. q, \$279; SOR ¶ 1. r, \$8,525; and, SOR ¶ 1. s, \$122. The documents indicate an application was completed. There is no documentation the application was accepted or that payment of the listed obligations was made.

In Applicant's answer to the SOR, he asserts a financial service company was either disputing or negotiating with a number of the creditors. Applicant failed to document any outcome from disputes or negotiations on his behalf. He also asserts a number of the debts were removed from his credit report, but provided no credit report documenting the removal.

In the sale of the rental property, the debts listed in SOR ¶ 1.b. (\$8,794), SOR ¶ 1.n. (\$2,838), and the state tax lien listed in both SOR ¶ 1.o. (\$12,606) and SOR ¶ 1.t. (\$21,946) were paid. (See answer to SOR, Answer to FORM) The creditor in SOR ¶ 1.d. (\$18,211) is considering Applicant offer to settle for \$9,105. The creditor in SOR ¶ 1.m. (\$14,816) has offered to settle the debt for \$3,012. (Answer to FORM) There is no indication Applicant has accepted the offer or made payment in compliance with the offer.

In October 2007, Applicant completed a monthly personal financial statement showing net monthly income of \$9,952 and a net monthly remainder of \$6,387. His annual yearly income was in excess of \$120,000. (Item 5) Applicant owns a home worth \$275,000 on which is owes \$174,000. (Item 5)

The SOR alleges 21 delinquent accounts totaling \$109,000. Applicant has paid five debt totaling approximately \$55,000. He indicates a number of the other debts have been paid, are duplicate debts, or have been removed from his credit report. However, no documentation supporting his assertions was provided. There is no evidence that 14 debts totaling \$40,000 have been paid. A summary of the SOR debt follows:

	Creditor	Amount	Current Status
a	Credit card.	\$2,367	In October 2007, Applicant stated a financial service firm was negotiating a lesser pay off. In his answer to SOR, he states the debt was removed from his credit report, but provided no documentation.
b	Debt admitted by Applicant.	\$8,794	Paid 11/21/07 as shown in Settlement Statement. Applicant had disputed the debt as shown on his credit report. (Item 8)
c	Credit Card.	\$7,215	Applicant asserts this debt is a duplication of 1.a, but fails to document the same. In response to SOR, states it was removed from his credit report, but provided no documentation.

d	Credit card.	\$18,211	The creditor's law firm is considering Applicant's settlement offer of \$9,105. (Answer to FORM, page 11) Applicant asserts this debt is a duplication of 1.m, but provides no documentation supporting his assertion. Applicant had disputed the debt as shown on his credit report. (Item 8)
e	Collection agency.	\$1,836	Listed in Item 5. Applicant asserts it was paid, but provided no documentation. He asserts it was removed from his credit report, but provides no documentation supporting his assertion.
f	Collection agency.	\$3,144	Listed in Item 5. Applicant asserts it was removed from his credit report, but provides no documentation supporting his assertion.
g	Department store account.	\$538	Listed in Item 5. Applicant asserts it was removed from his credit report, but provides no documentation supporting his assertion.
h	Medical account	\$139	Applicant asserts this debt was paid, but listed it under "Liabilities" in Item 5.
i	Medical account	\$79	Applicant asserts this debt is a duplication, but listed it under "Liabilities" in Item 5.
j	Civil judgment filed in September 2002. (Item 6)	\$5706	In October 2007, Applicant stated a financial service firm was negotiating a lesser pay off. In his SOR answer, he states it was removed from his credit report, but provided no documentation.
k	Medical account	\$124	Applicant asserts this debt is a duplication but listed it under "Liabilities" in Item 5.
l	Medical account	\$113	Applicant asserts this debt is a duplication of 1.a, but fails to document the same.
m	Admits credit card debt.	\$14,816	Creditor has offered to settle for \$3,012. (Answer to FORM, page 10)
n	Civil judgment filed in November 2006. (Item 6)	\$2,838	Judgment paid 11/21/07 as shown in Settlement Statement.

o	State tax lien filed in June 2005. (Item 6)	\$12,606	PAID. \$7,024 paid 11/21/07 as shown in Settlement Statement.
p	Medical account	\$148	Applicant disputes the amount owed. Applicant asserts this debt is a duplication, but listed it under "Liabilities" in Item 5.
q	Medical Account	\$279	Applicant disputes the amount. Applicant asserts this debt is a duplication, but listed it under "Liabilities" in Item 5.
r	Civil judgment filed in November 2006. (Item 6)	\$8,525	Paid. Duplication of 1.b. Paid 11/21/07 as shown in Settlement Statement.
s	Medical account.	\$122	Applicant disputes the amount. Applicant asserts this debt is a duplication, but listed it under "Liabilities" in Item 5.
t	State tax lien filed in April 2007. (Item 6)	\$21,946	PAID. Lien Release dated November 14, 2007.
u	Driver Adj	\$75	Asserts this utility bill as paid at closing of his duplex in April 2007. Currently disputing the debt. It does not appear on any of his credit reports. (Items 7 and 8)
		\$109621	Total debt listed in SOR

On November 17, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), a Standard Form (SF) 86. (Item 4) In response to question 27 concerning his financial record he listed a \$2,838 judgment entered in 2005, a \$12,606 state tax lien in 2005, and a \$8,201 federal tax lien in 2002. He states:

I have incurred multiple negative entries on my credit rating during the time frame I was caring for both my Mother and Fathers (sic) cancer treatments and subsequent deaths. . . During the time frame of about 1998 through 2002 I did not pay particular attention to my finances like I should have as I was just to (sic) pre-occupied with caring for my Mom and Dad. I am now working with my creditors to finalize balances due and payoff thee balances.

Applicant failed to state he had ever been more than 180 delinquent on any debt or was currently more than 90 days delinquent on any debt, but did state, "[b]ack in 1998-1999 I had a credit card account with [bank] that fell behind more than 180 days

. . . I am currently disputing the amount owed. . . “

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. 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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant has a history of financial problems. He owed 21 delinquent debts totaling \$109,000. Applicant's history of delinquent debt is documented in his SF 86 (Item 4), his credit reports (Items 7 and 8), the record of his judgments and recorded liens (Item 6), and in his residential loan application (Item 5) Throughout this process, he admitted responsibility for a number of the delinquent debts. He provided insufficient documentation to show payment of other delinquent debts. The government established the disqualifying conditions in AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations."

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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;

(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 disputes owing a \$75 utility bill (SOR ¶ 1.u). The record fails to show this debt is owed. I find for Applicant as to SOR ¶ 1.u.

Applicant's financial problems were contributed to by his parent's death, he being the primary care giver for his parents before their deaths, and his diabetes. This occurred between 1998 and 2002. His parent's deaths are events that will not recur, however, the debts do not appear to be related to the deaths other than he was preoccupied with more important matters. Only seven of the debts, totaling \$1,000, were medically related. AG ¶ 20(a) has limited applicability.

The death of Applicant's parents is something beyond one's control, however, it has been over five years since their death. It is understandable Applicant's finances were placed behind the more important task of primary care giver for his parents. Applicant has acted responsibly in paying \$55,000 on the five debts paid. However, there is no documentation that 14 debts totaling \$40,000 have been paid, which fails to show responsible action. The applicability of AG ¶ 20(b) is only partial.

Applicant has obtained the assistance of two tax specialists and was able to pay all past due tax obligations and the tax liens were satisfied. He also obtained the services of a financial specialist for his other debts. There is no showing of financial counseling. More important with no evidence of payment of the \$40,000 of debt, Applicant fails to show the problem is under control or being resolved. AG ¶ 20(c) does not apply.

Applicant has paid five of the debts. AG ¶ 20(d) clearly applies to these debts. Another creditor (SOR ¶ 1.m) has offered to settle a \$14,816 debt for \$3,000. However, there is no evidence the offer was accepted or payment made in compliance with the offer. AG ¶ 20(d) does not apply to the 14 unpaid debts.

The two debts Applicant disputed, as evidenced by his credit report (Item 8), he

either paid or made an offer to pay. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

Under Guideline E, personal conduct, the concern is 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 ¶ 15.

The allegations under Guideline E, Personal Conduct are unfounded. The Government has shown Applicant's answer to questions 27 and 29 were incomplete, but this does not prove the Applicant deliberately failed to disclose information about his finances. Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

The purpose of the questionnaire is to inform the government of any adverse areas in Applicant's background. Applicant's responses on his SF 86 gave adequate notice that he had multiple negative entries on his credit report and had not giving his finances the proper care necessary when he acted as his parent's primary care giver when they were diagnoses and deaths. In response to question 27 concerning his finances, he listed a judgment and two tax liens.

These entries would have put any investigator on notice that Applicant had financial problems and Applicant's financial background needed to be closely reviewed. Applicant was not attempting to hide his financial problems. I am satisfied he did not intentionally falsify his SF 86. Accordingly, I find for Applicant as to the personal conduct security 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) 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. From the record it is not possible to determine the debts incurred were not the type indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, or that money was not spent frivolously. The record does show the two of the largest debt set forth in the SOR were not incurred on luxuries, but were state tax liens.

Applicant's biggest problem is the record. He indicates a number of the debts have been paid, are duplicate debts, or have been removed from his credit report. However, he provided no documentation supporting his asserts. There is no evidence that the 14 debts totaling \$40,000 have been paid or were duplicates of any other debts.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise suitably addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

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, Financial:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant

Paragraph 2, Guideline E, Personal Conduct: FOR APPLICANT

Subparagraph 2.a and 2.b: For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge