



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



In the matter of:

)	ISCR Case No. 14-04281
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/24/2015

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. He failed to mitigate security concerns for personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 5, 2014. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On March 28, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on April 22, 2015. He admitted 9 of the 13 delinquent debts. He noted that he has or is making arrangements to pay six of the debts (SOR 1.a, 1.b, 1.c, 1.d, 1.e, and 1.i). He stated two accounts have been paid (SOR 1.h and 1.k), and his wife is paying another account. (SOR 1.m) He denied four accounts (SOR 1.f, 1.g, 1.j, and 1.l). (Item 1) He did not respond to the falsification allegation under Guideline E even after being advised of the need to respond by Department Counsel. (Item 2) He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on July 1, 2015. Applicant received a complete file of relevant material (FORM) on August 18, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a reply to the FORM. I was assigned the case on December 1, 2015.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate. He could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the Personal Subject Interview summary. Applicant did not respond to the FORM, so he waived any objection to the admissibility of the Personal Subject Interview summary. I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 74-year-old high school graduate with some college credit. He has been employed by various defense contractors since at least December 1999 as a supply technician. He served as a federal police officer for approximately 25 years from December 1970 to May 1995. He served on active duty in the Army from June 1962 until June 1965 and received an honorable discharge. He married in May 1991 and has one adult son. He and his wife separated in May 2008 and now live apart. Applicant was investigated for eligibility for access to classified information in June 1976, December 1978, June 1988, and August 2000. He was granted eligibility for access to classified information. (Item 3, e-QIP, dated February 21, 2014).

The SOR lists, and credit reports (Item 5, dated January 14, 2005; Item 6, dated March 7, 2014; and Item 7, dated June 25, 2015) confirm the following delinquent debts for Applicant: a credit card collection account for \$410 (SOR 1.a); a telephone debt in collection for \$250 (SOR 1.b); a cable company debt in collection for \$290 (SOR 1.c); a debt in collection for \$500 (SOR 1.d); a rental debt in collection for \$3,578 (SOR 1.e); a telephone debt in collection for \$946 (SOR 1.f); a debt in collection for \$912 (SOR 1.g); a telephone debt in collection for \$1,181 (SOR 1.h); a car repossession debt charged off for \$9,255 (SOR 1.i); a debt 120 days past due for \$210 on a balance of \$1,160 (SOR 1.j); an account charged off for \$471 (SOR 1.k); an automobile repossession debt charged off for \$4,400; and a home improvement debt 90 days past due for \$413 on a balance of \$10,580 (SOR 1.m). The total amount of the alleged delinquent debt is \$22,816.

Applicant did not list any delinquent debts in response to financial questions on the e-QIP he submitted on February 21, 2014. When Applicant was interviewed by the OPM security investigator on June 5, 2014, he reported that his financial outlook was positive. He had financial problems in the past but his financial troubles have been resolved and his overall financial situation is getting better. All of his present financial obligations were timely paid. He reported to the investigator only one department store delinquent account. The debt was incurred by his wife and she did not make timely payments. Applicant said he made arrangements in January 2014 to pay \$50 monthly on the debt. He is current with these payments. He informed the investigator that in the last seven years he had no other financial troubles or delinquent debts; that he had no judgments entered against him; there were no repossessions; no default on any loans; no bills or debts turned over for collection, charged off or late payments; and no credit cards cancelled. (Item 4, Personal Subject Interview, dated June 5, 2014, at 7)

The security investigator questioned Applicant about debts that were on his credit reports. Applicant stated that he had no knowledge of the delinquent debts at SOR 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.h, 1.j, 1.l, and 1.m.

He also responded that he has no knowledge of the debt in collection for COMCAST at SOR 1.c. However, he reported he now has COMCAST service and that bill is current.

The delinquent debt at SOR 1.i is for the remainder after a van repossession. Applicant reported that sometime in 2010 he defaulted on the \$630 monthly loan payments for his van because of medical bills and treatments. He told the creditor to retrieve the vehicle. Since he did not consider this a repossession because he asked the creditor to take the vehicle, he did not report it as a repossession on his e-QIP. He agrees with the information on the credit report as to the amount still outstanding on the debt. He has not made any payments towards the debt.

The delinquent debt at SOR 1.k was the remainder from an unpaid loan. Applicant secured a loan of approximately \$4,200 in 2010 or 2011 to repair flood damage in his house. He reported that he repaid about \$3,700 of the loan. He did not

have sufficient income to pay the remainder of the loan. He was on disability and only receiving \$125 weekly from September to December 2010. He chose to disregard the debt because of lack of income. He was contacted in August 2012 about the debt and agrees with the amount listed on the credit report. He did not present any documents to verify payments made on this debt.

Applicant informed the security investigator that he would research all of the delinquent debts discussed and obtain a copy of his credit report. He would resolve and settle as many of the delinquencies as he could. He had no timeframe for when he would resolve the debts because he did not know the amount of his debts. (Item 4, Personal Subject Interview, dated February 21, 2014 at 7-10) Applicant presented no information to show he researched his debts or the results of his research.

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 must be considered 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 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 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.

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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit reports. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under AG ¶ 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. Applicant stated that the cause of his delinquent debts was his cancer treatment starting in 2010.

Applicant indicated that some of the debts have been paid. He did not present any documentation to verify the payments on the debts, the status of the debts, or that the debts have been paid or resolved. He claimed to the OPM security investigator in June 2014 that he did not know about the majority of the delinquent debts. He told the investigator that he would research the debts and attempt to resolve them. He had two opportunities to report on the results of his research and effort, when he responded to the SOR and when he responded to the FORM. He has not provided any information on the result of his investigation or the status of the debts.

There are security concerns about Applicant lack of action concerning his delinquent debts. The existence of delinquent debts and lack of meaningful action to resolve them indicate that he has not acted reasonably under the circumstances. The debts have not been paid, and Applicant has not presented a reasonable plan to resolve his financial problems. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the identified debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant did not provide any derogatory financial information provided on his security clearance application. As noted in the SOR and the credit reports, Applicant had significant delinquent debts. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant did not respond to the personal conduct allegation based on his failure to provide full and complete financial information on his e-QIP. I will treat his lack of an answer as a denial of an intentional falsification. Applicant told the OPM investigator that he was unaware of many of the debts. However, he was able to provide details on some of the debts when confronted with the debts by the security investigator. While there is a security concern for a 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, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Based on the information he provided the security investigator, I find that Applicant knew he had delinquent debt when he completed his e-QIP, and deliberately failed to provide correct and accurate financial information on the security clearance application.

I considered the following mitigating condition under AG ¶ 17:

(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 by 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; 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 circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

These mitigating conditions do not apply. Failure to provide full and complete information in response to questions on a security clearance application is not a minor offense. This failure to provide accurate information was recent and frequent. Applicant failed to provide accurate information in reference to his finances on his security clearance application in February 2014 and again in response to questions from the security investigator when he told him that his finances were good and his debts current. He did not reveal information concerning his delinquent debts until confronted with them by the security investigator. Since he knew significant details about the debts when confronted with them, he must have known about the debts when he completed the e-QIP.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant knew he had delinquent debt when he completed his e-QIP and deliberately failed to provide full and accurate information concerning his finances on his e-QIP. He acknowledged some of his debts in his interview with the OPM investigator. He agreed to research the debts and

determine his liability for them. He never reported the result of his research or any action taken to resolve his debts. He has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his 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 -1.m:	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 not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge