



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



In the matter of:)
)
) ISCR Case No. 17-00312
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro Se*

03/05/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Guideline E, personal conduct concerns were not established. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 9, 2014. On March 27, 2017, 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 DOD CAF acted under Executive Order (EO) 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on April 14, 2017. He denied 7 of the 12 SOR allegations and admitted the others with explanations. He denied the falsification allegation in SOR ¶ 2.a. Applicant also requested a hearing before an administrative judge. The case was assigned to another administrative judge in May 2017 and transferred to me on October 16, 2017. On January 18, 2019, the Defense Office of

Hearings and Appeals (DOHA) notified Applicant that the video teleconference hearing (VTC) hearing was scheduled for February 7, 2019. I convened the VTC hearing as scheduled.

Government Exhibits (GE) 1 through 8 were admitted into evidence without objection. I left the record open at Applicant's request until February 21, 2019, and he provided several post-hearing documents by email of February 13, 2019, that were collectively marked as Applicant's Exhibit (AE) A and admitted without objection. On February 21, 2019, Applicant provided more supplemental documents that were collectively marked as AE B and admitted without objection. DOHA received the transcript (Tr.) on February 21, 2019.

Findings of Fact¹

Applicant is 57 years old. He graduated from high school in 1979 and had some college. Applicant enlisted in the U.S. Navy in 1979 and served honorably for 14 years before accepting a voluntary separation incentive to retire early as a senior chief petty officer (E-8). He served as an electronics technician, including submarine duty, and participated in Operation Desert Shield in 1990. Applicant earned numerous awards including four Navy Achievement Medals (NAMs) for his service. (Tr. 26-27) He has been married three times: 1979 to 1986; 2003 to 2005; and presently since 2014. He reported three adult-children by his first wife. Applicant has been employed as a project manager for a federal contractor since 2008. He has worked for federal contractors, with a security clearance, for over 25 years without infractions. (Tr. 22) Applicant travels 95% of the time for his job. (Tr. 23)

The SOR alleges 12 delinquent debts totaling approximately \$26,571, including a past-due second mortgage on his primary residence in the amount of \$14,681 at SOR ¶ 1.i. The SOR also alleges three delinquent medical debts, utility and credit-card debts. Applicant did not disclose any of these delinquencies in section 26 (Financial Record) of his SCA. (GE 1)

Applicant's credit reports reflect that he obtained a primary mortgage in the approximate amount of \$148,000 in March 2006. (GE 2) At the same time, he obtained a home equity loan or second mortgage in the amount of \$37,000. Both loans were transferred several times, and Applicant has continuously paid his primary mortgage as agreed. (GE 2-6) His 2014 credit report indicates that the second mortgage was past due in the amount of \$14,681, and the last activity on the account was in December 2011 before it was closed and transferred. (GE 2) A real property transaction record concerning his primary residence, reflects that at some point the second mortgage was

¹ Unless stated otherwise, the source of the information in this section is Applicant's July 9, 2014 security clearance application (SCA) and the summaries of his security clearance interviews on February 17, 2015, and November 1, 2016.

transferred to Countrywide Mortgage Company.² (GE 7) It fell off Applicant's later credit reports without explanation. (GE 5-6)

In his personal subject interview (PSI) with a clearance investigator in February 2015, Applicant stated he had been making payments of \$350 per month on the second mortgage when he fell behind on payments. (GE 8) He tried to negotiate, but the creditor wanted payment of the full \$14,681 due, and he could not afford to pay that. Applicant testified credibly that since then, the second mortgage (SOR ¶ 1.i) was transferred and he has made multiple phone calls to try to discern the present creditor holding that loan, to no avail. (Tr. 53-54) He fell behind on payments because he had a heart attack in 2011. He was disabled, and out of work, for six months. (Tr. 33, 55) The creditor stopped communicating with Applicant. He testified that he refinanced his primary residence in August 2018 without problems and there was no mention of the second mortgage by his present lender. (Tr. 57-60) Applicant corroborated this by providing supplemental, post-hearing documents including a closing disclosure statement showing a payoff of \$124,195 to the previous mortgagee and no reference to any second mortgagee.³ (AE A)

SOR ¶ 1.a is for a medical debt placed for collection in the amount of \$2,229. Applicant testified that this was a result of an ambulance ride required to transport him between hospitals after his heart attack. (Tr. 37) He felt that the total ambulance bill of \$4,000 was exorbitant for a short ride. Nonetheless, he is now in a payment plan and making monthly payments of \$150 per month on this debt. (AE A) SOR ¶¶ 1.c and 1.d are also medical debts placed for collection by the same creditor as a result of co-payments that were not covered by Applicant's medical insurance. These have been paid in full. (Tr. 39-40, AE A, GE 5) Applicant testified that the charged-off debt for \$242 at SOR ¶ 1.b was for the purchase of a horse trailer. (Tr. 38) It was paid in full in May 2017. (AE A)

Applicant testified that the debt placed for collection in the amount of \$1,077 at SOR ¶ 1.e was disputed with the three major credit-reporting-bureaus as it is not his credit-card debt. (Tr. 40-41) He researched the matter and made phone calls to the original creditor (bank). Applicant provided post-hearing documentation that the creditor was unable to substantiate these debts and no longer considers them valid collection accounts. (Tr. 42, AE B) Applicant was overseas for extended periods of time for his job, and he admits that he did not check his credit reports for about 10 years. (GE 8) He

² This disgraced mortgage-lender was "at the epicenter of the mortgage meltdown that in 2008 brought the nation's economy to its knees." (*N.Y. Times, June 24, 2016 article*) John Leibowitz, Chairman of the Federal Trade Commission was quoted "Its business model was based on deceit and corruption, and the harm caused to the American consumer is absolutely massive and extraordinary." Countrywide was a subsidiary of Bank of America (BOA). The U.S. Department of Justice (DOJ) reached a \$16.65 Billion civil settlement with BOA in 2014 for systematic mortgage fraud – the largest civil settlement against a single entity in American history. See DOJ Office of Public Affairs press release dated August 21, 2014 – *Bank of America to pay \$16.65 Billion in Historic Settlement for Financial Fraud Leading up to an during the Financial Crisis*.

³ I infer that a proper title search was completed before this closing in compliance with prevailing real-estate law and practices.

told the clearance investigator he was not aware of the credit-card debts and he ignored some debts. He has an active account with the creditor at SOR ¶ 1.e. He testified that the same status applies to the creditor in SOR ¶ 1.g (\$1,466) and ¶ 1.l (\$4,419), which are for a credit-card debt placed for collection in the amount of \$4,419 and an account placed for collection for \$1,466. These were effectively disputed and the creditor no longer considers them to be valid debts. (AE B)

The credit-card debt placed for collection by a bank at SOR ¶ 1.h was also effectively disputed to the three credit bureaus, and the creditor no longer considers it a valid debt. (AE B) This was a credit card for a home-improvement store. (GE 8) The debt placed for collection by a telecommunication company in the amount of \$197 at SOR ¶ 1.f has been paid in full. (GE 5-6) The retail store debt placed for collection in the amount of \$1,157 at SOR ¶ 1.j was compromised and settled for \$354. (AE A) The delinquent phone bill at SOR ¶ 1.k for \$296 was paid in full in July 2014. (AE A, Tr. 46) The debt placed for collection by a bank in the amount of \$1,466 at SOR ¶ 1.l was for a computer that Applicant never received. (GE 8) He disputes this debt.

Applicant testified that he had a salary of \$135,000 to 140,000 in 2018. (Tr. 60) He receives \$600 a month in military retirement, and he has approximately \$15,000 in savings. He told the clearance investigator that he and his wife have residual or discretionary income of approximately \$ 3,000 each month. (GE 8) Applicant completed his SCA in Korea in July 2014. He did not list his delinquent debts because he was not aware of them, and he admits making financial mistakes and not checking his credit reports. (Tr. 70) He testified credibly that he was honestly unaware of these delinquencies and he did not deliberately intend to deceive the government or falsify the SCA.

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 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 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 national security eligibility will be resolved in favor of the national security."

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 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.

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 relating to financial considerations is set out in AG ¶18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁴ Applicant has met that burden. The second mortgage and other delinquent debts alleged in the SOR have been adequately addressed.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions 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 . . . , and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 endured a heart attack, a divorce, and extensive overseas travel for work. Arguably, these conditions were beyond his control. Once he realized that the delinquencies might affect his eligibility for a security clearance, he effectively disputed some debts, and paid others. He acted responsibly under the circumstances and he produced relevant or responsive documentation either in response to the SOR or in post-hearing documents. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He met that burden. AG ¶¶ 20(a),(b),(d) and (e) apply.

Guideline E, Personal Conduct

⁴ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes....

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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 testified credibly that he was in Korea when he completed his SCA in 2014 and he honestly was not aware of the delinquent debts alleged in the SOR. Since the evidence shows that his largest debt, the second mortgage, does not exist, and many other debts were successfully disputed or paid off, I find his testimony to be compelling and I accept his explanation. It has not been established that he deliberately or intentionally falsified his SCA or tried to deceive the government.

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(d):

(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. I have incorporated my comments

under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guidelines.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the financial considerations security concerns and that personal conduct concerns were not established.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge