



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



In the matter of:)
)
 -----) ISCR Case No. 17-00726
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: Troy Nussbaum

03/15/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On June 21, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations).¹ In a response notarized on June 4, 2018, he admitted all but one of the allegations. He also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on February 22, 2018. A hearing originally scheduled for May 9, 2018, was cancelled to give Applicant more time to retain an attorney. A May 10, 2018, notice, setting the hearing for June 11, 2018 was issued. The hearing was convened as scheduled.

The Government offered eight documents, accepted into the record as exhibits (Exs. 1-8). Exs. 1-5 and 7-8 were accepted without objection while Ex. 6 was accepted

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 within the DOD on or after June 8, 2017.

over objection.² (Tr. 11-17) Applicant gave testimony, introduced a live witness, and proffered nine exhibits, accepted without objection as Exs. A-I. The record was held open through July 2, 2018, for submission of additional items; this was extended to July 23, 2018, at Applicant's request. The transcript (Tr.) was received on June 20, 2018. Three character references and a page of argument were timely received and accepted into the record as Exs. J-M without objection. The record was then closed on July 23, 2018. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate personal conduct security concerns.

Findings of Fact

Applicant is a 41-year-old senior professional engineer who has worked for the same employer for four years. He has earned a bachelor's degree and is presently working on a master's degree. Applicant is married with two minor children. Although born in the United States, Applicant's family is from a foreign country, where he spent many years in school.³

After five years of diligent study at university in the United States, Applicant thought he had graduated in the spring of 2000. He had timely completed his final semester's coursework and received final grades for his courses. He applied and was permitted to participate in spring commencement exercises. He rented his cap and gown, and received his graduation token or pendant when his name was called. Shortly thereafter, he began taking graduate courses for about a semester before he decided to start working full time.⁴ In 2001, he completed a security clearance application indicating he had received a bachelor's degree in May 2000.

In 2003, Applicant again applied to take graduate courses. This time, he was told he could not enroll in graduate courses because he did not have a bachelor's degree. For years, he tried to reconcile this confusion, which appeared to be related to money owed the university. It appears between 2000 and 2003, whatever issues barring his unconditional graduation that existed had become a major obstacle.

Meanwhile, in 2003, Applicant married his pregnant girlfriend, the couple had a child, his wife went back to school, and Applicant needed to find a way to support his family. Specifically, "he needed to be able to earn the amount he should have been entitled to for finishing his bachelor's and master's degree which he would've finished at the time had he not been denied the bachelor's degree." (Tr. 19)

² Regarding the objections to Ex. 6, it was taken into evidence but is accordingly given appropriate weight under the circumstances. It is also noted that Applicant volunteered portions of the exhibit during his direct testimony.

³ This fact is potentially relevant given any cultural or linguistic issues that may have arisen with regard to Guideline E. However, it is also noted that his several siblings are all graduates of U.S. universities.

⁴ SOR allegation 1.a. Applicant was not enrolled in the graduate program, but the school permitted students to take two or three course offerings before applying for acceptance into the program.

In 2006, Applicant falsified multiple documents from the university indicating he had both a bachelor's degree and a master's degree in engineering.⁵ (Tr. 46, 70) He then used those documents to apply for a job, which was later offered and accepted.⁶ In 2009, Applicant's falsity was caught during a government background investigation.⁷ Applicant confessed the truth to both his employer and the government. Applicant's manager expressed his displeasure at these developments, noting he needed a degree to continue with the company. The two discussed the time Applicant should resign and finish his degree. (Tr. 19) There is no documentary evidence reflecting a formal letter of resignation or notice. He did not want to attend an up-coming meeting where he would now be viewed as only a high school graduate. A week later, however, he received a certified letter reflecting that upper management had made the decision to terminate him. Apparently, word of this agreement was not well-spread. Around that time, a co-worker wrote an email to another colleague noting that Applicant had simply "disappeared" over a week prior and was no longer working at the company. (Ex. D)

After he completed the bachelor's degree, Applicant knew he wanted to obtain a graduate degree from the same institution. He updated his resume to indicate a master's degree with an anticipated graduation date in the future. He was not then enrolled in the master's program. That section of the resume, submitted to his next employer in October 2006, stated:

EDUCATION: MS (Engineering; University; City) May 2003
BS (Engineering; University; City) May 2000⁸

In 2014, Applicant submitted a resume to his then-prospective employer that stated:⁹

EDUCATION
(University; City)
Master of Science in Electrical Engineering
Expected May 2018
Concentration in Communications and Signal Processing

⁵ When asked why he also falsified having earned a master's degree, Applicant stated: "I would have been done with a master's [degree] by that time had things not gone the way they did at [his undergraduate school] the first time. And I spoke to the hiring manager . . . and I realized having a master's degree would make [my] case a lot better." (Tr. 48)

⁶ SOR allegation 1.b. These included falsified academic transcripts, resume, and application.

⁷ Compare Ex. 6 at 3, Applicant noted that he "misled the [company] into believing I had a college degree from [] This came to light during my 2008 (5 year) investigation to renew my clearance." (emphasis added)

⁸ Ex. 3.

⁹ Ex. 4.

(University; City)
Bachelor of Science in Electrical Engineering
May 2013

In fact, at the time, Applicant was not enrolled in a master's program at that university.¹⁰

Applicant testified that he did not mean his resume wording to imply he was actually enrolled in a master's program at that university. (Tr. 53) He was told by a "professional" that this was but a way to let prospective employers "know that you intend to get a master's degree or you're taking graduate level course [sic] and you intend to get a master's degree." (Tr. 53) He was told that the wording "let's them know you don't have a degree but you have started the process." (Tr. 54) It is unclear how not having first been enrolled in the program started the process of earning a graduate degree. Later, Applicant told the hiring partner that he was not yet in the master's degree program. (Ex. B) Ultimately, Applicant was offered his present position, where he has been a well-regarded employee.

In July 2014, Applicant certified a security clearance application (SCA) in which he stated he left his employer in 2009 by mutual agreement, rather than by unilateral termination by upper management.¹¹ Applicant maintains that he believes the facts reflect that the agreement between himself and his manager show his departure was meant to be as they had contemplated: that he would leave the office and return to school. A week later, he received the certified letter from higher management that he was terminated for violating company policy. No formal charges were filed against him. (Tr. 61) He feels it is unfair that the employer should be able to dictate the terms of his departure from their company after he and his immediate manager had already discussed the issue. (Tr. 62)

During a personal subject interview in May 2015, Applicant stated that he was only asked whether he had a college degree after he was hired in 2006. The interviewer never mentioned the falsified application, academic transcript, and resume included in his application submission documents.¹² Applicant points to Ex. E to show the interviewer only made notes regarding Applicant's comments regarding the fact he did not have the degree. Because the interviewer's notes do not inquire about the falsified application, transcript, and resume, Applicant believes he did his duty and the interviewer failed to ask about those documents. He takes no responsibility for neglecting to disclose the falsifications he omitted or obscured. In that same interview, Applicant failed to disclose that he was terminated by management, not simply left by

¹⁰ SOR allegation 1.c. Applicant is still working on this master's degree at this time.

¹¹ SOR allegation 1.d. In that application, Applicant did note that he left under allegations of misconduct.

¹² SOR allegation 1.e.

mutual agreement.¹³ He did so because he still does not view management's letter to be the formal or official action for his departure or for violating company policy.

Aside from issues related to personal conduct, three delinquent debts are noted in the SOR (2.a-2.c). They are student loans amounting to approximately \$41,200. At some point after the summer of 2000, Applicant got a job that would enable him to make payments on his student loans. He then started making payments on them after they were no longer in deferment status. When subject to a layoff in December 2001, Applicant became delinquent on the loans and they went back into deferment. When again employed, he resumed payments until June 2009, when he again defaulted on the loans after leaving a job. (Tr. 32) He then returned to school later that year while unemployed, and did so without taking any additional loans.

The family relied on Applicant's wife's income and Applicant's retirement account and investments, which were liquidated. Applicant attributes his acquisition of the delinquent debts to financial stress experienced during this nearly five-year time span studying and not working. He has since had one loan put into rehabilitation and the other two consolidated with that loan. Therefore, he is now dealing with only one lender. (Tr. 37) Applicant provided a payment history going back to May 2018. (Exs. F-G) The lender is now being paid \$252.72 a month for his loan balance. The loans are now in timely repayment. (Exs. F-G)

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision after a conscientious scrutiny of a number of variables known as the "whole-person concept.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility and 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by

¹³ SOR allegation 1.f.

applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct 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 or sensitive information.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying. Here, Applicant denied making certain falsifications or strategic omissions on his SCAs, on job application materials, and during a May 2015 personal subject interview. If Applicant's answers and materials were intentionally false or meant to mislead or misrepresent, the following disqualifying conditions could apply:

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;

AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

I find that several of the untrue, inconsistent, or omitted facts were intentionally put forth to set Applicant in a better light. The first issue arose on Applicant's 2001 SCA, in which he wrote he had graduated from a particular university with a bachelor's degree in May 2000. Applicant believed he had graduated at that ceremony because he had completed his coursework, was given permission to attend commencement exercises, walked the stage in cap and gown, and was given a token of some sort. Then unbeknownst to him was the fact he apparently had an outstanding financial issue that had to be addressed before he could formally be considered a graduate.

Apparently, Applicant was unaware that occasions arise when one is given the opportunity to go through the motions of graduation with one's peers before all graduation criteria have been met, such as when there is an unpaid balance, health issue, or missing academic credit. Apparently, Applicant failed to cross his "t"s and dot his "i"s with this regard in the intervening year before he completed the SCA. On the other hand, it is not implausible that this situation was the result of naiveté. (SOR 1.a) Applicant fully admits, however, that he submitted a falsified application package to a prospective employer in 2006, a package including a falsified application, falsified academic transcript, and a false and misleading resume. (SOR 1.b)

As part of an application package for a job in 2014, Applicant detailed under "EDUCATION," the name and city of a university, "Master of Science in Electrical Engineering, Expected May 2018, Concentration in Communications and Signal Processing. (SOR 1.c) Applicant dismisses this entry as merely a showing of his intention to pursue that degree, a tip-off to the prospective employer that it was his immediate aim. He testified a professional gave him this explanation.

I disagree, however, as to how that advice was meant or implemented. Inclusion of an expected or anticipated graduation date for a future degree is predicated not on a desire or hope, but on significant steps – *ie.* enrollment in the program and, perhaps, some completed coursework. Here, Applicant was not enrolled in the master's program at that particular university. There is no documentary evidence reflecting that his enrollment had been initiated or was guaranteed. While Applicant was no doubt firm in his commitment to seek that degree, obstacles to its fruition were still potentially ahead at that point. Given the conviction of his testimony on this point, however, I find he relied on and misunderstood professional advice.

On his July 2014 SCA, Applicant wrote that he left a job in 2009 by mutual agreement. (SOR 1.d) He maintains that is the fact, and stresses it despite other facts surrounding his departure. He needed a bachelor's degree to maintain the job. He discussed his lack of a degree with immediate management and it was decided that he would resign and pursue his bachelor's degree. Then, apparently, he disappeared; co-worker's were concerned at his disappearance. Applicant was embarrassed about potentially attending a meeting where it could be disclosed he only had a high school diploma. A week after meeting with his manager, he received a certified letter from upper management that he was terminated for violating company policy.

Applicant thinks it is unfair a company can dictate how his departure is characterized. There is no documentary evidence, however, showing that he formally disputed or appealed this designation with human resources or a higher manager. Instead, he chose to move on accepting only his version of the facts. To do so was not only at his own peril, but it shows a lack of acceptance to the facts here.

Finally, in a personal interview from May 2015, Applicant discussed the truth about his alleged bachelor's degree graduation date, but failed to disclose the fact he had also submitted to that employer falsified application materials, a falsified academic transcript, and a falsified resume. (SOR 1.d) Applicant points to the investigator's notes and shows that there is no query by the investigator concerning those admittedly falsified documents. Applicant misses the point. In concealing the information, the investigator had no basis upon which to pose questions regarding those documents. This process demands honesty and candor; it relies on an applicant being forthcoming. Here, Applicant failed to meet those standards, and superior judgment should have told him these were not insignificant or irrelevant facts. Moreover, in that same interview, Applicant again failed to discuss his termination in 2009 by upper management for a policy violation, instead continuing to adhere to his original position that the first action – discussion with his immediate manager – trumped the official action taken by the company's hierarchy after he ceased reporting for work. (1.e)

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant has three delinquent student loans. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The student loans at issue have been in and out of deferment on more than one occasion as various factors interrupted Applicant's education. The credit reports in evidence were apparently pulled during a period when Applicant was technically delinquent on those accounts. It is hard to attribute their delinquency to conditions beyond Applicant's control if he truly left employment simply to return to school full time; if he was terminated from his job, AG ¶ 20(b) could apply in part, although he presented deficient evidence showing he acted responsibly during that period.

Moreover, there is no documentary evidence that Applicant tried to address these debts before the issuance of the SOR in June 2017. Indeed, the payment history submitted only goes back to May 2018. Given the ultimate disposition of this case, however, and the fact these student loans are now in repayment, I find AG ¶ 20(b) and AG ¶ 20(d) both apply in part.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 41-year-old senior professional engineer who has worked for the same employer for four years. He has earned a bachelor's degree and is presently working on a master's degree. Married, Applicant has two minor children. Over the past years, Applicant has been in and out of college. As a result, his student loans have been in and out of deferment, rehabilitation, and in repayment. Last year, he had his three student loans consolidated. They are now in timely repayment.

What is most troublesome with Applicant's case is the matter of various inaccuracies or omissions related to SCAs, interviews, and job application. The most worrisome is the 2006 production of falsified student academic transcripts, an incorrect and misleading resume, and falsified application (1.b). This admitted and obviously purposeful maneuver casts a pale on Applicant's efforts to promote himself in a favorable light. However, I do find it conceivable that two of the allegations could be based on semantics or simple misunderstanding (1.a and 1.c).

The falsifications alleged at 1.d-1.f, however, seem to fall into the same category as the one at 1.b. Indeed, it seems as if Applicant is either truly unaware of how the arguments here stack up, or simply prefers to rely on an argument more beneficial to his cause. While that is his choice, it fails to explain away the alternative facts offered or the security concerns they raise. Taking these factors together, I find that Applicant mitigated financial considerations security concerns, but failed to mitigate personal conduct security concerns.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-f:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a-2.c:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge