



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



In the matter of:)
)
) ISCR Case No. 17-02520
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Christopher D. Thomas, Attorney At Law

March 29, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On August 5, 2010, and March 29, 2016, Applicant submitted security clearance applications (e-QIP). (Government Exhibits 1 and 2.) On October 13, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct and Guideline F, Financial Considerations. The action was taken 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on February 5, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 22, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing that same day, and the hearing was convened as scheduled on November 27, 2018. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without objection. Applicant

called two witnesses and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 7, 2018.

Findings of Fact

Applicant is 39 years old, is married to his second wife and has four children. He has a Bachelor's degree in Information Security and is currently working on his Masters. He is employed by a defense contractor as a Cyber Security Analyst. He is seeking to obtain a security clearance in connection with his employment.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

After graduating from high school, at the age of 19, Applicant joined the United States Marine Corps. In 1999, Applicant, who lived with his parents, requested leave from the military to take care of his mother who had quit working because she was sick with diabetes and high blood pressure. Applicant's leave was denied, but Applicant left the military anyway, without authorization, to take care of his mother. Applicant took care of his sick mother for two to three months before she went back to work. Applicant was absent from the military without leave for approximately six years, from September 1999 to February 2006. Applicant explained that he was unexpectedly given short-notice that he was being sent on temporary duty to Australia. He stated that there was no one else in his family who could take care of his mother, since his father worked, and his brother was in high school. Applicant stated that his family was experiencing financial problems and they could not afford to hire someone to take care of his mother. In 2006, Applicant returned to duty and pled guilty at a trial by court-martial. He received a bad conduct discharge from the military in November 2006.

In 2010, Applicant began working for a defense contractor and in 2011, he was granted a security clearance that he has held for the past eight years. In April 2013, while possessing a security clearance, and while married to a woman in the United States, but separated from her, Applicant became romantically involved with a female foreign national from Taiwan he met on line. Applicant continued the affair with his Taiwanese girlfriend until approximately September 2013. In June 2013, Applicant traveled to Taiwan to visit the Taiwanese woman. The Government contends that the Applicant falsified his travel request with his employer by telling them that he was taking his wife to Taiwan for her birthday. Applicant denies that he did this. The Government also contends that Applicant did not receive a travel briefing required before he traveled to Taiwan as he was directed. Applicant denies this. The Government further contends that Applicant lied about saying the reason he stayed longer than his scheduled date of leave in Taiwan was because he missed his flight, when in fact, he intentionally missed his return flight to the United States in order to stay longer with the Taiwanese woman.

As a result, Applicant was absent without leave from work from June 21, 2013 through June 25, 2013. Applicant claims that he notified his employer that he would not be returning to work as originally scheduled. Applicant was questioned by a DoD investigator about the issue, and said that he would not be seeing the Taiwanese girl again. Following that situation, Applicant's Taiwanese girlfriend visited him in the United States, spending about six weeks with him, from approximately July to September 2013. Applicant failed to report this foreign contact to his company security department. The summaries of the Applicant's interviews dated September 28, 2010; October 31, 2010; January 31, 2017, as well as a Government memorandum for the record dated October 1, 2014 corroborates the Government's position. Accordingly, this allegation under Guideline E is found against the Applicant. (Government Exhibit 3, 8 and 9.)

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated March 29, 2016. (Government Exhibit 2.) In response to Section 26 concerning his financial record, Applicant was a series of questions. Specifically, in the past seven years has he had a judgment entered against him? Is he currently delinquent on any Federal debt? Has he defaulted on any type of loan? Has he had bills or debts turned over to a collection agency?" The Applicant answered, "NO." These were false responses. Applicant failed to list the debts set forth under Guideline F, below. This allegation is also found against the Applicant, see discussion below.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified six delinquent debts, three of which are student loan accounts, totaling approximately \$100,000, showing a history of financial problems. Applicant denies each of the allegations set forth in the SOR, except allegation 2.a., under this guideline. Credit reports of the Applicant dated August 21, 2010; April 13, 2016; April 21, 2017; and April 10, 2018, confirm the outstanding debts. (Government Exhibits 4, 5, 6 and 7.)

1.a. A delinquent Colorado student loan debt was placed for collection in the approximate amount of \$74,148. Applicant states that this debt was packaged, sold, and consolidated with his other student loans, and he is making regular monthly payments to resolve the debt. (Applicant's Exhibit D.)

1.b. A delinquent U.S Department of Education student loan debt was placed for collection in the approximate amount of \$15,595. Applicant states that this debt was packaged, sold, and consolidated with his other student loans, and he is making regular monthly payments to resolve the debt. (Applicant's Exhibit D.)

1.c. A delinquent U.S. Department of Education student loan debt was placed for collection in the approximate amount of \$8,849. Applicant states that this debt was

packaged, sold, and consolidated with his other student loans, and he is making regular monthly payments to resolve the debt. (Applicant's Exhibit D.)

1.d. A judgment was entered against the Applicant in January 2014, in the approximate amount of \$5,000. Applicant states that the debt was paid off through garnishment. (Tr. pp. 112-113.)

1.e. A delinquent debt was placed for collection in the approximate amount of \$204. Applicant states that the debt was paid off a long time ago. (Tr. p. 113.)

1.f. A delinquent debt was placed for collection in the approximate amount of \$83. Applicant contacted the company to pay the debt and there is no record of it. (Tr. p. 114.)

Applicant testified that he is now paying his student loans as agreed, and he has paid off his other delinquent debts. After his divorce was finalized, Applicant contacted the U.S. Department of Education, consolidated the loan balances, and set up a payment plan to resolve the student loans. Applicant stated that since 2015, he has been making regular monthly payments over \$300 that are automatically deducted from his bank account, and the debt is now current. (Tr. p. 111.) He plans to continue to follow this payment plan until the debt is paid in full.

Two witnesses testified on behalf of the Applicant. Applicant's coworker stated that Applicant is reliable and trustworthy, and should be granted a security clearance. Applicant's mother testified that she urged Applicant to take care of her during her illness, and she feels bad about the fact that this has caused him trouble in the military and now with his security clearance. (Tr. pp. 36-80.)

Applicant's performance review for the period from July 20, 2012 to July 19, 2013 indicates for the most part that he "consistently meets requirements." (Applicant's Exhibit E.)

A letter of recommendation from Applicant's long-time friend and coworker attests to Applicant's loyalty, honesty, and integrity. Applicant is described as being very knowledgeable and experienced in his field, and he is highly recommended for a security clearance. (Applicant's Exhibit H.)

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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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 E - Personal Conduct

The security concern for the personal conduct guideline 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 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 ¶ 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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(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 or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

It is noted that Applicant's misconduct in the Marine Corps is almost 20 years removed. However, Applicant's poor decision making has continued over the years. His credibility is also in question. Applicant was not truthful with the Government concerning his affair and interlude with his Taiwanese girlfriend, while still married to a woman in the United States. Applicant deliberately lied to his employer on various occasions regarding this relationship. His conduct does not show honesty, integrity, good judgment or reliability. Furthermore, Applicant deliberately failed to disclose his delinquent debts on his security clearance application. Applicant claims that he thought his wife at the time was paying his student loans. However, given the number of student loans he had, and the sizable amount of the student loans, Applicant knew or should have known that these debts remained owing when he completed his security clearance application in August 2016. If he did not know, he should have checked his credit report before completing the application. The fact that he did not list these loans in response to questions on his application, shows that he was either extremely careless, or he deliberately concealed the information from the Government, which in either case indicates questionable judgment, unreliability, and untrustworthiness, characteristics of an individual who does not meet the qualifications for access to classified information.

Guideline F, Financial Considerations

The security concern relating to the guideline for 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 misuse, 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.

Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant incurred delinquent debts that he could not pay. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them set forth below:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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;
- (f) the affluence resulted from a legal source of income; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant is paying his student loans and they are now current. He is also paying his other delinquent debts. Applicant has incurred no new delinquent debt. He has demonstrated that future financial problems are unlikely. Accordingly, this guideline is found for the Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline E and Guideline F in my whole-person analysis. Applicant is not young and naïve. He is a 39-year-old man who has held a security clearance for the past eight years, and who has not been truthful with the government when required. Applicant has not demonstrated that he can be trusted with the national secrets. He lied on his security clearance application about not having delinquent debts. He lied to his employer in an effort to conceal information about his Taiwanese girlfriend that he obviously did not want his company to know about. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. He is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

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

Darlene Lokey Anderson
Administrative Judge