



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



In the matter of:)	
)	
)	ISCR Case No. 18-00187
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2019

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 21, 2016. On March 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E and F.¹

Applicant responded to the SOR on April 9, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 18, 2018. The Defense

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Office of Hearings and Appeals issued a notice of hearing on July 31, 2018, and the hearing was convened on August 28, 2018. Government Exhibits (GE) 1 through 3 were admitted into evidence without objection. Applicant testified at the hearing, but did not introduce any documentary evidence. DOHA received the hearing transcript (Tr.) on September 6, 2018.

Findings of Fact

Applicant is a 62-year-old industrial engineer for a defense contractor, employed since 2004. Applicant received a bachelor's degree in 1983 and a master's degree in 1985. He married in 1978 and divorced in 1987, and married in 2002 and divorced in 2015. He has one adult child. He has held a DOD security clearance for 32 years.

The SOR alleges under Guideline E that Applicant met a woman online that he has not met in person, and borrowed and sent approximately \$65,670 to her in Nigeria. As a result, Applicant became delinquent on financial obligations and filed a Chapter 13 bankruptcy petition in 2016. The bankruptcy is pending a final discharge. These allegations are cross-alleged under Guideline F (financial considerations). Applicant admitted the SOR allegations, and provided explanations in his Answer.

Applicant divorced from his second spouse in October 2015, incurred responsibility for nearly all of the marital debt, and gave up about half of his bank assets and retirement fund. His household income was reduced once his spouse left. At the same time, Applicant believed he was providing financial assistance to a woman, "K," whom he met through an online dating site. K was supposedly an American citizen traveling to Nigeria for business. Applicant never met K, but spoke with her in two short phone calls, and often texted with her from 2015 to 2018. During this period, K provided many requests for Applicant to send her cash, including problems with getting medically cleared to leave the country, visa issues, etc. Applicant wanted to help her, so he began sending money via Western Union. In the summer of 2016, Western Union suspected fraud, and prohibited him from sending money to Nigeria with their service. Applicant then used Money Gram until they refused to continue to send money, also suspecting fraud. Applicant resorted to buying \$100 gift cards and sending them to K on his own. Next, K directed Applicant to deposit money into U.S. bank accounts in other people's names. At first, Applicant sent \$10,000, but was required to complete a federal financial transaction form for the bank. To avoid completing the form, he sent no more than \$6,000 at a time. Applicant borrowed about \$69,000 in loans to send to K in Nigeria, and sent another \$100,000 over time.

Applicant became delinquent on his mortgage loan and other debts, causing him to declare bankruptcy and file a Chapter 13 case in 2016. The Chapter 13 requires a five year payment plan, to be completed in 2021. Applicant declared about \$115,000 in debt.

K was aware of Applicant's financial distress and bankruptcy, but continued to press him for money. He stopped sending cash at the end of 2016 on the warning of his bankruptcy attorney, but continued the relationship to the summer of 2018, even after receiving the SOR. Applicant told K where he worked and his job title. However, Applicant

never notified his employer's facility security officer (FSO), law enforcement, or the dating website of the fraud scheme, even by the time of the hearing, but he testified that he is considering it.

Applicant has not sought psychological counseling, but is considering using the services provided by his employer. He was required to utilize financial counseling before filing bankruptcy. Applicant described his actions with regard to K and his finances as "lack of good judgment." He stated he was emotionally involved, was in denial, and wanted to believe her. He ended the relationship after it became "painfully obvious" to him that it was fraudulent.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of

establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline E; Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying condition are potentially applicable:

(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 whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized

release of sensitive corporate or other government protected information . . .

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, 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; and

(g) association with persons involved in criminal activity.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The personal conduct alleged is generally sufficient to implicate AG ¶¶ 16 (d), (e), and (g).

Guideline E includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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; 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.

Applicant participated in the scheme to transfer money to a possible foreign national was initially unwittingly, however, once money transfer companies began to question the transactions, he should have known that the scheme was likely fraudulent. His inability to realize the fraudulent nature of the relationship early on, exposes a long series of errors in judgment, and calls into question Applicant's willingness and ability to safeguard protected information. Although he has now acknowledged the relationship

was likely fraudulent, he continued to have contact with K long after he was notified of the likely fraudulent nature of the relationship. He disclosed his employment and job title, and has been reluctant to report the relationship to his employer's FSO, the dating website, or law enforcement. He has not sought counseling to assist him in preventing similar conduct in the future. Based on his significant loss of good judgment and secretive nature of his relationship, Applicant has not shown sufficient evidence of mitigation. I am not convinced that this incident is behind him or that similar high-risk and irresponsible behavior will not recur. No mitigation fully applies.

Guideline F: Financial Considerations

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 18 (a), (b), and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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 for the problem 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; 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's involvement in a thinly-veiled relationship to fraudulently extract money from him was at first unwitting; however, it quickly became apparent to be a fraudulent scheme with a possible foreign national. His continued involvement with borrowing money and transferring about \$169,000 to a "person" he never met invokes a significant degree of poor self-control, lack of judgment, and an intent to hide his relationship from appropriate authorities. His lack of financial control is troubling, and raises significant doubts about his overall financial management decisions and personal financial responsibility. I am not convinced Applicant is financially responsible or makes good financial decisions. No mitigation fully applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines E and F, in my whole-person analysis. I also considered Applicant's long history of employment and security eligibility. However, his involvement in the fraudulent relationship, borrowing money to send to an unknown foreign person, bankrupting himself to continue the scheme, and continued participation even after being warned about the scheme and after receiving the SOR in this case, shows a complete lack of awareness and judgment expected of a person entrusted with classified information. I remain unconvinced of his financial responsibility, good judgment, and ability to resist further high-risk activity.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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: Subparagraphs 1.a - 1.d:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline F: Subparagraph 2.a:	AGAINST APPLICANT Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

Gregg A. Cervi
Administrative Judge