



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



In the matter of:)
)
) ISCR Case No. 18-01480
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*
01/04/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations or Guideline E, personal conduct. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On June 11, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant answered the SOR on July 5, 2018, and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on August 16, 2018. Applicant received the FORM on August 24, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided an undated, two-page response to the FORM, with attachments including two character references, and a printout of a two-year payment history of child support payments made in 2017 and 2018. The Government’s evidence, was identified as Items one

through six. All exhibits were admitted into evidence without objection. The case was assigned to me on December 31, 2018.

Findings of Fact¹

Applicant is 49 years old. He graduated from high school in 1988, and completed some community college courses, but did not obtain a degree. Applicant has been employed as a document preparation clerk by a federal contractor since October 2016. He was married in 1990 and divorced in 2004, and he remarried in 2007. He reports a son, age 18, and a daughter, age 15, and he has two-adult stepchildren. Applicant states that he had periods of unemployment including: October 2009 to October 2010; October 2013 to February 2014; August 2014 to May 2015; and November 2015 to June 2016. He served on active duty in the U.S. Army from 1989 to 1995 and earned an honorable discharge. He continues to serve in the Army Reserve and recently was promoted to sergeant first class. Applicant said he was deployed to Iraq for 15 months while he served on active duty at a U.S. base from October 2010 to October 2013.²

Applicant disclosed an arrest in November 2015 for misapplying entrusted federal property in section 22 of his Security Clearance Application (SCA).³ He pled guilty in March 2016 to this misdemeanor offense and paid a \$300 fine and \$800 in court costs. He admitted to dumping several flyers and newsletters in a dumpster while he was employed as a letter carrier with the U.S. Postal Service (USPS). Applicant stated he resigned from the USPS under adverse circumstances but he was not terminated.⁴

In his Answer to the SOR (Answer), Applicant admitted two of the three delinquent debts alleged in the SOR totaling \$37,340, including the \$36,532 child support arrearage alleged at SOR 1.a. He denied the debt placed for collection in the amount of \$237 at SOR ¶ 1.c, stating that this account was paid in full as of June 22, 2018. He attached a receipt documenting this payment to his Answer to the SOR. He also attached an "Income Withholding for Support" agreement that he entered into with his employer on February 16, 2018. This required Applicant to pay \$1,012 per month in child support based on an order from the county court in state A.

The child support arrearage arose because although Applicant pays child support, his payments have been sporadic due to chronic unemployment.⁵ His first

¹ Unless stated otherwise, the source of the information in this section is Applicant's February 19, 2017 Security Clearance Application (SCA). (Item 3)

² Item 4.

³ Item 3.

⁴ Item 4.

⁵ Items 4 and 5.

marriage in 1990 was to a German national. They had a son and a daughter together. Applicant has had no contact with his son since 2004. Starting in 2006, a county court ordered that Applicant's pay be garnished in the amount of \$1,052 and sent to Germany via the county court in state A. This court order was reaffirmed in 2014. Applicant attached a one-page payment history to his response to the FORM, reflecting child support payments of \$425 every two weeks in 2017, and \$506 every two weeks (or \$1,012 a month) in 2018, in compliance with the income withholding for support agreement. The last reported payment was made on August 17, 2018. He also attached two character reference letters attesting to his work ethic, integrity and trustworthiness.

He admitted the allegation in SOR ¶ 1.b, for an automobile loan that is past due in the approximate amount of \$571, with a total balance of \$7,131. In his clearance interview, applicant claimed that he opened this account in 2005, and he eventually gave the vehicle to a friend who was supposed to take over payments on the loan. The friend reneged on his promise to make payments and Applicant attached a letter from the creditor dated June 26, 2018, to his Answer. It reflects a payment in the amount of \$291 was verbally authorized in June 2018, and Applicant was supposed to continue making monthly payments on this automobile loan, pursuant to this verbal agreement. However, Applicant has provided no documents or evidence of the payment agreement, aside from this one-time payment, to support his claims.

In his Answer to the SOR, Applicant also admitted the allegation under SOR ¶ 2.a for personal conduct, his conviction for depositing postal flyers in the trash, with an explanation. He was already punished for this misconduct on the job as a letter carrier, when he paid court costs and a fine. He felt pressure to complete his mail route in a finite amount of time, which did not allow for additional advertising flyers to be delivered. He was also forced to resign under adverse conditions.

Policies

This 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

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 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. According to AG ¶

2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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 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. 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.

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

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interviews. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁶ Applicant has not met that burden. Only one of the delinquent debts has been resolved, the debt alleged in SOR ¶ 1.c.

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;

⁶ 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).

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

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

Applicant endured multiple periods of unemployment. Arguably, this condition was beyond his control. He bears some responsibility for his forced resignation as a letter carrier for misconduct. However, it is unclear what efforts he made to find employment. He made only sporadic child support payments, before being ordered to do so by the county court. He admits to an arrearage of more than \$36,000. He did attach an income withholding for support agreement to his Answer, but it started in February 2018. His efforts are too little, too late. He has produced two favorable character references, but no evidence of financial counseling or a budget.

Applicant attached to his response to the FORM, a payment history showing child support payments made in 2017 and 2018, but he stated that these payments were ordered initially in 2006, and reaffirmed by the county court in 2014. It is unclear what payments, if any, he made before 2017. It is equally unclear why he was unemployed so frequently.

Applicant did produce evidence of one payment in the amount of \$291 on his delinquent automobile loan at the end of June 2018. This is evidence of at least one repayment on this debt, presumably pursuant to a plan. He also demonstrated that the debt at SOR ¶ 1.c is paid in full. Yet, these efforts were on the eve of his FORM. SOR ¶¶ 1.a and 1.b have not been resolved. In short, he has provided insufficient documentation to mitigate the delinquent debts alleged in the SOR. His child support obligations are longstanding and unfulfilled. The alleged debts are recent and ongoing. He has not demonstrated that he acted responsibly under the circumstances. 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. The mitigating conditions enumerated above do not apply.

Guideline E, Personal Conduct

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:

(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 judgement, 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. This includes, but is not limited to, considerations of:

(4) evidence of significant misuse of government or other employer's time or resources; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Since Applicant admitted his untrustworthy behavior and misdemeanor misconduct as a letter carrier, he has not mitigated the government's concern. He had a fiduciary responsibility to his postal service customers when he was entrusted with their mail for delivery. He misused USPS time and resources. Although there is no evidence of a contract or writing, it is self-evident that his commitment to the USPS was to deliver the mail entrusted to him. He dumped it for his own convenience in expediting completion of his route. Insufficient time has passed since he committed this offense to conclude that Applicant would act reliably if he was entrusted with classified information.

Under AG ¶ 17, conditions that could potentially mitigate security concerns include:

(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; and

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

Applicant acknowledged his aberrant behavior by pleading guilty to the misdemeanor charge of misapplying entrusted federal property and disclosing his conviction in his SCA. He alleviated stressors and changed his circumstances by resigning his job under pressure. Since his arrest and conviction are public matters and he disclosed them, there is no vulnerability to exploitation, manipulation, or duress. However, Applicant provided no evidence of counseling, and insufficient time has elapsed from his offense, to conclude that it won't recur. His conviction cuts to the heart of the matter of special trust and confidence being placed in persons holding security clearances, and continues to cast doubt on his reliability and trustworthiness. Applicant has not mitigated the government's concerns.

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 the 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 E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Most importantly, Applicant has breached his position of trust as a letter carrier and raised concerns about his trustworthiness and reliability, which have not been mitigated, and he has not mitigated his delinquent debts.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations, or under Guideline E, 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 and 1.b:	Against Applicant
Subparagraph 1.c:	For 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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge