



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



In the matter of:)
)
) ISCR Case No. 18-01502
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: Jessica Coronado, Esq., Grady & Associates

February 7, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 10, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 29, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 4, 2018. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7,

which were admitted without objection. The Applicant offered five exhibits at the hearing, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 13, 2018.

Findings of Fact

Applicant is 42 years old. He is married with two children from his current marriage, and one from a prior marriage. He has a high school diploma, military training, and some college. He is employed by a defense contractor as a Project Manager. He is seeking to obtain a security clearance in connection with his employment. Applicant has been working for his current employer since September 2016.

Guideline E – Personal Conduct

The Government alleges in the SOR that the Applicant 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.

Guideline F - Financial Considerations

The Government alleges in the SOR 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.

Guideline J, Criminal Conduct

The Government alleges in the SOR that Applicant is ineligible for clearance for engaging in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness, and calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant admits, with an explanation, each of the allegations set forth under each of the guidelines noted above. Credit Reports of the Applicant dated January 7, 2012; December 13, 2016; and August 27, 2018, confirm each of the debts listed in the SOR. (Government Exhibits 5, 6, and 7.) Applicant served in the United States Navy for thirteen years from February 1998 until March 2008.

While serving in the Navy, on or about August 9, 2007, Applicant pled guilty to Larceny, under Article 121 of the Uniform Code of Military Justice (UCMJ) for stealing Overseas Base Housing Allowance in the approximate amount of \$31,938.70; and Forgery, under Article 132 of the UCMJ, for fraud against the United States for providing forged documents in the furtherance of the crime of larceny. From October 2005 to

February 2007 Applicant received Overseas Housing Allowance (OHA) for his dependants living in the Philippines. Applicant submitted a lease agreement to his command that showed that his family rented a house for about \$1,400 US dollars a month in the Philippines, and per DoD regulations, Applicant is entitled to the amount of rent plus utilities in OHA. Subsequently, the Naval Criminal Investigative Service checked Applicant's designated residence on the lease and found that Applicant's family were not living there. Applicant was provided his rights and confessed to creating a fake lease to receive OHA, by falsely representing that his family was living in the Philippines. He submitted the forged document to the Government as a real document. By providing this fake lease to the Government, Applicant was able to obtain approximately \$32,000 in money that he was not authorized to receive. (Tr. p. 28.) Applicant was found guilty at a Special Court-Martial. Applicant spent 30 days in the brig, 60 days restriction afterwards, reduction in rate to E-3, and forfeiture of pay of \$1,100 for six months. (Government Exhibit 4.) Applicant was administratively discharged from his military service due to his actions. In March 2008, as a result of his misconduct, Applicant received an Other than Honorable Discharge. (Tr. p. 31.)

After being discharged from the military, Applicant did not attempt to pay off his debt. Almost eleven years have past since this incident occurred and Applicant did not even attempt to pay the debt back to the Government. The debt was eventually charged off in the approximate amount of \$46,094. Applicant testified that at some point he noticed that his Federal income tax refunds were being garnished, but he did not pay much attention. (Tr. pp. 37 - 38.) In December 2018 or early January 2019, Applicant made his first voluntary payment toward resolving the debt of \$100. (Tr. p. 35.)

Two letters of recommendation submitted on Applicant's behalf from his Program Manager and from his Team Manager indicate that they consider the Applicant to be a hard worker, who is intelligent, punctual, and who consistently goes above and beyond to complete the tasks assigned to him. His is also described as a diligent and reliable team member and a role model for others. (Applicant's Exhibits A and B.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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. 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. 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, 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 clearance 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 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 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by for foreign intelligence entity or other individual or group.

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country; and

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

Applicant deliberately committed a fraud against the Government, and stole thousands of dollars from the Government that he has still not paid back. He forged a lease agreement to receive benefits that he was not authorized to receive. What makes the situation even worse, is the fact that he was serving in the United States military at the time he committed the offenses. He was trusted to serve and protect the interests of United States, and he failed. Although this misconduct occurred nearly eleven years ago, it is so egregious and goes to the core of why the DoD is concerned about the protection of national security. Applicant was not honest with the Government eleven years ago, and has still not shown that he is reliable and trustworthy. Under the circumstances, there is no excuse for Applicant's significant breach of trust. There are no applicable conditions that could be mitigating under AG ¶ 17.

Guideline F - Financial Considerations

The security concern 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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Although Applicant did incur the debt over ten years ago, he only recently started to make payments to resolve it. The debt has increased since he incurred it. He now owes approximately \$46,094. This does not show a good faith effort to resolve his debt. He remains excessively indebted. At this time, there is insufficient evidence of rehabilitation. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

It is noted that Applicant's misconduct in the past occurred almost eleven years ago. However, as egregious as it was, over the years, Applicant totally ignored the debt, and did absolutely nothing until recently to try to resolve it. Recently, meaning only after he applied for a security clearance, and realized it could be an obstacle for him in obtaining a security clearance. This debt owed to the Government for fraudulent criminal conduct should have been paid back as soon as possible. Applicant still owes the debt and little has been done over the years to resolve it. At this point, it cannot be said that he is financially stable, that he has shown good judgment, or that he has made a good faith effort to resolve his indebtedness.

Guideline E, Personal Conduct

The security concern relating to the guideline 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 a security concern and may be disqualifying. The following are potentially applicable:

(a) 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 considered as a whole, 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

None of the mitigating conditions are applicable. Applicant has failed to provide sufficient evidence in mitigation.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Personal Conduct, Financial Considerations, and Criminal 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge