



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



In the matter of:)
)
) ISCR Case No. 18-01514
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on June 12, 2017. On August 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E. 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 adjudicative guidelines (AG) implemented by the DOD on June 7, 2018.

Applicant timely answered the SOR 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 October 31, 2018. Applicant received the FORM on

November 15, 2018. The Government's evidence, included in the FORM and identified as Items 1 through 9, is admitted without objection. Applicant provided a response to the FORM, which was marked as AE A and entered into the record without objection. The case was assigned to me on February 14, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial or personal conduct concerns.

Findings of Fact¹

Applicant is a 40-year-old program manager-engineer for a federal contractor. He is married and has two children. He served in the U.S. Marine Corps Active Reserve from 1997 to 2005 when he was honorably discharged. (Item 4) He obtained an undergraduate degree in 2002, and a master's degree in 2007. He has held a security clearance since 2007. He has been employed with his current employer since April 2017. (Item 4)

Financial

The SOR alleges in 1.a-1.aa, a 2012 state tax lien in the amount of \$2,087; four student loans in collection; collection accounts; charged off accounts; and car repossessions for a total of 27 delinquent debts totaling approximately \$230,936. (Item 1) Applicant admitted the financial allegations listed on the SOR and provided explanations. He claims that some accounts are duplicates and that he has some debts that were judgments. (Item 3) Applicant believes that his delinquent debt is about \$173,609.43 and that the majority of the debt consists of student loans.

Applicant attributes his delinquent debts to unemployment, job instability and garnishment of some of his wages for a rental car charge of about \$8,000 that was charged to his corporate credit card in 2016, and his lack of payments. He was unemployed from June 2009 to August 2010 due to a contract ending. (Response to FORM) He was also unemployed from February to April 2017. (Item 5)

Applicant admitted that he owes the state tax lien in SOR 1.a, and that he will be establishing a payment plan with the state to resolve the issue. (AE A)

As to SOR allegations for student loans 1.b, 1.c, 1.g, and 1.aa, Applicant states that he has consolidated the student debt in the amount of \$180,000 into \$118,433, and that he has started making payments on the loans. He submitted a May 2018 letter stating that he was enrolling in a rehabilitation program for the student loans, but he did not submit any documentation that he has started the program by making any payments. It appears from the record that a garnishment of \$5,300.82 was deducted from his 2018 paycheck.

¹ Applicant's personal information is extracted from his security clearance application (Item 4) unless otherwise indicated by a parenthetical citation to the record.

As to 1.d, 1. e, and 1.m, all car loans, Applicant states that they have been paid in judgments in 2014. There is no information that any judgments have been released. It does appear in a credit report that he submitted that the allegation in 1.d was settled for less than the full balance. (AE A)

As to 1.f, 1.h, 1.i, 1.k ,1.l, 1.n, 1.o, 1.p, 1.q, 1.r ,1.s, 1.v, 1.y, and 1.z, Applicant responded to the FORM by stating that he will be setting up a payment plan soon. These accounts are on the credit reports and Applicant did not submit any evidence of payments made or payment agreements. (Answer to FORM)

As to 1.e, 1.j, 1.m, and 1.t, Applicant claims that they have been resolved as they are no longer on his credit reports. However, the remaining SOR alleged debts appear on the 2017 credit report submitted by Applicant as charged-off accounts or collection accounts. It does not reflect that any were actually paid.

Some of the debts appear to be duplicates as Applicant explains. SOR allegation 1.x appears to be a duplicate of 1.t; 1.w is the same as 1.o; 1.y is the same as 1.v. Applicant does not state that they are paid. They are either not on the credit report or he will set up a payment plan. He wanted to emphasize that the total amount he allegedly owes is less than what the SOR states.

Personal Conduct

The SOR alleges under Personal Conduct 2.a through 2.h, an arrest in 2015 and a charge of theft of a motor vehicle, a felony; termination of employment in 2017 for misuse of a company credit card and ineligibility for rehire; unauthorized use of another company's credit card for personal expenses of in the amount of \$8,000 that Applicant did not reimburse; five falsifications on his 2017 security clearance application including not reporting termination of employment (section 13 A and C); not listing the wrongful use of a company credit card (Section 26); and finally not listing an arrest. (Item1)

Applicant was arrested in 2015, and charged with theft of a motor vehicle. However, he was renting a car and presented documentation that he was released unconditionally from jail the following day. He did not report any details about the situation.

Applicant denied that he was fired in 2017. He stated that he voluntarily left the job. He plans to repay the \$8,000 charged on his corporate credit card. Applicant claims he lost his company card and that a hotel charged an expense on that card instead of his personal card.

Applicant denied the five falsifications as described above. He stated that none of the actions were done purposely and that he stands ready to take responsibility for them. He did not articulate a credible reason why he did not list the incidents on his 2017 security clearance application.

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.

Eligibility for a security clearance 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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. See *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 ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 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.

Analysis

Guideline F (Financial Considerations)

The 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. 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, and failure to pay a state tax lien, and education loans that are not in repayment, along with numerous collection accounts that became delinquent, establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); AG ¶ 19(c) (“a history of not meeting financial obligations”); and 19(f) (“failure to pay annual Federal, state, or local income tax as required.”

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 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;

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

AG ¶ 20 (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 has a 2012 state tax lien, numerous collection accounts, vehicle repossessions, defaulted student loans, judgments, and wage garnishments. He stated that he has made some payments and is in the process of establishing payment plans. He stated that judgments were paid in 2014. He provided no documentation that a student loan rehabilitation plan has actually started or that he has started other promised payment plans. A few accounts appear to be duplicates. Applicant did not provide evidence of any payments other than the garnishments from the record. It is not clear how long his pay had been garnished and for which accounts. He was unemployed for a short time but he was also terminated for wrongful behavior. He admitted that he owes the debts and promises to pay and set up plans. However, he provided no documentation to confirm his assertions. There is no information in the record as to his current salary. It is impossible to know if he is financially stable. Applicant has furnished insufficient information to meet his burden. There is no record of financial counseling. None of the mitigating conditions apply.

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, 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 person may not properly safeguard classified or sensitive information.

(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 individual may not properly safeguard classified or sensitive 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 government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources;

(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; ...;

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

(g) association with persons involved in criminal activity.

Applicant has not provided a credible explanation as to why he was arrested for car theft. He admitted that he put personal expenses on a company credit card and gave no real reason for the actions. He denied that he was fired but rather left the company. However, he admitted to the \$8,000 unauthorized charges on the corporate credit card. He denied the falsifications on his security clearance application. He noted that this was not purposeful. He failed to report an arrest or his credit card misuse on his security clearance application. He knew these actions occurred recently. He deliberately did not report them. Therefore, AG 16(a), (c) and (d) apply.

17. Conditions that could mitigate security concerns include:

(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.

Here, Applicant intentionally, knowingly, and willfully misreported information on his 2017 security clearance application in three separate sections. He misused a

company credit card and has an unexplainable arrest from 2015. It is not the result of a one-time mistake or an isolated incident. Although he admitted to the wrongdoing, he explained that he will make amends and pay what he owes. Applicant's actions reveal untrustworthy or unreliable behavior and an unwillingness to comply with rules and regulations. He has not met his burden to mitigate the personal conduct concern. None of the mitigating conditions apply.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

Applicant has held a security clearance since 2007. He served in the U.S. Marine Corps receiving an honorable discharge. He has worked for a number of years as a contractor. He is married and has two children.

The record does not provide sufficient information as to why Applicant accrued so many debts. He was unemployed for a short time. He was also terminated for wrongdoing. He wants to pay his debts and promises to set up plans. He has not done anything to resolve his state tax lien. He has not received financial counseling. There is no evidence of payments or payment plans other than garnishment.

Applicant intentionally falsified his security clearance application in five sections. He misused a company credit card. He has not mitigated the financial or personal conduct security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.aa

Against Applicant:

Paragraph 2, Guideline E (Personal Conduct):

AGAINST APPLICANT

Subparagraphs 2.a-2.h:

Against Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge