



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



In the matter of:)	
)	
[Name redacted])	ISCR Case No. 18-01962
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2019

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline E (personal conduct), but failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On May 23, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 15, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On September 4, 2018, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated October 2, 2018, was provided to him by letter on that same day. Applicant received the FORM on October 9, 2018. He was afforded a period

of 30 days to file objections and submit material in refutation, extenuation, or mitigation. On November 7, 2018, Applicant timely submitted an eight-page response to the FORM. On December 20, 2018, the case was assigned to me. Department Counsel submitted five documents with his FORM, marked as Items 1 through 5. Applicant's response to FORM is marked Item 6. Items 1 through 6 are admitted into evidence.

Findings of Fact

Background Information

Applicant is a 59-year-old maintenance worker employed by a defense contractor since 2017. (Item 3) He seeks a security clearance in conjunction with his current employment.

Applicant received his GED "sometime between 1994 and 1996." (Item 3) He was awarded an associate's degree in 2012 and a bachelor's degree in 2014. Applicant has never married, and has an adult son (Items 2, 3)

Financial Considerations

Applicant's two delinquent SOR debts comprise a \$44,367 student loan collection account and a \$20,436 child support collection account. Applicant acknowledged these debts in his SOR answer. They are further established by his June 2017 and October 2018 credit reports as well as by his Office of Personnel Management Personal Subject Interview (OPM PSI) conducted in February 2018. (SOR ¶¶ 1.a – 1.b; Items 1, 4, 5)

During his OPM PSI, Applicant stated that he was unable to repay his student loan because he was not making enough money. During that interview, he also stated that he planned to contact the Department of Education by the end of February 2018 to set up a payment plan and hoped to have the account current by December 2020. (Item 3) In his SOR answer, he attributed this debt to "naivety and procrastination." He added that he "obtained a payment plan from the agency that allows me to return to my original lender next year." (Item 1) According to his two credit reports, Applicant's student loan account has been delinquent since 2017. (Items 4, 5) Applicant stated in his response to FORM, "I have already beg[u]n payments with a creditor to reestablish [sic] my school loan." (Item 6)

Also during his OPM PSI, Applicant stated that his child support account became delinquent in 1994 and at that time he owed approximately \$8,000. He stated that his paycheck was being garnished and his tax refunds were withheld. In 2006, he was informed by the court that his child support arrearages had increased to \$30,000. Applicant disputed that amount because his pay was being garnished and his tax refunds were being withheld. Applicant had taken no further action to resolve the matter since 2006 because he could not afford a lawyer and his paycheck was still being garnished for child support arrearages. He stated that he intended to get this debt resolved, but was unable to afford a lawyer. (Item 3) In his SOR answer, Applicant stated, "I have a payment plan with the state of [...] since, I believe, 1994 on my child

support, therefore, that not only shows my intention of fully paying this debt but also made me current.” (Item 1). In Applicant’s FORM response, he stated that he “will be speaking with an attorney next week to reduce or expunge my child support.” (Item 6)

Department Counsel’s FORM discussed specific shortcomings of Applicant’s SOR answer, and emphasized long-standing DOHA case law concerning the necessity for applicants to provide mitigating documentation. Applicant submitted numerous favorable whole-person work-related evidence; however, he failed to submit any documentation that addressed the two SOR debts.

Personal Conduct

When Applicant completed his May 2017 SF-86, he failed to disclose his student loan collection account and his child support collection account, as required. He denied that he intentionally omitted disclosure of these delinquent debts, claiming oversight or misinterpreting the questions. In reviewing his OPM PSI, I note that he also failed to list other required information or provided incorrect information on his SF-86, such as incomplete identifying information, information related to his residence, an incorrect school name, mistakes or incorrect information about his employment, and incorrect or incomplete information regarding alcohol issues. I also note that he provided adverse information concerning his criminal history. (Items 2, 3)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.”

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 of 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(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.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c).

AG ¶ 20 lists five potentially mitigating conditions under these facts:

(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.

The Appeal Board explained an applicant's responsibility to prove applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

With regard to financial considerations, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without sufficient information suggesting that his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Personal Conduct

Applicant admitted that, when he completed his SF-86, he failed to list his student loan collection account and his child support collection account, as required. He denied that he intentionally omitted these debts, claiming oversight or misinterpreting the questions. I also note that he made other mistakes or failed to report required information when completing his SF-86. He discussed these shortcomings during his OPM PSI. Based on the available information, it appears Applicant became confused when completing his SF-86. His lack of attention to detail cannot be construed as a willful and deliberate attempt to undermine the investigative process. Although the information he provided regarding his financial situation, and other issues, on his SF-86 proved to be incorrect, I attribute these lapses to carelessness and am satisfied that he did not deliberately and intentionally fail to disclose his delinquent debts with the intent to deceive.¹ No disqualifying condition under Guideline E was established in this record, and discussion of potentially mitigating conditions is not warranted.

Applicant chose to rely on the written record. In so doing, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, or mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his efforts to address his delinquent debt. By failing to provide such information, financial considerations security concerns remain.

¹ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant national security eligibility. Clearance is denied.

ROBERT TUIDER
Administrative Judge