



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



In the matter of:)
)
) ISCR Case No. 18-02852
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2019

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 (SCA) on December 3, 2016. On December 10, 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 8, 2017.

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 March 26, 2019. Applicant received the FORM on April

29, 2019. The Government's evidence, included in the FORM, and identified as Items 1 through 6, is admitted without objection. Applicant did not provide a response to the FORM. 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 Fact

Applicant is a 27-year-old employee of a federal contractor. He graduated from high school in 2011. He reported no military service. He has never married. (Item 2) He has not held a security clearance and is sponsored by the defense contractor, with whom he has been employed since 2016.

Financial

The SOR alleges in 1.a-1.c delinquent debts totaling approximately \$28,000. (Items 1, 4, 5, 6) Applicant admitted the financial allegations listed on the SOR with the exception of 1.c. He noted that 1.b would be paid off when he receives his tax refund. He provided no explanation for the denial in 1.c. (Item 1)

Applicant provided no explanation for any of the delinquent debts that were charged-off or in collection. He admitted that he was fired in 2012, but provided no frame of time for which he was unemployed or how the termination affected his financial status. (Item 1)

Applicant did not disclose on his 2016 SCA that he had any delinquent debts. (Item 2) During his 2018 investigative interview, Applicant responded to a question concerning any debts that have been turned over to a collection agency, and stated ,yes, and disclosed the past-due collection account in the amount of \$3,871. (1.b) He stated that it was a 2014 credit card that he obtained to make a down payment on a 2013 car. He admitted that he never made any payments on the car. He stated that he forgot about this debt when answering the security clearance questionnaire. Applicant answered no as to any other delinquent bills. He was confronted with the charged-off account in 1.a for \$23,663. He was in a car accident and it was determined that he was at fault. His insurance did not pay. He received a settlement offer for \$11,000 in 2018. He has not settled the account, but plans to do so. He did not list the account in the security clearance application because he felt he should not be responsible for the debt because he believes he was not at fault. He gave no other information. (Item 3) As to the debt in 1.c for \$281, he had no recollection of the account, but he did not dispute it.

Applicant lives with his parents and stated that he is saving to pay his debts. However, he presented no documentation of any payment plans or receipts for payments. He disputed the one debt in 1.c, but provided no documentation to support the claim. Finally, he stated that it is not on his credit report. (Item 3) He added that he would attempt to obtain his credit reports. There is no information in the record as to his earnings or financial counseling.

Personal Conduct

The SOR alleges under the Personal Conduct Guideline at 2.a. that he falsified material facts on his 2016 security clearance application when answering Section 26 in totality, Applicant did not list any delinquent debts, defaults, charged-off accounts or collection accounts. He answered “No” to each subsection in the Section. Applicant admitted this allegation of falsification in his SOR response.

In his 2018 investigative interview, Applicant acknowledged one of the debts and stated that he forgot about it. He gave no valid reason for not listing the other debts that were on his credit reports. Applicant’s three credit reports, including the 2019 report reflect the delinquent accounts. (Items 4-6)

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 provide any documentation, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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; and

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

Applicant provided no evidence of payment arrangements or receipts for any of the debts. He did not present any information and that he 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.

Applicant admitted to allegation 2.a that he deliberately falsified his security clearance application by not disclosing any delinquent debts or collection accounts in response to Section 26. He did note during his 2018 investigative interview that he forgot to put one collection account on the application. However, when confronted with the others he had no valid reason as to why he did not list the other accounts. He knew about these accounts because he then provided explanations about each of them and why they were not paid. He deliberately did not report them. Therefore, AG 16(a) applies.

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 failed to report material information about his debts on his 2016 security clearance application in Section 26 of his SCA. 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 never held a security clearance. He has worked for a number of years as a contractor. He did not respond to the FORM, thus there is no other information about his background.

The record does not provide sufficient information as to why Applicant accrued his delinquent debts. He was unemployed for a time in 2012, but it is not known for how long. He wants to pay his debts and promises to set up plans. He has not done anything to resolve any of the accounts. He has not received financial counseling. There is no evidence of payments or payment plans. There is no information concerning his present earnings.

