



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



In the matter of:)	
)	
)	ISCR Case No. 19-00039
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 25, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on February 26, 2019, 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 May 8, 2019. The evidence included in the FORM is identified as Items 3-9 (Items 1-2 include pleadings and transmittal

information). The FORM was mailed to Applicant, who received it on May 13, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit any documentary evidence. Items 3-9 are admitted into evidence without objection. The case was assigned to me on August 21, 2019.

Findings of Fact

Applicant admitted all the Guideline F allegations, one Guideline E allegation (being terminated from his employment in May 2015), and denied the remaining Guideline E allegations in his answer to the SOR. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 56 years old. He has worked for a defense contractor since October 2015. He was unemployed from May to October 2015. From 1999 until May 2015, he also worked for a defense contractor until he was terminated for misconduct. He has a bachelor's degree. He is married and has one adult child. (Item 4)

The SOR alleges 13 delinquent debts (collection and charged-off accounts) totaling approximately \$40,000. The debts are supported by credit reports from May 2017 and September 2018, Applicant's statement to an investigator in March 2017, and his SOR admissions in his answer from February 2019. The SOR also alleged that he was terminated from his employment in May 2015 for misconduct; that he falsified his security clearance application (SCA) from February 2016 when he failed to affirmatively respond to questions about whether he left any employment because he was fired; and when he failed to affirmatively list on his SCA that he had been charged with an alcohol offense, as he was required to do. (Items 2-9)

Applicant attributes his financial problems to helping his father with his medical debts from 2011 to 2016. He claims the debts are unsecured pay-day loans and credit cards. He has no intention of paying the debts because he believes they are unenforceable against him in the state where he resides. There is no evidence of financial counseling. Applicant's debts remain unresolved. (Item 2, 5)

A document from his former employer established that Applicant was terminated from employment for cause in May 2015 for downloading and watching movies while at work, which his employer construed as timecard fraud. Applicant failed to disclose this circumstance when describing this employment in his 2016 SCA. During his background investigation, he initially told the investigator that, consistent with his answer on his SCA, he was laid off from this employment. Upon being confronted with the information that he was fired from that position by the investigator, Applicant so admitted. When asked why he provided this false information, Applicant responded that he did not like to think about being fired so he chose to characterize it as being laid off. (Items 2, 5, 8)

In January 2008, Applicant was stopped for speeding by a state trooper. Applicant was returning home after having dinner out with his wife. He claimed that he had not consumed any alcoholic beverages. He was given field sobriety tests and a breathalyzer test. He was told he failed the field sobriety tests, but no breathalyzer results are in the record. He was charged with driving while intoxicated (DWI). In March 2009, Applicant pleaded guilty to a lesser charge of obstructing a highway passageway. In July 2008, Applicant reported to his security officer that he was arrested for DWI earlier in January. Later in March 2009, the disposition of the case (pleading to the lesser offense) was also reported to his security officer. (Items 3, 5, 9)

When Applicant completed his SCA in February 2016, he was asked whether he had “ever” been charged with an offense involving alcohol. He responded with a “no” answer. When confronted with the 2008 DWI arrest by the investigator during his background investigation, Applicant stated that he did not list this charge because he did not think he had to because he was not convicted of the DWI, only the lesser charge of obstructing a highway passageway. (Items 2, 4-5)

Policies

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 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 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.

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 to obtain 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

All of Applicant’s delinquent debts remain unpaid and unresolved. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; and

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

Applicant's debts are recent and all remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond his control (father's medical debts, unemployment). He did not show that he took responsible action to attempt to resolve his debts. I find AG ¶ 20(b) partially applies. Applicant failed to provide documentation showing any efforts to contact creditors and set up payment plans, or make payments on the listed debts. On the contrary, Applicant has made a conscious choice not to address his debts and let them fall off his credit record with time. AG ¶ 20(c) does not apply. There is no evidence of financial counseling and no indications that his financial problems are under control. AG ¶ 20(d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying condition is 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

(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;

Applicant was fired from his position in 2015 for misconduct. He falsely characterized that event in his 2016 SCA as him being "laid off." He admitted to an investigator, after being confronted, during his background investigation that he had been fired and chose to deliberately conceal this information when completing his SCA. AG ¶ 16(a) applies to SOR ¶ 1.b.

Applicant reported his DWI arrest to his security officer shortly after the event and long before filling out his SCA. He pleaded to a lesser, non-alcohol-related charge. He was under the mistaken belief that he did not have to list the DWI charge because he was not convicted of it. I find that Applicant did not deliberately conceal his DWI arrest, otherwise he would not have reported it to his security officer. AG ¶ 16(a) does not apply to SOR ¶ 1.c.

In May 2015, Applicant was terminated from his employment because he was downloading and watching movies while on duty. His former employer's records document this misconduct. AG ¶ 16(d) applies to SOR ¶ 1.a.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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.

Honestly completing an SCA is the initial crucial step in gaining access to classified information. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Likewise, engaging in work misconduct resulting in termination is not a minor offense. Such deliberate actions cast doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

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 guideline 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 considered Applicant's period of unemployment and the financial assistance he provided to his father. However, I also considered that Applicant failed to resolve any of his delinquent debts. On the contrary, he has chosen to ignore them and allow the passage of time to remove them from his credit history. Applicant has not established a track record of financial stability. He was removed from a position he held for over 16 years for workplace misconduct. He provided false information on his SCA about his removal from that position.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and 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-1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraph 2.c:	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge