



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



In the matter of:)
)
) ISCR Case No. 19-00099
)
Applicant for Security Clearance)

Appearances

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

08/09/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On November 7, 2018, Applicant submitted a security clearance application (SCA). On March 4, 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 action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 14, 2019, and he admitted all of the SOR allegations. (SOR ¶¶ 1.a - 1.q, and 2.a.) Applicant did not attach any supporting

documentation with his response. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing. On April 9, 2019, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant on April 12, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not provide a response to the FORM or object to Government Items 1 through 9, which were admitted into evidence. The DOHA Office assigned the case to me on June 20, 2019.

Findings of Fact

Applicant is 34 years old and employed by a DOD contractor as an aircraft mechanic since April 2018. He served in the U.S. Air Force from June 2003 to May 2009, when he was involuntarily separated from active duty due to personnel reductions. He married in 2006 and has six children, ages 1, 3, 4, 6, 9 and 11. He listed on his SCA that he was granted a DOD security clearance while he was active duty in the U.S. Air Force, but he does not currently possess a DOD security clearance. (Item 3)

The SOR alleges that Applicant has 16 delinquent accounts totaling approximately \$30,000. In 2013, he was arrested for 4th degree theft, and false reporting of information to police. He was convicted of false reporting of information to police. The debts alleged in the SOR are supported by the admitted credit bureau reports. Applicant's 2013 arrest and conviction were supported by his admission during his October 2016 background interview, the police records, and the Federal Bureau of Investigations criminal history report. (Items 1-9)

In July 2013, Applicant was charged with criminal conduct after he stole \$3,488 from his employer, and then fabricated a story to police that he had been kidnapped at gunpoint. He was employed as a general manager at a fast-food restaurant for just over three years. He stated that he was feeling stressed while driving to the bank to make a cash deposit for his employer. He claimed to have suffered an acute psychotic break, drove past the bank, and continued driving for another four hours. He believed there was another person in his car with a weapon. He eventually woke up from his trance about four hours later. He drove another four hours on his way home and found the police waiting for him at his residence. The deposit bag was still in his car, which he returned, but his employer stated that \$274 was missing from the daily sales cash register and petty cash. Applicant made restitution to his employer and the theft charge was dismissed. In his SOR response, he wrote; "With this charge I was never convicted of this crime. Money had gone missing after an episode that I was involved in and I was asked to pay it back and not be convicted." Applicant pled guilty to making a false report to law enforcement, paid a fine of \$315, and served two days in jail. (Items 2, 3, 7-9)

Applicant failed to provide any information about how he came to experience financial difficulties, or what he has done, or is doing, to resolve his outstanding financial

obligations. Department Counsel's brief clearly addressed Applicant's responsibility to mitigate the financial security concerns alleged in the SOR, and his SOR response was insufficient to meet this burden. Applicant received the FORM on April 19, 2019, and had 30 days to present evidence of refutation, extension, or mitigation, sufficient to overcome the *prima facie* case established against him. Applicant failed to provide any information within the 30-day period.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(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." 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. 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 as to obtaining 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 as to 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

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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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.

Applicant has approximately \$30,000 of accumulated debt alleged in the SOR. In July 2013, he was arrested after he stole money from his employer and then fabricated a story to police that he had been kidnapped at gunpoint. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

None of the mitigating conditions apply. There is insufficient evidence to show that Applicant's financial problems occurred under such unusual circumstances and are unlikely to recur, or that the conditions which caused his financial difficulties were due to circumstances beyond his control. There is no evidence to show that he is receiving, or has received, financial counseling from a credible source, or that there are clear indications that the financial problem is being resolved or is under control. There is no documentation in the record to show if Applicant has initiated or is adhering to a good-faith effort to repay his overdue creditors.

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).

As a general manager of a fast-food restaurant, it is clear that Applicant was placed in a position of trust by his employer. He violated that trust by taking money from his employer. His explanation that he suffered an acute psychotic episode is not credible. After a thorough investigation the police charged him with providing false information to a law enforcement agency. The theft charge was dismissed only after Applicant made restitution to his employer, not because there was no legal basis for the charge. Applicant was convicted of providing false information to the police, which clearly shows that he is untrustworthy and unreliable.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following are potentially applicable under the established facts in this case:

(d) credible adverse information this is not explicitly covered under other guidelines 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 included, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior. . . .; and
- (2) a pattern of dishonesty or rule violations.

Applicant's arrest in 2013 (SOR ¶ 1.q) was addressed under Guideline F, and was cross-alleged (SOR ¶ 2.a) under the personal conduct guideline. I have previously addressed the issue under Guideline F. Applicant's criminal actions show that he is untrustworthy and unreliable, and his conduct clearly demonstrated dishonesty and rule violations. Disqualifying conditions ¶¶16 (d)(1) and (2) apply in this case.

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 guidelines 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant failed to provide evidence of mitigation regarding his financial considerations and personal conduct security concerns. The circumstances surrounding his 2013 arrest demonstrate that he is capable of breaching the trust of his employer, which makes him an unsuitable candidate for being placed in a position of trust with the Government. The record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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
Subparagraph 1.a -1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to grant national security eligibility to Applicant. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge