



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-00257
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
 For Applicant: *Pro se*
 10/21/2019

Decision

MARINE, Gina L., 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 July 28, 2016. On February 8, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 20, 2019, and requested a decision on the written record without a hearing. On June 28, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on July 10, 2019,

and did not respond. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. Applicant's SOR answer included documents that are marked and admitted into evidence as Applicant Exhibits (AE) A through F. The case was assigned to me on September 12, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), his SCA (Item 3), and a summary of his security clearance interview (SI) (Item 6). Item 6 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 6. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 6 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 6 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 6 could be considered as evidence in his case. Applicant received the FORM, including a copy of Item 6. He did not respond to the FORM or otherwise object to Item 6.

Findings of Fact

Applicant is 55 years old. He separated from his wife of 27 years in December 2015, and divorced on a date not specified in the record. They have three adult children. He honorably served in the U.S. Army from 1983 through 1989. He earned his bachelor's degree in 1987. He was previously granted a DOD security clearance in 1988.

Applicant has been employed by the same defense contractor since January 2008, except for a period between March 2015 and July 2016 when he was separated due to a reduction in force (RIF). He received severance pay of an unspecified amount, which he used for support during the RIF. Since April 2015, Applicant has also worked part time as a self-employed contractor (which after July 2016 consisted of working remotely outside of his full-time employment hours). (SOR Answer at 3; Item 3 at 12-13; Item 6 at 7)

The SOR alleged five delinquent credit-card debts totaling \$63,736 (SOR ¶¶ 1.a – 1.e), and that Applicant deliberately failed to disclose any of them on his SCA (SOR ¶ 2.a). Applicant admitted each of the alleged debts, but denied any deliberate intent to falsify his SCA. Two accounts were charged-off by Creditor 1 (SOR ¶¶ 1.a and 1.b), and three by Creditor 2 (SOR ¶¶ 1.c – 1.e).

Applicant resolved two of the three debts owed to Creditor 2 (SOR ¶¶ 1.d and 1.e) in November 2018. While he proffered documents asserting that he resolved all three debts owed to Creditor 2 (AE B, C, F), the account numbers referenced therein did not match those listed on the credit reports. Thus, it was unclear to which SOR debt each document related. However, the Government conceded that the two resolved debts were SOR ¶¶ 1.d (\$8,061) and 1.e (\$7,815), and that SOR ¶ 1.c remained unresolved. (FORM at 2-3)

Applicant's three unresolved debts total \$47,860, including SOR ¶¶ 1.a (\$24,820 owed to Creditor 1), 1.b (\$13,799 owed to Creditor 1), and 1.c (\$9,241 owed to Creditor 2). In July 2018, Creditor 2 offered to settle the debt alleged in SOR ¶ 1.c. The record did not specify who wrote "Paid" on the copy of that offer (AE D), nor was any other corroborating documentation provided. In December 2018, Applicant finalized an agreement with Creditor 1 to repay the debt alleged in SOR ¶ 1.b. Under the terms of that agreement, he was obligated to pay \$7,000 via monthly payments of \$200 between December 2019 and October 2021. (AE A). He did not provide proof of any completed payments. In February 2019, he was in the process of negotiating a settlement with Creditor 1 for the debt alleged in SOR ¶ 1.a, the current status of which was not specified. (AE E).

Applicant certified his "no" response to whether he had any financial delinquencies on his SCA in July 2016. His certification included that "my statements on this form . . . are true, complete, and correct to the best of my knowledge and belief and are made in good faith." He was interviewed in August 2017 in connection with his security-clearance investigation to discuss, among other things, the contents of his SCA.

Applicant made inconsistent statements about his financial issues throughout his August 2017 SI. Initially, Applicant stated that he was financially stable and able to pay his bills, and maintained that there were no issues with his finances. After being confronted at the end of the interview, he acknowledged eight delinquent accounts, including the five alleged in the SOR. He claimed that he did not list them on his SCA because he did not find out that they were delinquent until after he submitted it in July 2016. By September 2016, three of the alleged debts (SOR ¶¶ 1.c – 1.e) were in collection status and delinquent at least 180 days, and the other two (SOR ¶¶ 1.a – 1.b) were delinquent at least 90 days. (Item 6 at 9-10; Item 5 at 6, 8 and 13; FORM at 3)

During the initial discussion about his specific delinquent debts, Applicant averred that each of them were current as of the date of the SI. He later admitted that they were not, in fact, current because his divorce attorney advised him not to pay them until the divorce was finalized (which had not yet occurred). While the Government argued the inconsistencies among Applicant's various SI statements, its falsification allegation in the SOR pertained only to the SCA not the SI. As such, it will be considered only to evaluate mitigation and the whole-person concept. (Item 6 at 9-10; FORM at 3)

Applicant's SOR answer (including February and March 2019 letters, and two April 2019 emails) also contained inconsistent statements about when he first knew about his financial indebtedness. In the February letter, he attributed his financial indebtedness to his period of unemployment between March 2015 and July 2016, his divorce proceedings, and the fact that he had two children in college. He stated that, during that time, he incurred "a significant amount of debt" in order to support himself and his family. He asserted that he had been working to settle his debts since he regained employment in August 2016. Although the date of his divorce is not otherwise

specified in the record, he referred to his “ex-wife” in the February letter, which presumes that his divorce had been finalized by then.

In the March letter, Applicant repeated the aforementioned facts of his February letter and added a comment about the falsification allegation: that he did not have knowledge of the debts alleged in the SOR until 2018. In the first April email, he stated that, at the time he completed his SCA in 2016, he had no knowledge of the credit-card debts caused by his divorce. Without specifying a date, he stated that his debts had “recently surface[d]” when he was contacted by a collection agency. He averred that his financial record was “impeccable and in great standing” until his divorce. In the second April email, he reiterated that he had “no knowledge of financial delinquency” at the time he completed his SCA, and that he learned of his delinquencies after being contacted by a collection agency “after [his] divorce.”

The record did not enumerate either the income that Applicant earned from his full-time and part-time employment, or his expenses (besides the \$2,500 per month he paid or has been paying over an unspecified period for alimony and housing), during the relevant period immediately preceding his unemployment through present. (Item 6 at 7). The Government identified the areas in which Applicant failed to provide documentary evidence to support his mitigation case. He was also advised of the opportunity to submit that evidence in his FORM response. He did not respond to the FORM. (FORM at 2-3)

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.” (*Egan* 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.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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. (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; AG ¶ 2(b)).

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are established:

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; and

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

Applicant has substantial delinquent debts that remain unresolved. He failed to demonstrate that he acted responsibly to address them. He regained employment in August 2016 and, during his unemployment period, had access to severance pay and possibly income from his part-time employment. Applicant is credited with resolving the two smallest SOR debts (SOR ¶¶ 1.d and 1.e) and for initiating actions to resolve the other three, especially since he tackled four of them well before issuance of the SOR.

Exacerbated by his failure to respond to the FORM, the record contains insufficient detail and documentation about his ongoing efforts and ability to repay the remaining debts. The fact that "Paid" was handwritten on the copy of the settlement offer for the debt alleged in SOR ¶ 1.c. was not sufficient to establish that Applicant either accepted the offer or paid the debt. Because he did not provide sufficient proof, I am also unable to conclude that he has either resolved or is making payments towards resolution of the debts alleged in SOR ¶¶ 1.a and 1.b.

Applicant failed to establish a meaningful track record of regular and timely payments or otherwise demonstrate that: 1) he will follow through with repaying his remaining debts, 2) he is currently managing his finances responsibly, and 3) his financial indebtedness is not likely to recur. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Guideline E: Personal Conduct

The concern under this guideline 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. 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:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition under this guideline could apply:

AG ¶ 16 (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.

When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an Appellant's state of mind at the time of the omission. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. (ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010))

Applicant consistently asserted that he was not aware of the delinquent debts alleged in the SOR until after he completed the SCA. However, he made contradicting statements to explain when he initially became aware of the debts. Those inconsistencies significantly undermined his credibility. His lack of candor during the SI

suggests that he was aware of the potentially negative impact his financial indebtedness could have on his security clearance. I find substantial evidence of an intent on the part of the Applicant to falsify his SCA. Therefore, AG ¶ 16(a) is established.

Neither of the following potentially relevant mitigating conditions under this guideline are established:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

An applicant's completion of a security questionnaire is the initial step in requesting a security clearance and the investigative process is contingent upon the honesty of the applicant. Beginning with an applicant's responses in the application,

The security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The Federal Government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions (based on complete and accurate information) about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

Applicant's failure to disclose his known financial indebtedness on his SCA was security significant. His subsequent inconsistencies and lack of candor during the SI and in his SOR answer undercut mitigation. I have doubts about Applicant's reliability, trustworthiness, and good judgment.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated security concerns raised by his financial indebtedness and deliberate falsification of his SCA. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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.c:	Against Applicant
Subparagraphs 1.d – 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge