



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



In the matter of:)
)
)
) ISCR Case No. 19-00859
)
Applicant for Security Clearance)

Appearances

For Government: Dan O'Reilley Esq., Department Counsel
For Applicant: *Pro se*

10/08/2019

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 March 6, 2017. On April 12, 2019, 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 July 22, 2019. Applicant received the FORM on July 26, 2019. The Government's evidence, included in the FORM, and identified as Items 1 through 7, is admitted without objection. Applicant did not provide a response to the FORM. The case was assigned to me on September 24, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial considerations or personal conduct concerns.

Findings of Fact

Applicant is a 34-year-old employee of a federal contractor. He graduated from high school in 2003. He served in the U.S. Navy from August 2005 to August 2010, receiving an honorable discharge. (Item 4) Applicant received an associate's degree in 2012. He is divorced and has no children. (Item 3) In 2016, Applicant obtained a certificate in motorcycle mechanics. He has been with his current employer since February 2017. Applicant has held a security clearance since 2009. (GE 4)

Financial

The SOR alleges in ¶¶ 1.a-1.k delinquent debts and judgments totaling approximately \$26,841. (Items 2, 6, and 7) Applicant admitted the financial allegations listed in the SOR. (Item 1, 2) Under personal conduct (SOR 2.a and 2.b), he denied the SOR allegations.

Applicant provided no explanation for any of the delinquent debts that were charged-off or in collection. He also incurred two judgments from a hospital for medical bills. He reported unemployment from March 2015 to August 2016. (Item 3, 4) He has worked steadily since that time. He noted that his current salary is \$75,000 a year. (Item 2)

Applicant replied in his answer that he has made payment arrangements with the creditors, but he did not provide any documentation. However, his 2019 credit bureau report shows that Applicant has made some payments toward his delinquent accounts, but three accounts remain in collection, and the majority of the delinquencies are still unresolved. (Item 5) SOR allegations ¶¶ 1.d through 1.k are related to medical collection accounts or judgments. He stated in his answer that he is working with the regional medical center to resolve the delinquent medical debts. He was involved in an accident and did not have health insurance. He provided no other details.

Applicant did not disclose on his March 2017 SCA that he had any delinquent debts. (Item 2) He responded "No" to each question in Section 26 concerning delinquencies. In his answer to the SOR, he stated that he was unaware of his financial delinquencies and did not list anything. During his 2018 investigative interview, Applicant denied having any judgments (1.h and 1.i) in the last seven years. After the investigator confronted Applicant, he responded that he did not disclose them on the SCA because he did not believe they would appear on his credit report. He knew they existed because his mother told him in 2016. He admits they are not paid. Applicant answered "No" as to

any other delinquent bills. Applicant denied the falsification allegations under SOR 2.a and 2.b. He was confronted with the charged-off account alleged in ¶ 1.a for \$16,151. During his interview, he stated that he was aware of the account, but it was not paid because he was unemployed. Applicant knew it was for the purchase of a motorcycle.

Applicant intends to pay his delinquent debts. He stated that he now has the means to pay the delinquent bills. To his credit, his 2019 credit report shows that he has recently made some attempts to pay under a partial payment agreement. (Item 5, 6) He made a \$52 payment for SOR ¶¶1.b and 1.c. There is no information in the record concerning financial counseling or use of a budget.

Personal Conduct

The SOR alleges under the Personal Conduct Guideline at ¶ 2.a, that he falsified material facts on his 2017 SCA 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 Section 26:Financial Record. Applicant denied this allegation of falsification in his SOR response.

In his 2018 investigative interview with an investigator, Applicant acknowledged the debts and judgments, after being confronted. He thought they were not on his credit report and that he had moved many times since his discharge from the Navy. This was the reason for the bills not being addressed. 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 5-7)

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 evidence to show that he has made a good-faith effort to start paying his delinquent bills, despite unemployment in March 2015 to August 2016. Since then, he has been gainfully employed. He promised to pay and set up payment plans in the future. However, he provided no documentation to confirm his assertions. Applicant stated that he earns \$75,000 a year and now has the ability to pay his delinquent debts. There is no information in the record concerning financial counseling or use of a

budget. Applicant has furnished insufficient information to meet his burden. None of the mitigating conditions fully 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 denied SOR allegation ¶ 2.a and ¶ 2.b 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 knew since 2016 about the medical judgments. He believed that they would not be listed on his credit report. 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 2017 security clearance application in Section 26 of that 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 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 2015 and 2016. He wants to pay his debts and promises to set up plans. He has made several small payments, but the majority of his debts are not resolved. He has not received financial counseling. There is no evidence of payments or payment plans.

Applicant intentionally falsified his security clearance application in section 26. He has not has mitigated the financial or personal conduct security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.k

Against Applicant:

Paragraph 2, Guideline E (Personal Conduct):

AGAINST APPLICANT

Subparagraphs 2.a-2.b:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge