



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



In the matter of:)
)
) ISCR Case No. 19-01545
)
Applicant for Security Clearance)

Appearances

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

11/18/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 17, 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 (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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 8, 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), and Applicant received it on September

9, 2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant submitted a timely response to the FORM and documents for consideration, which are marked as Applicant's Exhibits (AE) A through I. Applicant disputed parts of Item 5 and his corrections are noted in the findings of facts. There were no other objections by Applicant or the Government to any of the other Items or exhibits and they are admitted into evidence. The case was assigned to me on October 30, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He earned an associate's degree in 2009. He married in 1990 and divorced in 2014. He has three grown children, ages 20, 24, and 26 years old. He has worked for his current employer, a federal contractor, since July 2018. Before then he worked for a different federal employer from November 2015 to July 2018. He disclosed periods of employment and unemployment as follows: unemployed from July 2015 to November 2015; employed by a federal contractor March 2009 to July 2015; unemployed November 2008 to March 2009; and employed by a federal contractor June 2008 to October 2008. He disclosed he has held a security clearance since approximately 2008.

Applicant completed a security clearance application (SCA) on August 5, 2018. Section 26 of the SCA asked if any of the following had occurred in the past seven years: any possessions or property voluntarily or involuntarily repossessed or foreclosed; defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Applicant responded "No" to all questions and did not disclose any delinquent debts or loans.

The SOR alleges 10 delinquent consumer debts, 1 medical debt, and 8 delinquent student loans totaling approximately \$79,000. Three of the debts are for repossessed vehicles. Applicant was interviewed by a government investigator on November 19, 2018. The investigator afforded Applicant an opportunity to provide information about his finances and debts. (Item 5)

Applicant disputed the investigator's characterization of Applicant's response in Item 5. Applicant stated in his FORM Response (Response) the following:

When I was contacted by the investigator, I was not informed as to what the interview was about. Only that it was a follow up for more information. When I arrived, the investigator asked if I had financial problems. I responded no because I took the question to be directed to present everyday life. I am able to pay my current bills and I am not struggling to pay for a place to live,

a car to drive, food on the table, and all associated monthly bills with living. If they had asked if I had debt in collections, I would have said yes. Also, I did not say I knew nothing of the list of debts that was presented to me. I responded that I did know most of them, but I did not know the details of them and there were quite a few that I did not know about at all. As we started to go over them, I was unable to tell the investigator what some of them were. I was asked to take the list home with me to review and explain and come back at a later date with the info. That is exactly what I did. I researched each and every one of the items and found the info of what they were. I do not think what was reported, correctly conveys what actually transpired. The FORM makes it sound like I denied my debt, acted like I did not know anything about any of the items on the list but then was able to come back with the info as if I knew what it was to begin with. I had to find the info of what they were and was not trying to be deceitful. Some were bought by collection agencies, and I did not know who the originator of the debt was.

I have had some debt for some time. I have been trying to get a clear understanding of this for a few years now and everyday life sometimes redirects my efforts such as my father passing away recently, the contract I work on changing hands, and my layoff for 4 months in 2015. There has been much confusion on my part as to the debt. Not to mention that student loans and repayment of them is not a straight forward thing. With that said, I have never been in a position where the debt I owe caused me issues with taking care of myself or my family or kept me from paying my monthly bills.

* * *

I have been aware of the majority of my debt but during the course of this investigation, it was revealed to me debt I did not know about. As for the car repossessions, one was out of my control due to my layoff in 2015. The other two were voluntarily turned back over to the car dealer due to them selling me lemons that they refused to take responsibility for. I was unfamiliar with how these types of situations work and did not realize it was being put down as repossessions.

* * *

In my August 2018 e-QIP questions, I did not answer correctly the questions about my debt. This was an honest mistake and not done so deliberately to hide or purposefully deceive anyone. I do not know why that answer was selected as no but I know at the time I was taking it, I was down to the final days and was rushing to get it done.

On November 26, 2018, Applicant was interviewed again by the government investigator. At that time, he acknowledged the debts alleged in the SOR to the

investigator. He explained that he fell behind in paying his student loans in 2014 when his wife at the time needed surgery and had medical costs associated with it. He indicated he owed approximately \$27,368 from student loans that originated from 2007 through 2009. He stated he was working with a default resolution group and looking into other programs to help consolidate his outstanding student loans and create a payment plan. SOR ¶¶ 1.d, 1.e, 1.g, 1.k, 1.p, 1.q, 1.r, 1.s are the student loan allegations that total \$28,407. Applicant told the investigator that his failure to disclose any of the delinquent accounts on his SCA was due to oversight. (Item 5)

In his SOR answer (Answer), Appellant provided a computer screen shot from a debt resolution website that provided him with an overview of his defaulted student loans. The document showed he made a payment of \$3,451 in February 2019. He made payments of \$232 for the months of March, April, June and July 2019. It also showed that he made an additional payment in March of \$350 and in April 2018, he made a payment of \$1810. There was no proof of a May payment. (Answer)

In Applicant's response to the FORM (Response), he provided a copy of a student loan rehabilitation agreement dated February 2019 that verified an amount had been calculated, based on his income, to pay \$232 a month. The agreement requires him to make nine qualifying payments before the loans will be transferred to a new federal loan servicer. Applicant provided a document to show he made another payment in August 2019. The rehabilitation document indicated that once Applicant completed the terms of the agreement, he is required to reach out to the new federal loan servicer to establish repayment arrangements. Applicant's federal student loans became delinquent in June 2014, and his effort to rehabilitate them did not occur until February 2019. It is unknown if his agreement requires he make consecutive payments. (Response; AE C)

In Applicant's Response, he indicated he was working with a debt resolution company. It is unknown when he contracted with the company for its services. He provided a document from the company from August 2019, indicating it had, on Applicant's behalf, disputed two debts on the SOR, and the debts were removed from his credit report. The debts removed are alleged in SOR ¶¶ 1.h (\$1,759) and 1.i (\$1,197). (Response, AE D, E, F, G)

Applicant attributes his financial problems to four months of unemployment in 2015 and his 2014 divorce. In his SCA, Applicant disclosed he was charged with a misdemeanor in October 2015 and was required to pay a "hefty fine." Applicant had debts discharged in Chapter 7 bankruptcy in 1998. In Applicant's interview with the government investigator, he explained that the medical debt (SOR ¶ 1.o-\$602) was incurred for services for his current wife's surgery, and he was laid off shortly thereafter and unable to pay the medical bill. Credit reports show this medical bill was incurred in May 2012, prior to both Applicant's divorce and unemployment. The credit reports also show Applicant stopped making payments on two of his auto loans months prior to his July 2015 lay off. (SOR ¶¶ 1.b and 1.c) The debt alleged in SOR ¶ 1.a (\$13,388) became delinquent in July 2018. (I have not considered Applicant's unalleged bankruptcy or misdemeanor for disqualifying purposes, but may consider it when analyzing the whole-

person, in making a credibility determination, and in applying the mitigating conditions.) (Items 5, 6, 7, 8, 9)

Applicant stated in his Response to the FORM that when his father passed away in March 2019, he inherited his father's Individual Retirement Account (IRA). He did not indicate the amount of money he would inherit after taxes. He said he planned to use "some, if not all" of the proceeds to satisfy his remaining debts. He had not received the proceeds. (AE A)

Applicant provided a character letter from a person who has known him for ten years and is his friend. The writer has never seen Applicant engage in any activity or speak in any way that would be considered disloyal to his employer, the country, or pose any national security threat. He considers Applicant loyal and a person who has integrity. He trusts Applicant. (AE I)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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 states 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

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

- (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.

Applicant has numerous delinquent debts and student loans totaling more than \$79,000 that remain unresolved. These debts and loan delinquencies began accumulating in approximately 2012 and 2014. There is sufficient evidence to support the application of the above disqualifying conditions.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual had a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue.

Applicant admitted the numerous delinquent debts and student loans in the SOR. He recently contracted with a debt resolution company and two debts have been removed from his credit report. He failed to provide evidence that he has paid or resolved any of his other delinquent debts. His student loans became delinquent in 2014. Although he made a payment in April 2018, he failed to begin to seriously address them until after he was interviewed by a government investigator and his security clearance was in jeopardy. He is participating in a student loan rehabilitation plan and has made several payments, but he has not yet completed the program or provided an explanation for a missed monthly payment and its potential impact on his agreement. Applicant's delinquent debts and student loans are numerous, recent and ongoing. His failure to pay his financial

obligations cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his wife's surgery and then unemployment in 2015. He has been steadily employed since November 2015. He made a payment toward his student loans in April 2018, but then he failed to provide evidence of any action he took to resume his student loan payments until February 2019, which was after his reinvestigation for a security clearance began. Applicant admitted he owed the debts alleged in the SOR. Other than two delinquent debts that were removed from his credit report, he has not provided documentary evidence that he is paying any of the debts. One of his debts became delinquent in July 2018, while he was employed. Applicant's unemployment was beyond his control, but he failed to act responsibly after he obtained employment. He has taken some action recently, but he has not yet completed a student loan rehabilitation program. AG ¶ 20(b) is only partially applicable.

There is no evidence Applicant has participated in financial counseling, but he is working with a debt resolution company. Other than making some payments toward his student loans through a rehabilitation program, he has not provided evidence that he is paying any of his other creditors. At this juncture, there are not clear indications his financial problems are under control. There is evidence that he has made payments through a rehabilitation program to take his student loans out of default status. The fact that Applicant failed to seriously address his student loans until after his security clearance was in jeopardy diminishes a finding that his actions were a good-faith effort. The remaining evidence is insufficient to show he has paid any other of his delinquent debts. AG ¶¶ 20(c) does not apply. AG ¶ 20(d) minimally applies towards his student loans.

Through his debt resolution company, Applicant disputed two debts that were removed from his credit report. AG ¶ 20(e) applies to these debts.

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I have considered Applicant's explanation that he made an honest mistake when he failed to disclose any of his delinquent debts on his SCA. In his Response, he said he mistakenly answered "no" because he was rushed. Throughout his SCA, Applicant provided explanations and information in response to various questions, showing he took time to provide a detailed response. Section 26 is a long detailed question that includes multiple inquiries on different types of debts, some of which Applicant experienced. In his Response, he said that when the investigator asked if he had any financial problems, he answered "no" because he was able to pay his current bills. Applicant went on to explain "If they had asked if I had debt in collection, I would have said "yes." Applicant was aware he had numerous delinquent debts, but it appears he was reluctant to disclose them. His excuse that the investigator did not phrase the question in a manner that would illicit a specific response from him is not persuasive. The government relies on people to be forthcoming and honest on their SF 86 and when being interviewed by a government investigator. I do not find Applicant's explanation that he made an honest mistake when he failed to disclose his numerous financial problems on his SCA. I find he deliberately failed to do so. AG ¶ 16(a) applies.

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

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

The evidence does not support the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct his omissions. He continued to be reluctant to provide the information when he was questioned by the investigator.

The evidence does not establish mitigation under AG ¶ 17(a). Applicant did not make a prompt good-faith effort to correct his financial omissions before he was confronted. He was aware he had numerous delinquent debts and deliberately failed to disclose them. The government relies on people to be forthcoming and honest on their SF 86, especially when the information requested is derogatory. AG ¶ 17(c) does not apply because deliberately failing to disclose information on a SF 86 and swearing to its accuracy is not a minor offense. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

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

Applicant is 50 years old. He experienced financial problems when he divorced in 2014 and was unemployed for four months in 2015. He has been fully employed since November 2015, but failed to take consistent action on any of his delinquent student loans or debts until after his background investigation began. He recently began a student loan rehabilitation program, but has not completed it. He indicated he has inherited money from his father's IRA that he hopes to use to pay some or all of his debts. He has not received the money yet. He did not provide information as to the amount he will receive and a promise to pay does not amount to resolving his debts. Although he is working with a debt resolution company, he has not provided proof he has paid any of his debts. Applicant does not have a reliable financial track record. He has not met his burden of persuasion. The record evidence leaves me with serious 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-1g.:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.s:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge