



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



In the matter of:)
)
) ISCR Case No. 19-01001
)
Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial security concerns arising from his delinquent debts and personal conduct security concerns arising from his failure to disclose any delinquencies on his security clearance application. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 13, 2018. On April 17, 2019, the Department of Defense Consolidated Adjudication 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 took the action under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 21, 2019, and elected to have his case decided on the administrative (written) record, in lieu of a hearing. On August 30, 2019, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on September 9, 2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3-7 are admitted into evidence without objection. The case was assigned to me on October 24, 2019.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e, with explanations. He did not formally "admit" or "deny" SOR ¶ 2.a, but I construe his explanation as a denial. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. In May 2015, after serving 20 years on active duty in the U.S. Air Force, he retired as a tech sergeant (E-6). He earned an associate's degree while in the Air Force. He was unemployed for about a year after he retired, until mid-2016. Since then, he has worked a variety of jobs, including as a delivery driver and a laborer. He was unemployed for about 90 days during winter 2017-2018 when he was laid off due to lack of work. He has been employed as a driver for a defense contractor since February 2018. (Item 3) He held a clearance for 20 years, while in the Air Force. (Item 2)

Applicant was married from 1995 to 2000, when he and his first wife divorced. They had two daughters, both now grown. Applicant remarried in April 2006. His second wife passed away only weeks later, in May 2006. Applicant remarried in 2009. He and his third wife have two sons, ages 10 and 7. Applicant also has a stepson, age 14, from his third wife's prior relationship. (Item 3)

The Guideline F allegations in the SOR concern four small delinquent debts, and a large debt to the U.S. Department of Veterans' Affairs (VA). Under Guideline E, the Government alleges that Applicant failed to disclose any of those debts as delinquent when he submitted his SCA, in May 2018.

Guideline F

SOR ¶ 1.a concerns a \$106,684 debt to the VA (listed on credit reports as a "government overpayment"). The amount alleged is taken from a February 2019 credit report. (Item 5) An earlier credit report, from July 2018, lists the amount at \$82,181. (Item 6) The most recent credit report, from August 2019, lists the amount due at \$76,716, the same amount Applicant acknowledges in his Answer to the SOR. (Items, 2, 7)

The circumstances of the debt are best explained in the summary of Applicant's background interview. When his second wife died, Applicant began receiving \$1,700 a month from the VA. His second wife, A, had children, presumably from a prior relationship.

Applicant said in the interview that A's children received a payout from their mother's life insurance policy and her children "instructed subject to keep the funds he was receiving." (Item 4 at 3) His second wife's children are mentioned in Applicant's interview, but no details are provided. It is not known how many children his second wife had, how old they were at the time she died, or if they were of majority age, and old enough to knowingly waive their interests in such funds.

Applicant remarried in 2009. As a result, he was no longer eligible to receive benefits from the VA as a widower. However, the payouts continued, though Applicant asserted in his background interview and in his Answer that he notified the VA that he had remarried. He said in his interview that he assumed the payments were for his second wife's children and not for spousal benefits. If so, this does not explain why Applicant took no steps to see that that the money from the VA was re-directed to his second wife's children. (The interview summary actually refers to "their children" but this is likely erroneous, as it does not appear that Applicant and his second wife had any children together). (Item 4 at 3)

Applicant said in his background interview that, in any event, he continued to receive funds from the VA until he was notified when he retired from the Air Force that he owed about \$106,000 for the overpayments. ("They notified me of this overpayment the month I retired.") (Item 2) Applicant also said that, since 2016, the federal government has kept his tax refunds and \$100 of his monthly retirement pay. Other than that, he says he has received no documentation from the VA. (Item 2, Item 4 at 3)

There is no indication that Applicant is on a repayment plan except as indicated. Applicant provided no documents with his Answer to corroborate his assertions. However, the amount he owes the VA (\$76,716) is confirmed by Item 7, an August 2019 credit report provided by the Government.

SOR ¶ 1.b (\$4,839) is a credit card account for military personnel. It is in collection. Applicant admits the debt (at \$4,490) and the most recent information shows a balance of \$4,132 (as of August 2019) (Items 2, 7). Applicant noted in his Answer that the account is being garnished from his retirement pay (which, if so, would explain the declining balance). He did not provide any documentation and did not indicate that the account is otherwise on a payment plan.

SOR ¶ 1.c (\$532) is a charged-off credit card account. (Items 5, 7) Applicant fell behind on the account during a period of limited income. He attempted to resolve it with the creditor but was unable to do so because the account has been charged off. (Item 2)

SOR ¶ 1.d (\$174) is a past-due utility bill. Applicant said he paid the bill, and the August 2019 credit report shows a zero balance. (Items 2, 7)

SOR ¶ 1.e (\$324) is a past-due cable bill. Applicant admits the debt, but is uncertain that it is valid, since he has cable service with the same company currently. He

intends to pay the bill. The account is listed on the July 2018 credit report as being in collections, but is not listed at all on the two later credit reports. (Items 5, 6, 7)

Applicant explained that his financial circumstances were impacted by several events. His mother passed away in 2012, and he and his wife had to assume her financial obligations. He lost significant income when he retired from the Air Force in 2015. His wife took a job while he pursued civilian employment and they ensured that their family's basic needs were met. One of their sons was diagnosed with a rare medical condition. They spent a lot of time and money taking him to specialists. They are trying to remain afloat financially. (Item 2) Applicant provided no information, documented or otherwise, about his current finances, such as his assets, monthly income (and retirement pay), and monthly expenses which might be used to determine his ability to pay his debts.

Guideline E

When Applicant submitted his SCA, in May 2018, he did not disclose that he had any delinquent debts. He was asked to disclose delinquencies involving "Routine Accounts" including "bills or debts turned over to a collection agency" and was asked whether he had "any account or credit card suspended, charged off, or cancelled for failing to pay as agreed," in the past seven years. (Item 3 at Section 26)

SOR ¶ 2.a alleged that Applicant deliberately failed to disclose the delinquent accounts in SOR ¶¶ 1.a – 1.e when he answered "No" to those questions. All five of the accounts alleged are listed as being in collections on Applicant's July 2018 credit report, two months after his SCA. (Item 6)

Section 26 of Applicant's SCA also asked Applicant if "You are currently delinquent on any Federal debt." He answered "No" to that question as well, despite the VA debt in collection, as alleged at SOR ¶ 1.a, but falsification of that question was not alleged in the SOR.

Earlier on his SCA, Applicant provided details about all of his children, all of his wives (including specific dates of marriage, divorce, and death), his employment, his military service and his home addresses. (Item 3)

During his background interview, Applicant confirmed his negative answers to the financial questions on his SCA. He was then confronted with his 2018 credit report. He asserted that he was not aware of the accounts at SOR ¶¶ 1.c, 1.d, and 1.e. He acknowledged the military credit account at SOR ¶ 1.b but was not aware of details, since his wife handled the finances. He agreed with the VA account (SOR ¶ 1.a) in all details. (Item 4 at 3)

In his Answer to the SOR, Applicant apologized for omitting reference to the debts on his SCA and said he "would not intentionally lie about present debt or past debt." He asserted that he struggles with computers and had never filled out an SCA on a computer

before, though he has had a clearance for 20 years. He promised to be more careful in the future. (Item 2)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 access to classified information 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. 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

This is an unusual case, in that the financial security concern derives from two circumstances: four small debts reported for collection (SOR ¶¶ 1.b – 1.e), debts that total less than \$5,000; and the much larger debt to the VA, a debt also in collection for what was about \$106,000, now about \$76,600. (SOR ¶ 1.a)

SOR ¶ 1.a resulted from a “government overpayment” of financial benefits to Applicant by the VA after his second wife died. Thus, the origin of the debt comes from neither an “inability to satisfy debts” or a “history of not meeting financial obligations.” However, the debt is nonetheless now in collection status, as established by Applicant's credit reports. In that sense, then, AG ¶¶ 19(a) and 19(c) apply to SOR ¶ 1.a, as they do to the other debts in the SOR, debts which are also charged off or in collection.

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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

SOR ¶ 1.d is resolved. SOR ¶ 1.e is probably resolved, since Applicant indicated that he has an account with the same cable company, and the account is not reflected on the most recent credit reports. SOR ¶ 1.c is not resolved, though Applicant attempted to do so.

SOR ¶ 1.b is being resolved through garnishment of Applicant's retirement pay. SOR ¶ 1.a is also being resolved in this manner, and through the IRS's retention of Applicant's federal income tax returns. "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009). Thus, AG ¶ 20(d) has only limited application, to SOR ¶¶ 1.c, 1.d. and 1.e.

Applicant had difficulty finding steady employment after leaving the Air Force, and he experienced a decline in income. He has a child with a rare medical condition, which has taken time, energy, and money to address. These factors are beyond his control, and have had an impact on his finances. AG ¶ 20(b) therefore has some application. However, as with AG ¶ 20(d), Applicant has undertaken little good-faith or reasonable effort under the circumstances to pursue active resolution of his debts, most particularly the overpayment of the VA benefits. He provided no documentation of his active efforts to resolve the matter through any means other than the government's garnishment of his retirement pay and retention of his federal tax refund. AG ¶¶ 20(b) and 20(d) do not fully apply.

AG ¶ 20(a) has only partial application. Applicant's debt to the VA occurred following the death of his second wife. This led to overpayment of benefits from the VA. That was an unusual circumstance that is not likely to recur. However, the debt is both large and ongoing. It is also a debt to the federal government, a fact not unimportant when weighing Applicant's eligibility for access to a federal security clearance. According to Applicant's credit reports, the debt also remains in collection status. As such, it is not established that the debt no longer casts doubt on Applicant's current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not fully apply.

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. . .

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose any of the five delinquent debts (SOR ¶¶ 1.a -1.e) on his May 2018 SCA, in response to a question asking for disclosure of debts in collection or charged-off debts during the last seven years. Applicant admitted that he failed to disclose the debts, and apologized. He asserted that he was unfamiliar with computers and had never filled out an SCA on a computer before. I have construed his answer to SOR ¶ 2.a as a denial to the allegation of deliberate falsification.

The Government established that the five accounts were all past due. Applicant denied knowledge of three of them (SOR ¶¶ 1.c – 1.e) and said he was not aware that SOR ¶ 1.b, the military credit account (an account he recognized) was delinquent. Deliberate failure to disclose these debts on the SCA is not established.

Applicant's failure to disclose the VA debt (SOR ¶ 1.a), however, is harder to explain. Chiefly, he acknowledged in his Answer that "they notified me about this overpayment the month I retired." He also knew that the Government was keeping his federal income tax refunds, as well as some of his retirement pay. Unlike the other debts in the SOR (which total about \$5,000) the VA debt, even now, is over \$75,000, and was once over \$100,000. That makes it even more likely that Applicant was aware of it.

Applicant also acknowledged that he held a clearance for 20 years. By definition, he had prior experience filling out a security clearance application, even if he had never before filled one out on a computer. He therefore had reason to know that he should have disclosed the VA debt – a government debt that reached as high as \$106,000 -- as a possible financial security concern.

Applicant had a duty to disclose the VA debt on his SCA, as the debt was in collection to the federal government. I find that he deliberately failed to do so. AG ¶ 16(a) therefore applies to Applicant's failure to disclose SOR ¶ 1.a on his 2018 SCA.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(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.

Falsification of a security clearance application is a serious matter. It goes to the heart of an applicant's eligibility for a clearance. Once disqualifying conditions are established, Applicant has the burden to establish mitigation. He has not done so.

Applicant also had a duty to disclose the VA debt in answer to the question on the SCA asking him if "You are currently delinquent on any Federal debt." He answered "No" to that question as well. Falsification of that question was not alleged in the SOR, and I have not considered it as disqualifying conduct. However, the fact that he did not disclose the VA debt on his SCA at all, and in particular did not do so in answer to this question, significantly undercuts any evidence of mitigation that might otherwise have been shown.

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(a), 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.

Applicant's explanation that his second wife's children told him to keep the money from the VA since they had received life insurance benefits following their mother's death is undocumented. It is also dubious, without the ability to ask Applicant clarifying questions. He asserted that he informed the VA of his subsequent remarriage, thereby casting doubt, at least in his mind, on why the overpayment from the VA happened in the first place. But he also kept the money despite apparently concluding that it was meant

for his second wife's children, and was not for spousal benefits, without clarifying anything, either with them, or with the VA. His failure to act was both irresponsible and self-serving.

Regardless, Applicant also learned of the overpayment from the VA when he retired from the Air Force, in 2015, and he appears to have taken few if any active steps to resolve the matter in the years since then. Applicant's failure to take such steps to resolve a large Federal debt has a direct bearing on his eligibility to hold a Federal security clearance. Applicant's large, unresolved debt to the Federal government will remain a security concern until he shows a documented track record of good-faith efforts to resolve it. It is not enough to do nothing, and to wait passively for the IRS to keep his federal tax refund every year.

The fact that Applicant knew about the VA's overpayment when he left the Air Force in 2015 also means he knew he should have noted it on his SCA in 2018, either as a debt "in collection" (as alleged) or, at the very least, as a "Federal debt" (not alleged).

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.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge