



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-01326
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*
01/03/2020

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 26, 2016. On August 5, 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 August 22, 2019, and requested a decision on the written record without a hearing. On September 16, 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 5. 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 September 25, 2019, and did not respond. Item 1 contains the pleadings in the case. Items 2 through 5 are admitted into evidence. The case was assigned to me on November 26, 2019.

Findings of Fact

Applicant is 44 years old. He divorced his wife of six years in 2003. He has been married to his second wife since 2005. He has four minor children. He served honorably on active duty in the U.S. Army from 1994 through 2001, and from 2005 until August 2008, when he was medically discharged for reasons not specified in the record. From 2001 through 2005, he was on inactive reserve duty. He was previously granted a DOD security clearance in 2007. He earned a bachelor's degree in 2015. Applicant has been employed by the same defense contractor since March 2016. (Item 2)

The SOR alleged Applicant's 11 delinquent debts totaling approximately \$32,977, and that he deliberately failed to disclose any of them on his SCA. Applicant admitted each of the alleged debts, which remain unresolved. I construed his failure to respond to the falsification allegation as a denial of any deliberate intent to falsify his SCA.

The SOR debts were confirmed by his November 2016 and April 2019 credit reports. The November 2016 credit report revealed that 10 of the 11 SOR debts were then in delinquent status, including: 1) one past due since January 2012 (SOR ¶ 1.e); 2) four in charged-off status, including one since March 2014 (SOR ¶ 1.d), one since February 2016 (SOR ¶ 1.f), and two since May 2016 (SOR ¶¶ 1.b, 1.h); and 3) five in collection status (SOR ¶¶ 1.c, 1.g, 1.i, 1.j, 1.k). The last dates of activity for the collection debts alleged in SOR ¶¶ 1.c, 1.g, 1.i, and 1.k were reported as March 2015, June 2015, August 2015, and July 2014, respectively. The April 2019 credit report revealed that the mortgage-loan debt alleged in SOR ¶ 1.a was then approximately 30 days delinquent. (Items 4, 5)

Applicant certified his "no" responses to whether he had any financial delinquencies on his SCA in July 2016. He was interviewed in September 2018 in connection with his security-clearance investigation to discuss the contents of his SCA. During his interview, Applicant initially reaffirmed his "no" response. He acknowledged his delinquent debts only after being confronted with 10 of the 11 debts alleged in the SOR. He provided inconsistent explanations for his failure to list them on his SCA. He asserted that "he was not aware of" all of the accounts with which he had been confronted. Then, he averred that his omissions were an "oversight." He asserted that he planned to contact his creditors and make arrangements to resolve his delinquent accounts within 90 days. He maintained that he was current with his ongoing financial obligations and living "at or below his means." (Item 3 at 5-6)

During the interview, Applicant attributed his financial situation primarily to a period of underemployment following a job change. He did not specify a timeline or provide further details. He explained that he began to accumulate debt "around the time" that he changed jobs. He was late on payments before the job change, and then

fell further behind because his income decreased following the change. He became “overwhelmed” by his bills and struggled to make the monthly payments to his creditors. After being confronted during the interview, he acknowledged that he withdrew money from his 401k in June 2016 to “pay bills,” the amount of which was \$11,900 after taxes. He did not specify how that money was allocated. (Item 3 at 5-6)

The employment history on Applicant’s SCA revealed two periods of unemployment. The first was from August 2008 through January 2009, following his military discharge. The second was from February 2016 through March 2016, after his defense-contractor employer lost the contract on which he was working. He has otherwise been employed full time since January 2009. The record did not enumerate his relevant income and expense history. (Item 2 at 10-16)

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 has been employed full time in his current position since March 2016 and accessed \$11,900 from his 401k in June 2016. Applicant has neither resolved any of the debts alleged in the SOR nor established a plan to address them. Exacerbated by his failure to respond to the FORM, the record contains insufficient detail and documentation to explain not only why his debts occurred, but also why they have persisted. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns.

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))

I did not find credible Applicant's explanations for failing to report his known derogatory financial information on his SCA. Even if he did not know the details of each and every debt, he had been struggling with his finances to the point of making a substantial withdrawal from his 401k a month prior to certifying his SCA. Moreover, his November 2016 credit report revealed that at least 9 of the 11 alleged debts would have been in a reportable delinquent status when he certified his SCA in July 2016. I find substantial evidence of an intent by the Applicant to omit security-significant facts from his SCA. Therefore, AG ¶ 16(a) is established as to the debts alleged in SOR ¶¶ 1.b through 1.i and 1.k.

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 delinquencies on his SCA was security significant. The fact that he initially reaffirmed his "no" responses during his security clearance interview and only admitted them after confrontation undercuts mitigation. I have doubts about Applicant's current reliability, trustworthiness, and 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 the security concerns raised by his financial delinquencies and personal conduct. 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.k:	Against 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