



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-01671
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
 For Applicant: *Pro se*
 02/18/2020

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 January 2, 2018. On June 12, 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 21, 2019, and requested a decision on the written record without a hearing. On December 2, 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 7. 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 December 9, 2019, and did not respond. Items 1 through 3 contain the pleadings in the case. Items 4 through 7 are admitted into evidence. The case was assigned to me on January 22, 2020.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 3), his SCA (Item 4), and the summary of his security clearance interview (Item 5). Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a copy of Item 5 and a prominent notice advising Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 5 in his response to the FORM, or if he did not respond to the FORM, then he could be considered to have waived any such objection, and Item 5 could be considered as evidence in his case. Applicant did not respond to the FORM or otherwise raise any objections to Item 5.

Findings of Fact

Applicant, age 57, is married with three adult children. He honorably served in the U.S. Army from 1986 until he retired in 2008. His educational background was not specified in the record. He has been employed as an electronic technician by the same defense contractor since 1997. He was granted a DOD security clearance that same year.

The SOR alleged that Applicant accrued five delinquent debts totaling approximately \$40,000, and that he deliberately failed to disclose one of them on his SCA: a \$27,647 home-improvement loan (SOR ¶ 1.b). Applicant denied each of the SOR allegations. However, they were confirmed by his credit reports. The account alleged in SOR ¶ 1.b. was charged off in March 2015 with a last date of activity in August 2012. The accounts alleged in SOR ¶¶ 1.d and 1.e were placed for collection in December 2015 and April 2015, respectively; with last dates of activity in November 2012 and August 2013, respectively. As of March 2019, the accounts alleged in SOR ¶¶ 1.a and 1.c. were each approximately 30 days delinquent. (Item 3; Item 6 at 3, 6; Item 7 at 1, 2)

The debt alleged in SOR ¶ 1.a is a 30-year fixed-rate mortgage loan that Applicant opened in February 2003 in the amount of \$123,036. He initially fell behind with his monthly payments in February 2013. From approximately October 2013 through September 2016, the account was 120 days or more delinquent. He became current with his payments in approximately October 2016, apparently due to a loan modification. By March 2019, he had fallen approximately 30 days behind with his payments, with a \$900 past-due balance. He paid on time from April 2019 through October 2019, when his account status was "pays as agreed" with no outstanding balance. (AE A at 14-18; Item 6 at 4; Item 7 at 1)

The debt alleged in SOR ¶ 1.b is a home-improvement loan that Applicant opened in March 2003 in the amount of \$31,928. The account was charged off in March 2015 in the amount of \$27,647. There is no information in the record about any payments made following the charge off, but the reported balance due is \$24,511. (Item 6 at 3; Item 7 at 2)

The debt alleged in SOR ¶ 1.c is an automobile loan that Applicant opened in November 2011 in the amount of \$30,083. Between April 2015 and April 2019, he fell 30 days behind in his \$740 monthly payment approximately 10 times. In March 2019, his account was approximately 30 days past due with a \$9,984 remaining balance. In October 2019, the account was “paid and closed” with no remaining balance due. (AE A at 31-33; Item 6 at 4; Item 7 at 2)

The debt alleged in SOR ¶ 1.d is an unknown account that was placed for collection in December 2015 with a \$1,098 balance. Applicant’s March 2019 credit report notes that he disputed the account information with the credit bureau. However, there was no basis alleged in the record to dispute the legitimacy of the account, nor any documentation to establish that the credit bureau changed the delinquent status of account after the dispute. (Item 6 at 3; Item 7 at 2)

The debt alleged in SOR ¶ 1.e is a credit-card account that was placed for collection in April 2015 with a \$441 balance. Applicant claimed that the balance resulted from fraudulent use of his credit card. However, it was reported on his January 2018, March 2019, and October 2019 credit reports without any reference to a dispute by him. He did not otherwise provide documentary evidence to substantiate the alleged fraud or of any actions he took to resolve the issue. (AE A at 45-47; Item 5 at 2; Item 6 at 6; Item 7 at 2)

Applicant certified his “no” responses to questions on his SCA about whether he had any financial delinquencies in January 2018. He was interviewed in August 2018 to discuss, among other matters, financial issues developed during the course of his security-clearance investigation. During the interview, Applicant initially reaffirmed that he had no financial problems, was meeting all of his financial obligations, did not have any accounts in collections, and was not late on any payments. After being confronted with the debts alleged in SOR ¶¶ 1.b and 1.d, he stated that he was unaware of them and could not provide any information. He reiterated that he took care of all his financial obligations. After he was confronted about it, he acknowledged the credit-card debt alleged in SOR ¶ 1.e. He claimed that the debt related to charges made after the credit card had been stolen 10 years prior. While he averred that he had contacted the bank at the time it was stolen, he neither filed a police report nor had any other documentation to corroborate the theft or his communication with the bank. He stated that he would contact the creditor and pay the debt, if necessary. At the conclusion of the interview, Applicant reiterated that his overall financial situation was good, he never sought or received any financial counseling, and he would be more proactive to assure the accuracy of his credit report. (Item 5 at 2)

Applicant did not enumerate his relevant income and expense history or otherwise explain the circumstances underlying his accumulation of the delinquent debts alleged in SOR ¶¶ 1.a through 1.d. There were no account disputes noted in the October 2019 credit report Applicant provided with his SOR response. That report did, however, reveal that he had opened three new auto-loan accounts between May 2019 and August 2019 with monthly payments totaling \$1,565. (AE A at 19-24, 28-30; Item 2; Item 7 at 2)

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

AG ¶ 20(e): the individual has 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 actions to resolve the issue.

Sometime after the SOR was issued, Applicant brought the home-mortgage debt alleged in SOR ¶ 1.a current and resolved the auto-loan debt alleged in SOR ¶ 1.c. However, three debts totaling \$26,050 remain unresolved. He did not proffer a reasonable basis to dispute the debts alleged in SOR ¶¶ 1.b or 1.d. While he articulated a reasonable basis to dispute the debt alleged in SOR ¶ 1.e, he did not substantiate the alleged fraud or provide sufficient evidence of actions he took to resolve the issue.

Exacerbated by his failure to respond to the FORM, the record contains insufficient detail and documentation to explain not only why Applicant's delinquent debts occurred, but also why they have persisted, especially since he has been employed full time since 1997. There is no explanation for why his home-mortgage account remained seriously delinquent over a period of nearly three years between 2013 and 2016, and then became delinquent once again in 2019. Despite his unresolved debts, Applicant opened three new auto-loan accounts with monthly payments totaling \$1,565 between May 2019 and August 2019. While he resolved two of the five SOR debts, the record facts do not establish any of the applicable mitigating conditions. 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))

I did not find credible Applicant's explanations for failing to report the derogatory financial information on his SCA about which he had to have known. Although the SOR alleged that he falsified his SCA only with respect to his failure to disclose the debt alleged in SOR ¶ 1.b, the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.e were also in a reportable delinquent status when he certified his SCA in January 2018. Applicant struggled to make the monthly payments on his mortgage, which remained in serious delinquent status for nearly three years between October 2013 and September 2016 until he modified his loan. It is not believable that he would not have recalled even one part of his delinquent history at the time he completed his SCA. I find substantial evidence of an intent by the Applicant to omit security-significant facts from 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 delinquencies on his SCA was security significant. The fact that he reaffirmed his "no" responses during his security clearance interview and only admitted to one debt he claimed resulted from fraudulent activity further 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 history of financial delinquencies 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.e:	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