



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND
APPEALS



In the matter of:)
)
) ISCR Case No. 19-02588
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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 November 29, 2019, and elected to have his case decided on the written record in lieu of a hearing. Applicant's answer to the SOR failed to

address all of the allegations, and a letter was sent on January 6, 2020, instructing him to do so. He received the letter on January 26, 2020, and subsequently filed another answer in which he answered all of the allegations except ¶ 2.a, which he again failed to address. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on March 3, 2020. 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 5. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 5 are admitted into evidence. The case was assigned to me on May 12, 2020.

Findings of Fact

Applicant admitted all of the SOR allegations, except the allegation in ¶ 2.a, which he failed to answer. His failure to answer will be considered to be a denial. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He served in the military from 1986 to 1990 and was honorably discharged. He has a grown child from a previous relationship. He married in 2003 and has 16-year-old child and 20-year-old stepchild.

Applicant attributes his financial difficulties to periods of unemployment, which he disclosed in his security clearance application (SCA) were from January 2016 to June 2016; January 2015 to May 2015; and February 2014 to June 2014. He was employed by a government contractor from 2007 to January 2014. He also attributed it to his wife's loss of job due to medical issues. She reentered the workforce four months later, but her medical issues recurred and she was again unable to work. Applicant did not provide the specific dates when his wife lost her job, but said she was out of work a couple of years ago for two years. It is unknown whether she is currently working. (Item 2)

The debts alleged in the SOR are substantiated by Applicant's admissions and credit reports from June 2018 and January 2019. (Items 2, 4, 5)

The debt in SOR ¶ 1.a (\$24,145) is a vehicle repossession. The account was opened in January 2015 and the last activity on it was November 2017. Applicant wrote on the SOR: "I admit. I owe the money. But I turned the car in voluntarily." In Applicant's narrative answer to the SOR, he stated: "[w]e tried to keep the [car] but with only one person working I just couldn't do it." (Item 2) Applicant did not provide documentary evidence to substantiate he has paid, made arrangements to pay, or otherwise resolved this delinquent debt. (Items 2, 4, 5)

The debts alleged in SOR ¶¶ 1.b (\$7,217) and 1.g (\$277) are charged off accounts from the same creditor. Applicant avers that he is making payments on both. He provided a letter from November 2019 indicating an agreement to pay \$50 in the next week. Applicant did not provide documentary evidence that he made the agreed upon \$50

payment or that he has made other payments on the agreement and it is resolved. (Items 2, 4, 5)

The debt in SOR ¶ 1.c (\$1,813) is a telecommunications debt that Applicant admits and stated he is on a payment plan. The debt resulted when he switched cell phone plans. He has not provided documentary evidence to show he has paid, made arrangements to pay, or otherwise resolved this debt. (Items 2, 4, 5)

Applicant indicated he was on a payment plan with the creditor for the debt in SOR ¶ 1.d (\$909). He provided a November 2019 letter from the collection agency that holds the account reflecting a settlement agreement with Applicant to make a payment of \$25 in November 2019 and December 2019, and a final payment of \$632 in January 2020. Applicant did not provide documentary evidence to show he made any of the three agreed upon payments, or that he has otherwise resolved the debt. (Items 2, 4, 5)

Applicant provided proof that in November 2019, he paid the delinquent medical debt in SOR ¶ 1.e (\$137). Applicant admits he is responsible for the telecommunications debt in SOR ¶ 1.f (\$833). He provided a letter from the collection agency holding the account that reflects it agreed to settle the account with payments of \$25 in November and December 2019, and a final payment of \$366 in January 2020. Applicant did not provide documentary evidence to show he made the agreed upon payments or has otherwise resolved the debt. (Items 2, 4, 5)

Applicant completed a SCA in April 2018. Section 26 asked if in the past seven years he had any property voluntarily or involuntarily repossessed; bills or debts turned over to a collection agency; any accounts charged off; or if he was currently over 120 days delinquent on any debt. Applicant answered “no” to all of those inquiries and failed to disclose his repossessed vehicle, charged off debts, and debts in collection as alleged in SOR ¶¶ 1.a through 1.d and 1.g. When responding to the SOR, Applicant wrote next to ¶ 1.a that he voluntarily turned in the vehicle. He stated in his answer that he attempted to keep up with the vehicle payments, but was unable to because he was the only one working. The last activity on this account was November 2017. Applicant was aware his vehicle was repossessed and he was past due on payments when he submitted his SCA. He deliberately failed to disclose this information on it. (Items 2, 3, 4, 5)

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; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts totaling approximately \$35,194 that have not been paid or resolved. 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; and

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

Applicant admitted he owed all of the delinquent debts alleged in the SOR. He provided documentary proof that he paid the small medical debt in SOR ¶ 1.e after he received the SOR. He stated he had settlement agreements on some debts, but failed to provide documentary evidence to substantiate any payments made toward the debts or other evidence of efforts to resolve these debts. I am unable to conclude that financial problems are unlikely to recur and do not cast doubts on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his wife's loss of job due to medical issues. A specific time line was not provided. Applicant also attributed his financial problems to his periods of unemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant failed to provide documentary evidence to substantiate any payments he made to settle or resolve the debts alleged. AG ¶ 20(b) has limited application. AG ¶ 20(d) applies to SOR ¶ 1.e. There is no evidence he has received financial counseling or that his debts are under control. AG ¶ 20(c) does not 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 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.

Applicant's answer to the SOR confirms he was aware his vehicle had been repossessed, and he was having difficulty meeting his financial obligations, at the time he submitted his SCA. He deliberately failed to disclose these issues on his SCA as was required. 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;

(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.

AG ¶ 17(c) does not apply because deliberately failing to disclose information on a SCA 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 Guideline F and E 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 54 years old. He failed to meet his burden of persuasion. 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 raised 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge