



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



In the matter of:)
)
) ISCR Case No. 20-03254
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/04/2021

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial and personal conduct security concerns arising from his problematic financial history, employment misconduct, and falsification. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 7, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on January 4, 2021¹, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

¹ Note that the date reflected on the SOR reads January 4, 2020, but the digital signature reflected the actual date of January 4, 2021.

Applicant answered the SOR on January 11, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On February 11, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 10 (Items). Applicant was sent the FORM on February 12, 2021, and he received the FORM on March 1, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM or submit any documentation. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 10 are admitted without objection. The case was assigned to me on May 17, 2021.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 39 years old. He married in 2011, and has one child and a stepchild. Since March 2020, Applicant has been employed by a defense contractor. His job title is computer operator. (Item 5.)

The SOR alleged under Guideline F that Applicant has nine delinquent debts totaling over \$58,000. One of the allegations is for his delinquent student loans and it is the majority of his total debt (\$47,628). (Item 1.) Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.i. He also admitted that he filed for Chapter 7 bankruptcy in March 2014, which was discharged in July 2014. (SOR ¶ 1.j) He denied SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.g, and 1.h. (Item 2) He provided an explanation for his financial problems as follows:

"My financial hardships started in 2013. My wife had our son in November 2012, and it triggered her thyroid and caused her to have Graves' disease. She was unable to work for the next two years due to the surgical removal of her thyroid and gallbladder. I had the only income in our household which caused a snowball effect of late payments and eventually bankruptcy. My wife started working again in August 2016 and is now the only income until I start working for [employer]. Currently, I am the only source of income while my wife is recovering from substance abuse. Please consider my hardships and I hope you will understand that I need to be granted clearance to start work so I can help financially." (Item 5 pg. 39)

The Government does not contest or rebut Applicant's explanation for his financial issues. (FORM.) His SOR delinquencies began in 2013, and they persist to this day. His Chapter 7 bankruptcy Schedule F (Unsecured Nonpriority Claims) listed debts totaling \$71,561. With the exception of his student loans, a majority of these debts were discharged in July 2014. Although Applicant denied several debts, he failed to provide any supporting documentation to show that the debts had been resolved, in the process of being settled, or that he had a legitimate basis to dispute the debts. He also failed to

provide documentation to show what efforts, if any, he has taken to resolve the three debts he admitted in his SOR response. (Items 7, 8 and 9.)

The SOR alleged under Guideline E that Applicant deliberately falsified material facts on his April 2020 SCA in response to a listed employment. The question read: “For this employment have any of the following happened to you in the last seven (7) years: you were fired; quit after being told you would be fired; left by mutual agreement following charges of misconduct; or you left employment by mutual agreement following notice of unsatisfactory performance? Applicant answered “No” and intentionally failed to disclose that he had been terminated in March 2018 by his employer for falsifying his time cards. (SOR ¶ 2.a) In June 2020, during his background interview, Applicant continued to deny that he had been fired or was involved in any type of misconduct at the time he left this employment. The employer provided a written account stating that Applicant was fired after a week-long investigation revealed he repeatedly misconduct for falsified his time cards. The employment termination for falsifying time cards is also separately alleged in SOR ¶ 2.c. In his SOR response, Applicant admitted that he falsified his time cards, was terminated from his employment, and then falsified his SCA. (Items 1, 2, 4, 6 and 10)

The SOR also alleged that in August 2016, Applicant was terminated by his then employer for unauthorized personal use of a company vehicle. (SOR ¶ 2.b) Applicant disclosed his 2016 employment termination on the SCA. (Items 1, 2, 6 and 10)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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 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 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.

The SOR debts are established by the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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.

Applicant's SOR indebtedness started in at least 2013, and it continues to present. His financial problems are ongoing despite his July 2014 Chapter 7 bankruptcy discharge. AG ¶ 20(a) does not apply. There is nothing in the record showing that Applicant has initiated and is making efforts to resolve his overdue debts. AG ¶ 20(d) does not apply.

It is undisputed that Applicant's indebtedness was caused, in part, by his wife's serious health conditions and unemployment, which were conditions beyond his control. The first prong of AG ¶ 20(b) applies. The next inquiry, however, is whether Applicant acted responsibly under the adverse circumstances he was facing. There is nothing in the record showing that Applicant made any efforts to address his overdue debts. I cannot find that the second prong of AG ¶ 20(b) applies. Therefore, I find against Applicant on SOR ¶¶ 1.a. through 1.i.

Guideline E: Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant was terminated by his employer in March 2018 for falsifying his time cards. He intentionally did not disclose this employment termination on his April 2020 SCA, as required. He was also terminated from employment in August 2016 for unauthorized personal use of a company vehicle. AG ¶¶ 16(a) and 16(c) are established.

AG ¶ 17 lists conditions that could mitigate security concerns including:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant admitted falsifying his 2020 SCA. He also admitted his two recent job terminations by employers for cause. His intentional omission, which casts doubt on his reliability and trustworthiness, and his employment misconduct on two separate occasions are recent, serious, and may recur in the future. Personal conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 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 Guideline E and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant failed to mitigate the financial considerations and the personal conduct security concerns. He leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	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.

Pamela C. Benson
Administrative Judge