



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



In the matter of:)
)
) ISCR Case No. 19-02317
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns.

Statement of the Case

On September 5, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on October 16, 2019, and requested a hearing before an administrative judge. That SOR was apparently withdrawn, and another SOR was issued on February 3, 2020, detailing security concerns under Guidelines F and E (personal conduct). Applicant responded to the second SOR on March 8, 2020, and again requested a hearing before an administrative judge.

The case was assigned to another administrative judge on May 7, 2021. The case was reassigned to me on June 7, 2021. The hearing was convened as scheduled on June 9, 2021. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to

submit additional documentary evidence. He submitted a 70-page document that I have marked AE C and admitted without objection.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer since August 2017. He submitted documents attesting to his superior job performance during that period. He is applying for a security clearance for the first time. He has an associate's degree, and he is about six courses short of a bachelor's degree. He is married with two children. (Transcript (Tr.) at 29-30; GE 1; AE A, B)

Applicant has a history of financial problems. He filed a Chapter 7 bankruptcy case in March 2005. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$835 in back state taxes for 2000. The petition listed claims totaling \$43,525 under Schedule F, Creditors Holding Unsecured Nonpriority Claims. Applicant's debts were discharged in July 2005. (Tr. at 31-32; GE 6)

The SOR alleges that Applicants owes back federal (\$8,990) and state (\$1,692) income taxes for tax year 2015, and that he has six delinquent debts totaling about \$17,300. Applicant admitted that he owed all of the debts at one time, but he stated that one debt was paid, and he was in the process of settling other debts. (Applicant's response to SOR; GE 9; AE C)

Applicant owed federal income taxes for tax years 2014 and 2015. He entered into an installment agreement with the IRS to pay \$157 per month, starting in March 2018. The payments for 2014 were completed in June 2018, and then the payments were applied to 2015. He made every \$157 payment from March 2018 through November 2019, for a total of \$3,297. Documents from the IRS indicate that as of December 2019, Applicant owed \$8,990 for tax year 2015 (SOR ¶ 1.a). Applicant continued with the monthly payments through at least June 2020. The balance owed as of November 2020 was \$5,019. He changed the monthly payment in August 2020 to \$50 per month. He made all the monthly payments through at least May 2021. (Tr. at 33-34; Applicant's response to SOR; GE 7; AE C)

Applicant owed state taxes for tax year 2015. He entered into an installment agreement to pay \$60 twice per month. He documented 13 payments between June 2019 and December 2019, leaving a balance at that time of \$1,690 (SOR ¶ 1.b). He made a \$744 payment by credit card in June 2021 to pay the state taxes in full. (Tr. at 34-35; Applicant's response to SOR; GE 7; AE C)

SOR ¶ 1.c alleges that Applicant owes \$777 for an unnamed medical debt as listed on a December 2019 credit report. Applicant admitted that he owed the debt at one time, but he asserted that the debt was paid. The debt is not listed on any credit report after the October 2020 credit report. (Tr. at 36-37; Applicant's response to SOR; GE 4, 5, 8; AE C)

Applicant engaged the services of a credit-counseling company in April 2021. He enrolled three debts in the company's debt-management program (DMP). He agreed to pay the company \$45, plus \$45 per month. He also agreed to deposit with the company \$423 per month, which the company would use to pay his creditors. The DMP was later amended to pay five creditors, including the debt alleged in SOR ¶ 1.d. (GE 10; AE C)

SOR ¶ 1.d alleges a \$4,518 charged-off auto loan. Credit reports from 2018 and July 2019 list the balance as \$4,685. Applicant made payments on the debt, reducing the balance to \$4,518 in December 2019 and \$4,341 in October 2020. The credit-counseling company is paying the creditor \$150 per month through the DMP. The balance was \$4,203 in July 2021. (Tr. at 37-38; Applicant's response to SOR; GE 2-5, 8; AE C)

Credit reports from 2018 and July 2019 list a \$2,190 account to a collection company on behalf of a telecommunications company (SOR ¶ 1.e). The debt was reported by all three credit reporting agencies; it was assigned to collection in December 2016; and the date of last activity was August 2018. Applicant asserted that the debt was paid. The debt is not listed on any credit report after the July 2019 credit report. (Tr. at 38; Applicant's response to SOR; GE 2-5, 8; AE C)

The creditor for the \$7,592 delinquent debt alleged in SOR ¶ 1.f obtained a \$7,650 judgment against Applicant in October 2014. The same law firm represented another creditor who obtained a \$5,782 judgment against Applicant in July 2015. This judgment was not alleged in the SOR as Applicant satisfied the judgment in December 2018. (Tr. at 47-48; Applicant's response to SOR; GE 2-5, 8; AE C)

Applicant agreed to pay \$500 per month for 15 months starting in January 2019, followed by a last payment of \$150 in April 2020 to pay the \$7,650 judgment. The law firm notified the court on June 1, 2020, that the judgment was satisfied. The judgment was apparently paid by garnishment. (Tr. at 39-41; GE 8; AE C)

Applicant agreed to pay \$27 per month starting in December 2020 to pay the \$590 debt alleged in SOR ¶ 1.g. The debt was reported by TransUnion and Experian on the August 2018 credit report. It was reported as assigned in June 2016, with a date of last activity of August 2018. Applicant asserted that the debt was paid. The debt is not listed on any credit report after 2018. (Tr. at 43; Applicant's response to SOR; GE 2-5, 8; AE C)

SOR ¶ 1.h alleges a \$1,625 delinquent debt. The debt was reported by TransUnion on the August 2018 credit report. It was reported as assigned in July 2016, with a date of last activity of August 2018. Applicant asserted that the debt was paid. The debt is not listed on any subsequent credit report. (Tr. at 41-42; Applicant's response to SOR; GE 2-5, 8; AE C)

Applicant paid other debts that were not alleged in the SOR. He received financial counseling through the credit-counseling company. He stated that he planned

to continue paying his debts until his financial issues are resolved. (Tr. at 46-49; GE 2-5, 8, 10; AE C)

Applicant attributed his financial problems to periods of unemployment and underemployment, and separation from his wife before they reconciled. He was terminated from a job in 2014 after he failed a drug test when he returned to work from long-term disability in July 2014. He smoked marijuana while on disability. He asserted that he has not used marijuana since 2014. (Tr. at 27; Applicant's response to SOR; GE 1, 7; AE C)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2018. He reported significant financial problems, including his back federal and state income tax debt. He reported a November 2017 driving while intoxicated (DWI) offense.¹ He also reported that in 2014, he was "[t]erminated after returning from long term disability." He did not state the reason for the termination, and he did not report his 2014 marijuana use under the drug-use question. (GE 1)

Applicant discussed his DWI and marijuana use during his background interview in April 2019. He asserted that he only had one beer while with his family on Thanksgiving. That evening, several hours after his one beer, he drove to get fast food for his wife, and he was stopped for not having his lights on. He stated that he passed the field sobriety test, but his blood alcohol concentration (BAC) was .09%. He stated he was adversely affected financially because he had to hire a lawyer. He stated that he paid citations for not having his lights on and issues with his registration, but he was found not guilty of DWI. (GE 7)

Applicant also discussed his marijuana use with the investigator. He stated that he used marijuana once or twice while in high school, and again in January 2014 while he was out on disability. He stated that he did not think he would have a problem with the drug test, because the test was in July 2014, months after he used marijuana. He asserted that he has not used marijuana since January 2014. (Tr. at 27, 30-31; GE 7)

Applicant denied intentionally providing false information about his marijuana use on the SF 86. He stated that he thought he reported the marijuana use. He stated that he completed the SF 86 on the computer, and it was kicked back about three times, and he did not notice that it was missing the information about his marijuana use. (Tr. at 24-26; Applicant's response to SOR; AE C)

Policies

This case is adjudicated 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,

¹ The DWI was not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's credibility, in the application of mitigating conditions, and during the whole-person analysis.

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, 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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including unpaid taxes and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his financial problems to periods of unemployment and underemployment, and separation from his wife before they reconciled. Unemployment and underemployment would normally be considered as beyond one's control, but not when it resulted from a positive drug test.

Applicant has been paying his debts for several years. He satisfied a \$5,782 judgment in December 2018. He satisfied a \$7,650 judgment in about May 2020. The judgment was apparently paid by garnishment. He has been paying the IRS since March 2018, and his state taxes are paid. He paid other debts, including debts that were not alleged in the SOR, and he is paying debts through a DMP.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to resolve his financial problems, and he took significant action to implement that plan. His finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. 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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's marijuana use in 2014 reflects questionable judgment and an unwillingness to comply with rules and regulations. The conduct also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

Applicant did not report his 2014 marijuana use on his 2018 SF 86. I considered all the evidence, including Applicant's explanation that he thought he reported the marijuana use. He stated that he completed the SF 86 on the computer, and it was kicked back about three times, and he did not notice that it was missing the information about his marijuana use. He reported on the SF 86 that he was "[t]erminated after returning from long term disability," but he did not state that he was terminated after a positive drug test. When assessing Applicant's credibility, I considered two statements made during his background interview that are implausible. He stated that he had a .09% BAC after drinking only one beer several hours before he was stopped by the police, and he reported that he tested positive when he returned to work in mid-2014 after using marijuana one time in January 2014. I find by substantial evidence² that he

² Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See, e.g., ISCR Case No.

intentionally provided false information about his marijuana use on the 2018 SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

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

Applicant denied that he lied on the SF 86. Having determined that he intentionally omitted information about his marijuana use in an attempt to mislead the government, I have also determined that his explanations that the omissions were unintentional were also false. It would be inconsistent to find his conduct mitigated.³

17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

³ See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the

There is no evidence of marijuana use after 2014. That conduct would normally be mitigated. However, I cannot trust that Applicant told the truth about his marijuana use. Without complete candor, there are no applicable mitigating conditions to that conduct.

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 relevant 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 have incorporated my comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's favorable employment record at his current job. However, that is insufficient to overcome his lack of honesty.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns.

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:

falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge