



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



In the matter of:)
)
-----) ISCR Case No. 20-01250
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/10/2021

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 16, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on January 11, 2021, 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.

Applicant answered the SOR on February 9, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA). On March 25, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9 (Items). Applicant was sent the FORM on March 26, 2021, and he received the FORM on April 7, 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. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 9 are admitted without objection. The case was assigned to me on July 6, 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 36 years old, divorced from his first wife (November 2016) and remarried (April 2017). He has five children from ages 12 to 19 (which includes two stepchildren). Since January 2018, Applicant has worked for a defense contractor. (Item 5.) He had two periods of unemployment, from November 2014 to March 2015 and from July 2015 to the summer of 2016. (Item 6.)

Under Guideline F, the SOR alleges that Applicant failed to file federal income tax returns for 2013 and 2014 and from 2016 through 2018, and that he owes the federal government \$3,855 for tax years 2013 through 2015. Applicant claimed that he did not file his tax returns because he did not have the money to pay his taxes. Under the same Guideline, the SOR alleged 18 delinquent debts totaling \$19,290, of which \$4,216 are medical debts. Applicant admitted those allegations. In a number of his answers, Applicant that his "plan" was to "set payment arrangements." (Item 4.) Applicant submitted no documents evidencing such "plans." The SOR debts were in arrears as of 2018 and are currently delinquent. (Items 7 and 8.)

Under Guideline E, the SOR alleged that Applicant was convicted in November 2013 of driving under the influence and driving on a revoked or suspended license. His sentence was a fine and mandatory completion of an Alcohol and Substance Abuse Program (ASAP). He failed to complete ASAP and failed to pay the fine. (Item 1.) Applicant answered admitting those allegations and that he planned to take to ASAP and pay the fine. (Items 4 and 6.) He submitted no documents showing that he completed ASAP or paid the fine.

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).

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure to file ... annual Federal ... income tax returns or failure to pay annual Federal ... income tax as required;

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;

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(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.

The evidence supports a conclusion that Applicant has had a problematic financial and federal income tax history as alleged. This raises security concerns under AG ¶¶ 19(a), (b), (c) and (f).

The next inquiry is whether any potential mitigating conditions apply. For the reasons set forth below, I find that none of the Guideline F potential mitigating conditions apply in this case.

Applicant's SOR indebtedness runs from 2018, and it continues to this day. Applicant's indebtedness was neither infrequent nor long ago. 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 or rectify his income tax defaults. AG ¶¶ 20(d) and (g) do not apply.

Applicant claimed that his indebtedness was caused by his divorce and his periods of unemployment, conditions largely 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. He apparently did not contact or otherwise reach out to his overdue creditors to advise them of the causes of his delinquent debts. I cannot find that the second prong of AG ¶ 20(b) applies. Therefore, I find against Applicant on SOR ¶¶ 1.a. through 1.v.

Guideline E - Personal Conduct

AG ¶ 15 sets out the security concern about 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 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(e)(1) sets forth below potentially apply to the conduct alleged under Guideline E:

personal conduct...that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group, including engaging on activities which, if known, could affect the person's personal, professional, or community standing.

I concur with the Government's contention that AG ¶ 16(e)(1) applies and raises a security concern. Applicant's pattern of criminal misconduct is just what is contemplated under AG ¶¶ 16(c) and (d). That pattern evidences questionable judgment, unreliability, and dishonesty.

The next inquiry is whether any potentially mitigating conditions apply. After a careful review of the entire record, I find that none of the mitigating conditions under Guideline E apply in this case.

The record evidence on Applicant's financial condition and his personal conduct raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. Accordingly, I conclude that Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.v:	Against Applicant
Paragraph 2, Guideline E	Against Applicant
Subparagraphs 2.a:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge