



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



In the matter of:)
)
) ISCR Case No. 19-03746
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant’s embellishment of his professional background on his résumé and his omission of pertinent information from his security clearance application, including criminal charges, generate personal conduct security concerns that he failed to mitigate. Moreover, Applicant owes approximately \$30,000 in delinquent state and federal income taxes, and he is under Chapter 13 bankruptcy protection. In sum, Applicant failed to mitigate the personal conduct and financial considerations security concerns. Clearance is denied.

Statement of the Case

On April 10, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial*

Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive) and the National Security Adjudicative Guidelines (AG), effective June 8, 2017.

On January 11, 2021, Applicant answered the SOR, denying all of the allegations, and requested a hearing. The case was assigned to me on August 30, 2021. On September 22, 2021, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for October 18, 2021. The hearing was held as scheduled. I received 18 Government exhibits (GE 1-GE 18), and considered Applicant's testimony. I also incorporated a copy of the discovery letter that Department Counsel mailed to Applicant (Hearing Exhibit I). The transcript (Tr.) was received on October 26, 2021.

Findings of Fact

Applicant is a 43-year-old single man with an eight-year-old child. He was married to his third wife from 2009 to 2020. The marriage ended in divorce. (Tr. 25) Applicant is a U.S. Army veteran, serving from 1996 to 2009. He was discharged honorably. His Army service included five tours of duty in combat zones. (Tr. 27) Since 2020, he has been working for a defense contractor as a support engineer. (Tr. 27) His job duties include modeling simulations for radio transmitters. (Tr. 28) He has earned an associate degree and a bachelor's degree, and he is currently pursuing a master's degree.

In February 2019, Applicant received a job offer from his previous employer. (GE 6) The employer hired him, in part, based upon his credentials listed on his résumé and his social media *LinkedIn* account, including a "Ph.D." of electrical and computer engineering earned in 2009, a master's of engineering earned in 2012, a bachelor's of science earned in 2009, and a bachelor's of computer engineering earned in 2011. (GE 6 at 9; GE 5 at 3) During the onboarding process, the company's human resources officer contacted Applicant to ask about his college major, which was not listed on his résumé. (GE 6 at 13) The human resources officer also asked him why his security clearance application (SCA) did not include the advanced degrees listed on the résumé. (GE 4) Applicant informed the human resources officer that he majored in math and minored in physics from the college from which he graduated in 2009. (GE 6 at 14) Also, Applicant said he would supplement his SCA with the additional information and provide a college transcript the next day. (GE 6 at 15) Applicant did not provide the promised information. Instead, he never returned to work, and resigned from the employment three days later. (GE 4)

Applicant gained another job in May 2018. He submitted the same résumé that he had submitted to his previous employer. (GE 5 at 3) He did not list the previous employer in the employment history section of the résumé submitted to the new employer. (GE 5 at 4-5)

In response to interrogatories from DOHA in January 2020, Applicant denied receiving the degrees that he had listed on his résumé. (GE 3 at 3) When asked on cross examination about the discrepancy, Applicant denied intentionally embellishing his

résumé, contending instead that the online company that prepared his résumé mistakenly included this information without his knowledge. (Tr. 47) Yet when Applicant initially responded to the human resources officer's email in February 2019 regarding the resume, he used the title, "Ph.D." after his name in the email signature block. (GE 6 at 13)

Applicant stated on his April 2018 SCA that he earned a master's degree in 2014, when, in fact, no degree was granted to him that year. When asked about the false information, Applicant testified that he made a mistake, and that he meant to indicate that 2014 was the last date that he had taken a class at the university. (Tr. 62) Applicant's submission of embellished résumés and erroneous information on his SCA prompted the Government to allege that he intentionally falsified this information, as alleged in SOR subparagraphs 1.a through 1.c.

In 2000, Applicant was arrested and charged with first degree burglary, a felony. The charge was later dismissed. (GE 7 at 6) In 2004, Applicant was arrested and charged with driving while impaired. Subsequently, he was convicted of the lesser offense of reckless driving to endanger. (GE 9) In 2007, Applicant was charged and subsequently convicted of driving under the influence. (GE 7 at 4) In 2009, Applicant was charged with the felony of failing to return a rental car. (GE 7 at 7) The charge was subsequently dismissed.

Applicant failed to list any of these arrests, charges, or convictions on his 2018 security clearance application. He explained that he thought criminal activity was not required to be listed if it occurred more than ten years before the completion of the security clearance application. (Tr. 77) The security clearance application requires applicants to disclose felony charges or alcohol-related charges, regardless of when they occurred. (GE 1 at 38)

Applicant has a history of financial problems. In 2001, he filed for Chapter 13 bankruptcy protection. (GE 15) He later converted the case to a Chapter 7 bankruptcy, whereupon the debt covered by that bankruptcy was discharged in May 2002. (GE 14) The amount of debt is unknown from the record.

In 2016, Applicant's student loan accounts, totaling approximately \$86,000, came out of deferment. (Tr. 90) The following year, the IRS conducted a random audit, which concluded that he owed an additional \$19,043 in income taxes for tax year 2014.

In October 2017, Applicant filed for Chapter 13 bankruptcy protection, which included the 2014 tax debt, in addition to student loans of approximately \$80,000. (GE at 7) In September 2021, Applicant obtained a modification of the Chapter 13 bankruptcy plan to include tax debts for 2017 and 2018. (GE 18 at 3) The total amount to be paid in his Chapter 13 bankruptcy is \$84,142, and Applicant is to satisfy the plan in 60 months. (GE 3 at 3) He has been making payments since December 2018. (GE 3 at 13) Currently, the balance of his delinquent federal tax debt totals approximately \$30,000. (GE 18 at 3)

The SOR alleges that Applicant falsified his 2018 SCA when he did not disclose the tax debt owed from 2014 in response to Section 26. Applicant contends that he did not falsify Section 26. Specifically, he filed a tax return in 2014 that proved to be inaccurate per an audit in 2017, which determined that he owed more money than he originally paid. (Tr. 55)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 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 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. Section 7 of Executive Order 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 E: Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (*Id.*)

Applicant embellished his résumé, claiming multiple degrees that he did not earn. When his then employer noticed a discrepancy between his security clearance application and his résumé, Applicant quit the job abruptly. He then obtained another job using a résumé with the same embellishments that he submitted to his previous employer. Applicant contends that the erroneous information on his résumé were mistakes made by the online company that he retained to prepare it. Given the timing of his departure from his previous employer when confronted with the discrepancy, and his use of the term “Ph.D.” after his name in the signature block of an email he sent to the human resources officer of his previous employer, I conclude that his explanation is not credible. 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,” applies without mitigation.

The egregiousness of Applicant’s falsifications regarding his résumé negates the credibility of his explanations for listing a master’s degree that he did not earn on his security clearance application, omitting his criminal history record, and omitting delinquent taxes from the security clearance application. In conclusion, Applicant has failed to mitigate the Guideline E security concerns.

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant has a history of struggling with debt and is currently under a Chapter 13 bankruptcy payment plan. His bankruptcy debt includes \$30,000 of delinquent federal tax debt. AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant was unaware that he owed an additional \$19,043 for his tax year 2014 income taxes until it was revealed in an audit. He has been paying his federal income tax delinquency under his Chapter 13 bankruptcy plan consistently since December 2018. Under these circumstances, AG ¶ 19(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,” does not apply.

Applicant attributes his financial problems to his divorce. However, he and his third wife did not divorce until 2020, four years after his student loans came out of deferment and three years after he filed for bankruptcy protection. 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,” does not apply.

Applicant filed for Chapter 13 bankruptcy in 2017, and he has been making income tax payments through the plan since December 2018. 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,” apply.

Although Applicant has been making payments towards his federal income tax delinquency for more than two years, approximately \$30,000 remains overdue. Consequently, 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,” does not apply.

In sum, while he presented some mitigation, it is too soon to conclude Applicant has mitigated the financial considerations security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

The nature and seriousness of Applicant's deliberate misrepresentations, his lack of credibility when confronted with them, and his ongoing financial problems disqualifies him from security clearance consideration. Upon considering this case in the whole-person concept, I conclude Applicant has not mitigated the 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:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge