



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00123
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2022

Decision

PRICE, Eric C., 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

Applicant submitted a security clearance application (SCA) on August 6, 2020. On April 12, 2021, the Defense Counterintelligence and Security Agency 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; Department of Defense (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.

On August 9, 2021, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) dated August 30, 2021 including

documents identified as Items 1 through 6. Items 1, 2, and 3 are the SOR, a letter to Applicant, and his answer to the SOR. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted an undated response to the FORM that is marked as Applicant Exhibit (AE) A. Items 4 through 6 and AE A are admitted into evidence without objection. The case was assigned to me on February 28, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a, and denied the allegation in SOR ¶ 2.a, with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He served in the United States Air Force from 2004 to 2012, and was honorably discharged. Applicant has never been married and has no children. He has worked as an aircraft mechanic for a defense contractor since July 2020. Applicant worked overseas from August 2014 to September 2016 and from November 2016 to September 2019, and in the United States since October 2019. He was unemployed from September 2016 to November 2016, September to October 2019, and from May to July 2020. (Item 4)

Under Guideline F, the SOR alleges one delinquent account totaling approximately \$27,690, and under Guideline E, that Applicant deliberately failed to disclose that delinquent debt on his SCA. (Item 1)

Applicant reported no financial issues in the SCA he completed on August 6, 2020. A credit report dated August 20, 2020 reflects the delinquent account alleged in SOR ¶ 1.a as charged off and closed. (Items 4, 6)

During a September 2020 interview by government investigators, Applicant initially confirmed his responses in the SCA were correct. After being confronted with financial records, Applicant acknowledged the past-due debt alleged at SOR ¶ 1.a was his, and said he did not report that debt in his SCA because he thought the account was charged off and closed. Applicant attributed the credit-card debt to living expenses he incurred while he was unemployed from September 2016 to November 2016. He reported contacting the creditor on several occasions seeking to lower monthly payments, and claimed his requests were denied. He stated an attorney advised him that it was in his best interest to allow the bill to go to collection and to be charged off, with the understanding this course of action would negatively impact his credit score. Applicant confirmed he had not paid the debt and said he did not intend to pay it. (Item 5)

In his August 2021 answer to the SOR, Applicant admitted owing the debt alleged in SOR ¶ 1.a. He attributed the delinquency to financial difficulties since 2017. He recounted unsuccessful efforts to resolve the debt and reported no contact with the creditor since 2017, after being advised by an attorney to "abandon the bank" if he was unable to pay it. He said he was working on fixing his financial issues and communicating

with a lawyer to see what he could do about the delinquent debt. He denied falsifying answers to the questions on his SCA alleged in SOR ¶ 2.a, because he claimed no knowledge of actions by the creditor after defaulting on the delinquent account. (Item 3)

In his FORM response, Applicant submitted a copy of his answer to the SOR and another one-page document. He averred that improper termination of his overseas employment contract caused significant financial hardship including a requirement that he pay three extra months of rent because he could not provide sufficient notice before leaving to accept a lower paying position in a third country. He also noted the background interview did not reflect that after losing his job in September 2016, he focused on paying an overseas loan obligation and resolved that loan in early 2020. (AE A)

Applicant did not report resolving the delinquent account alleged in SOR ¶ 1.a and provided no documentary evidence of payments on that debt. He did not provide evidence, documented or otherwise, of his current financial budget, savings or expendable income.

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 common sense 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

(b) a history of not meeting financial obligations.

Applicant has a single delinquent debt of approximately \$27,690 dating back to 2016. He admitted the debt was not 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.

AG ¶ 20(a) warrants some consideration because the SOR alleges a single debt that is not recent. Applicant used the delinquent credit card to pay living expenses while unemployed overseas for approximately three months in 2016 and transitioning to a lower paying job in a third country. However, he provided no evidence of payment on the debt since at least 2017, and acknowledged the debt has not been resolved. AG ¶ 20(a) does not fully apply, since the debt is ongoing.

Applicant's periods of unemployment from September 2016 to November 2016, September to October 2019, and May to July 2020, were circumstances beyond his control that negatively impacted his finances. The first prong of AG ¶ 20(b) therefore applies. However, he did not provide documentary evidence of his communications with the creditor or of his inability to make payments on the debt after he obtained full-time employment in November 2016. The evidence is insufficient to demonstrate that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

There is no evidence Applicant has received financial counseling, initiated or adhered to a good-faith effort to repay the creditor or otherwise resolved the delinquent

debt. To the contrary, he admitted no contact with the creditor since 2017, and stated he had not paid, and did not intend to pay, the delinquent account. He understood defaulting on the debt would negatively impact his credit score. An applicant's decision to default upon a contractual obligation, even if done upon the advice of counsel, might have adverse effects on him or her, including raising questions as to his willingness or ability to abide by other obligations, such as those governing the protection of classified information. See, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). Despite being aware of the significance of the government's financial concerns, Applicant failed to take appropriate action. His conduct under the circumstances casts doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09- 08533 at 3-4 (App. Bd. Oct. 6, 2010). AGs ¶¶ 20(c) and 20(d) do 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

In his August 6, 2020 SCA, Applicant denied that in the past seven years any bills or debts were turned over for collection, and that he had any credit card account suspended, charged-off or suspended for failing to pay as agreed. During a September 14, 2020 background interview, he initially confirmed his SCA responses were correct. After being confronted with financial records, he acknowledged the past-due debt alleged at SOR ¶ 1.a, and said he did not report that debt because he thought the account was charged off and closed. He also stated an attorney advised him that it was in his best interest to allow the bill to go to collection and to be charged off. In his August 2021 answer to the SOR, he again admitted owing the debt, but denied falsifying answers to the financial questions alleged in SOR ¶ 2.a, stating he had no knowledge of actions by the creditor after he abandoned the delinquent account.

I do not find Applicant's denial or explanation persuasive. The SCA is clear on the type of accounts to be disclosed, including those turned over for collection, charged off, or cancelled by the creditor. And Applicant's claims in response to the SOR that his SCA responses were true because he had no knowledge of the creditor's actions after he defaulted are not consistent with his admissions during the background interview. I find Applicant deliberately failed to disclose the delinquent account in his SCA. AG ¶ 16(a) applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

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

(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.

Applicant did not correct his omission until after he was confronted with the financial records during his background interview. He did not make a prompt good-faith effort to correct the omission. He has also provided inconsistent statements about his knowledge of the status of his delinquent debt since being confronted with financial records in September 2020. Deliberately falsifying relevant and material information on an SCA is not a minor concern. His actions cast doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered that Applicant is 36 years old, was honorably discharged from the United States Air Force in 2012, and that there is no evidence of additional delinquent accounts since 2017. Applicant accumulated a single delinquent debt of approximately \$27,690 in the past that he has refused to pay. Although his decision not to make any payments on this debt may have been a sound financial avenue for him to follow to eventually put his finances in order and clear his negative credit history, his decision also raises potentially disqualifying and current security concerns under the Directive. He also deliberately failed to disclose that debt on his SCA, as required. 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.

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
Subparagraph 1.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge