



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



In the matter of:)
)
-----) ISCR Case No. 21-02198
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 21, 2019. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on October 30, 2020, 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 November 15, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On January 5, 2022, Department Counsel submitted the Government’s

file of relevant material (FORM), including documents identified as Items 1 through 9. Applicant was sent the FORM on January 6, 2022, and he received the FORM on January 12, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on January 21, 2022. (Item 10).

In his response, Applicant objected to three Items in the FORM. (Item 10.) First, he objected to the SOR (Item 1) on the ground that its date “clearly misrepresents the actual date.” In his answer to the SOR, however, Applicant did not make any objections. (Item 2.) Therefore, his objection was not timely made and was waived. Notwithstanding that waiver, the SOR and the SOR that Applicant answered (Item 2) correctly stated the date to be October 30, 2021. The cover sheet date with “October 30,2020” was clearly a typographical error. The first objection has no merit and is overruled.

Second, Applicant objected to Item 8, a letter from the CAF to Applicant dated January 26, 2009. He contends that there “is no supporting document for the date.” That Item is, however, a stand-alone document as one piece of evidence. It is admissible as a business record of a regularly conducted activity. Fed. R. Evid. 803(6). The second objection has no merit and is overruled. Items 1 and 8 are admitted over Applicant’s objections. Items 2 through 7, and Item 9 are admitted without objection.

Applicant’s final objection (although not named as such) to the FORM was that it did not include “a current credit bureau report.” The Directive, however, does not require that a current report be included in the FORM. Credit bureau reports are snapshots of an applicant’s financial status at the time they are generated. Applicant himself submitted three credit bureau reports with his answer to the SOR (Item 2) and two other reports that are included in the FORM. (Items 5 and 6,) Appellant’s objection is without merit and is overruled.

This case was assigned to me on March 17, 2022.

Findings of Fact

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

Applicant is 49 years old, was thrice married and thrice divorced, the last divorce being in March 2016. As of his November 2021 Answer, Applicant had remarried. He has an adult son. Applicant has an associate’s degree (2006), a bachelor’s degree (2018), and a master’s degree (2019). He served on active duty in the U.S. Navy from 1999 until 2011, when he was honorably discharged. Applicant has worked for a defense contractor since October 2018. He was granted a security clearance in December 2008. While working for that defense contractor, Applicant was also self-employed part-time as an insurance producer from February 2011 until February 2013 when his license expired. At the time of his October 2019 SCA, Applicant had lived at the same residence since

September 2012 (a rental). (Item 3.) When he answered the SOR, Applicant had moved to a different home (which he owns) but in the same state. (Item 2.)

Under Guideline F, the SOR alleged that Applicant has seven delinquent debts totaling \$38,176. (Item 1.) He admitted the SOR allegations with explanations and refers to three credit reports attached to his answer. (Item 2.) More specifically, in admitting these debts, Applicant also answered that he settled or resolved the SOR debts by or before October 13, 2021 (Item 2, ¶¶ 1.d.- g.) or November 8, 2021 (Item 2, ¶¶ 1.a.- 1.c). The credit reports also show that the seven SOR debts were in collection or charge-off status (sometimes both), some as far back as April 2018. (Items 2 and 4 through 7. Items 5 and 6 are credit reports submitted by Applicant. In his response to the FORM, Applicant submitted documents showing a payment made on September 14, 2020, to the collections creditor of SOR ¶ 1.f. He also submitted documents showing he settled the debts in SOR ¶¶ 1.a. and b. on November 8, 2021. (Item 10.)

Under Guideline E, SOR ¶ 2.a. alleged that Applicant deliberately failed to disclose the delinquent accounts listed in SOR ¶ 1 on his October 2019 SCA. (Item 1.) Applicant denied that allegation. (Item 2.) He offered a number of explanations. First, Applicant called the omissions of the seven delinquent accounts from his SCA an “error.” Second, he mentioned that he was going through a divorce. Third, Applicant noted that he was “uncertain” of the legality of some of those debts. Fourth, he stated that he had started a business and guaranteed some of the start-up expenses of that business. (Item 2.) During Applicant’s Personal Subject Interviews (PSIs), he was asked about his delinquent accounts. Applicant agreed that those were his accounts. He was also asked why each of those accounts was omitted from his SCA. Applicant responded that those accounts were omitted due to an “oversight.” (Item 9.)

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 conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) an unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The guideline also includes conditions under AG ¶ 20 that could potentially mitigate security concerns arising from financial difficulties.

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

A security clearance adjudication is not a debt-collection process. Rather, an administrative judge examines the way an applicant handles his personal financial obligations to assess how they may handle their security obligations. Here, Applicant's security clearance eligibility was called into question by his past financial problems. The SOR debts are established by Applicant's admissions and the Government's and Applicant's credit reports. I conclude that disqualifying conditions AG ¶¶19(a), (b), and (c) apply. The next inquiry is whether any mitigating conditions apply.

Applicant's seven delinquent debts were not infrequent. And some of the debts became delinquent in 2018. Those delinquencies persisted until Applicant resolved them in October 2020 and November of 2021. AG ¶ 20(a) does not apply.

Applicant noted a number of circumstances that caused his financial problems: a divorce, expenses from a new business, the closing of that business, and questions about the legality of some debts. I considered that those individually or taken together could have been "conditions . . . largely beyond [Applicant's] control," as contemplated by AG ¶ 20(b). That, however, does not end the inquiry. AG ¶ 20(b) also requires that Applicant act "responsibly under the circumstances."

In this case, Applicant began the security clearance process in October 2019, when he submitted his SCA. The credit reports in the record (two from the Government and five from Applicant) showed that the SOR debts were in existence at that time. Applicant admitted that those debts were delinquent when he answered the SOR in

November 2021. He resolved those debts by paying them in October 2020 and three of them in November 2021, which was after the SOR was issued and after Applicant's PSIs (in November and December 2019). The conclusion is inescapable that the security clearance process motivated Applicant to address his delinquent debts. I find that Applicant did not act responsibly under the circumstances. AG ¶ 20(b) does not apply. For the same reasoning, I find that AG ¶ 20(d) does not apply (lack of good faith). See ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017); ISCR Case No. 10-05909 at 3 (App. Bd. Sep. 27, 2012).

Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and Applicant's answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). Under Guideline E for personal conduct, AG ¶ 15 states the concern that "[c]onduct 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." A statement is false or dishonest when it was made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

More specifically, AG ¶ 16(a) states the following potentially disqualifying condition:

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations [or] . . . determine national security eligibility.

In this case, the SOR alleged that Applicant falsified facts by failing to disclose his seven financial delinquencies on his SCA. Applicant denied that allegation. He called his omissions errors and the result of "oversight." His longstanding debts, however, totaled more than \$38,000. Debts of that magnitude are difficult to overlook, especially if Applicant, as he claims, had recently been through a divorce. And Applicant is well-educated and has been through the security clearance process before. He was granted a security clearance in 2008. There is no record that Applicant was engaged in extensive foreign travel or deployments. He lived in the same residence since 2012 and moved only recently but stayed in the same state. Therefore, Applicant was presumably not out of the reach of his creditors. He could have communicated with them about his debts. There is nothing in the record suggesting that he did so, except after the clearance process started. In addition, he demonstrated in this proceeding his facility with credit reports. I conclude that Applicant deliberately falsified his SCA by omitting his seven SOR debts. Therefore, I find AG ¶ 16(a) applicable, and I find against Applicant on SOR ¶ 2.a.

I also considered the potentially mitigating conditions enumerated in AG ¶ 17. No mitigating conditions apply in this case.

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 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 in my whole-person analysis.

Under AG ¶ 2(a), 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 also considered the whole-person concept.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

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.-g.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a.:

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.

Philip J. Katauskas
Administrative Judge