



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 21-02294

Appearances

For Government: Dan O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2022

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised 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 September 9, 2020. (Item 3.) On December 16, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. (Item 1.) The DOD CAF acted 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, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 10, 2022 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 11, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. He was given an opportunity to file objections and submit material to refute, extenuate,

or mitigate the Government's evidence. He received the FORM on April 21, 2022, but he did not provide additional information after receiving the FORM. The case was assigned to me on July 29, 2022.

Findings of Fact

Applicant, age 38, is divorced and has one daughter. He graduated from high school in May 2003. He has been employed with his current employer since October 2016. Applicant reported no unemployment. He works full time as a quality control inspector. He reported no military service. This is his first request for a security clearance. (Item 3).

The Statement of Reasons (SOR) sets forth security concerns under Guidelines F and E. The SOR ¶¶ 2.a through 2.j under Guideline F (Financial Considerations) lists ten delinquent accounts totaling approximately \$18,000. (Items 5, 6, and 7) Under Guideline E, the SOR alleges under SOR 1.a, that Applicant falsified his September 9, 2020 SCA by not disclosing his financial delinquencies in response to Section 26 of the SCA.

Financial

In his Answer to the SOR, Applicant admitted to all of the allegations under Guideline F and Guideline E. He provided no explanations in that answer except that "he made a mistake on the form." (Item 2) His 2020 and 2021 credit reports support the Guideline F allegations. (Items 5, and 6) The delinquent debts included consumer loans, student loans, vehicle repossessions, and other collection accounts.

In his 2020 subject interview, Applicant responded to questioning concerning his financial delinquencies. (Item 4) He related information about his four education loans in collection from 2010 OR 2011. Applicant stated that he could not make the minimum monthly payments required after the expiration of his deferment and forbearance periods His financial hardship was due to lack of sufficient income to meet his family's living expenses. He added that one year ago he applied for student loan forgiveness, but received no response. Applicant stated that he is arranging monthly payments of \$150, but provided no documentation or further information regarding the student loans (Item 4).

Applicant explained that his two vehicle repossessions stem from purchases of a 2015 truck bought in 2017. The truck was repossessed in 2019 after Applicant became 60 days delinquent on his \$439 monthly payment, and on the purchase of a used vehicle which was repossessed in 2016. He could no longer make the monthly payment of \$450. Applicant explained that he could not make these vehicle payments due to many medical bills resulting from his daughter's eye surgeries. Applicant explained that the hospital and the surgeon required a substantial sum upfront because his medical insurance did not cover the entire cost of the procedures and follow-up care. (Item 4)

As for the remaining delinquent debts from a personal loan and a credit card opened in 2016 or 2017, Applicant attributed the delinquencies to the ongoing and

substantial medical debts incurred from his daughter's eye surgeries. He stated that he had been making some monthly payments but could not continue. Also, when he divorced in 2017 he was required to make child support payments of \$700 a month. The medical bills coupled with the child support payments prevented any payments to his loan and credit card debts. (Item 4)

Applicant disputed one debt due to identity theft (SOR 1.e.) but there has been no resolution. This is reflected in the credit bureau report. He has not received any information concerning a resolution. (Item 5) His credit bureau report (Item 6) showed multiple accounts that Applicant pays as agreed.

There is no information in the record concerning Applicant's annual income or budget. It does not appear that he has sought financial counseling. He had circumstances beyond his control with the 2017 divorce, child support payments and the many eye surgeries for his child. However, he did not provide any documentation or evidence relating to those events or any payments or payment arrangements that he has made. He has had steady employment since 2012, but did not produce evidence of any small payments that he has made for the debts.

Applicant was asked after his subject interview to provide documentation or statements from creditors, receipts, or agreements. However, he did not provide any of the requested information. He told the investigator that many of his arrangements with creditors was "verbal." (Item 4) He considers his student loans a priority and wants to address all his debts. He estimates that he could accomplish this in a seven-year period. Applicant told the investigator that he did not include any of the delinquent debts on his SCA because he was unable to obtain a credit report to provide the required information. Applicant stated that he was not attempting to hide any information as he was aware of his financial issues, but he did not have specific details available. (Item 4)

Personal Conduct

As to SOR 1.a, it was alleged that Applicant falsified material facts on his September 2020 SCA by not responding to Section 26-Financial Record Delinquency that he had delinquent bills in the last seven years or had failed to pay as agreed. Applicant answered "No" to both questions. (Item 3)

Policies

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and, AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant has unresolved delinquents that are not paid. The debts are recent.

AG ¶ 20(b) is not fully established. While Applicant's divorce, child support payments and payment for the many medical bills for his daughter's eye surgeries are circumstances beyond his control, he did not provide any documentation or evidence of the bills. He has been steadily employed since 2012, and did not produce any receipts or payment arrangements to judge whether he has acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not provide any documentation of obtaining financial counseling or evidence of any good-faith efforts to show what he has done to address the debts.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR for lack of sufficient evidence and documentation. For these reasons, I find he has not fully mitigated the security concerns under the financial considerations guideline.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's failure to disclose his financial issues on his SCA although he knew specific details at his subject interview, it is not plausible that he would check "No" to Section 26 because he did not have his credit report available. He intentionally omitted the information and falsified material information which raises the following:

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.

Applicant admitted and stated that he made a mistake on the SCA but in the subject interview when questioned he knew and was very aware of his current financial issues. The investigator confronted Applicant, and then Applicant immediately without

help provided detailed explanations of each issue. He elected not to provide any explanation of his financial condition on the SCA. In doing so, he provided false information.

In this instance, it is clear from Applicant's comments that therefore, AG ¶ 16(b) is established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the mitigating conditions outlined above, none of them apply in this case. SOR AG 1.a is established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including the various circumstances beyond his control, I conclude that Applicant has not presented evidence of mitigation under either guideline. Clearance is denied.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 1:a:	Against Applicant
Paragraph 2, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 2.a-2j:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information under the financial consideration guideline or the personal conduct security concerns guideline. Clearance is denied.

Noreen A. Lynch
Administrative Judge

