



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



In the matter of:)
)
) ISCR Case No. 21-01569
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns and the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant responded on January 7, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 23, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 14, 2022. As of May 2, 2022, he had not responded. The case was assigned to me on August 16, 2022, after having been assigned to another administrative judge. The Government exhibits included in the FORM (Items 1-10) are admitted in evidence without objection.

Findings of Fact

Applicant is a 39-year-old employee of a government contractor. He has worked for his current employer since April 2008. He earned an associate's degree in 2008. Applicant has been married since July 2013 and has one young son. Applicant has been awarded a clearance in the past. (Items 3, 9, 10)

Under Guideline F, the Government alleged in its SOR that Applicant had nine delinquent debts totaling about \$56,000. Applicant's delinquent debts consisted of student loans, including Federal student loans (SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.h), and credit cards (SOR ¶¶ 1.a, 1.c, 1.g, and 1.i). Applicant denied all the Guideline F allegations described in the SOR, with comments. However, the Guideline F SOR allegations are all established by the Government's evidence, which includes credit reports listing them. (Items 1-10)

In May 2019, Applicant was flagged by the Defense Information System for Security (DISS) under the DOD Continuous Evaluation Program (CE) for having approximately \$66,000 in delinquent credit-card and student loan accounts. As a result of this information, a DOD investigator conducted security interviews with Applicant in July 2020, August 2020, December 2020, and January 2021. Applicant also submitted a certified Questionnaire for National Security Positions (SF 86) in August 2020. Applicant did not list that he had any delinquent debts on his SF 86, despite being required to do so. (Items 1, 3, 5, 9, 10)

During Applicant's July 2020 security interview, he told the investigator that he never opened or applied for the accounts listed in SOR ¶¶ 1.a, 1.c, and 1.g, and that he does not have any credit cards. He claimed that he did not realize the account listed in SOR ¶ 1.i was delinquent, or he would have paid it. Applicant also claimed that he did not realize that his student loans in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.h were delinquent because he paid these student loans on time every month. During a follow-up phone call with the investigator in August 2020, Applicant claimed that the debts in SOR ¶¶ 1.a, 1.c, and 1.g were fraudulently opened in his name. He claimed that he contacted the fraud department for each of these creditors and each opened a fraud investigation. Applicant also claimed that he contacted Equifax and informed them of this fraud. Applicant claimed that a representative from Equifax told him that it would remove the accounts from his credit report. According to Applicant, he asked representatives from these creditors and Equifax to provide him with documentation showing he is not responsible for these accounts. Applicant claimed that he did not list the SOR accounts on his SF 86 because he did not know they existed or did not believe they were delinquent. He also alleged that he had paid off the debt listed in SOR ¶ 1.i, but no documentation corroborating this payment is in evidence. Finally, he claimed that he decided to "transfer" his student loans to another creditor, and that he had begun that process. (Items 1, 2, 5-9)

During a follow-up December 2020 interview, despite earlier claiming that he had no credit cards, Applicant volunteered that the accounts in SOR ¶¶ 1.a, 1.c, and 1.g are his accounts. He conceded that he is responsible for these accounts, while also

claiming that some, but not all, of the charges on the accounts were fraudulent because the charges were made from out of state. He stated that he hired an attorney to help him dispute these allegedly fraudulent charges. During this interview, he claimed for the first time that he did not list these charges on his SF 86 because his attorney told him that he only needed to list debts for which he was responsible. Applicant also acknowledged being delinquent on his student loans. This time, he stated that he did not list these debts as being delinquent on his SF 86 because they did not come to mind when he was filling it out. He stated that he now understands that he should have listed these debts on his SF 86. He claimed that he will resolve all the SOR debts. (Items 1, 2, 5-10)

In his March 2021 interrogatory responses, Applicant claimed that he has paid all the debts in the SOR and that he provided documents to corroborate that he has paid these debts. However, the documents in the record do not support his claim of payments. Applicant provided an undated portion of a Credit Karma credit report that reflects that the SOR debts are “closed.” This portion of a credit report does not explain the reason the SOR debts are listed as closed, nor does it provide any evidence that the SOR debts were closed because Applicant paid them. The document also does not show that the accounts were closed because they were fraudulently opened or that fraudulent charges were made on them. Applicant provided no documentation to support his allegations of fraud with respect to the credit-card accounts listed in the SOR. The only entry in a credit report that reflects a dispute with any of these accounts appears in the December 2020 and April 2021 credit reports submitted by the Government with respect to SOR ¶ 1.a, and states that the account information is disputed by the consumer. All of the SOR debts appear as collections or charged off on all three of the credit reports provided by the Government. (Items 1, 2, 4, 9, 10)

Applicant provided a document from a creditor that arguably shows an attempt to refinance the debts in SOR ¶¶ 1.b, 1.e, and 1.h. However, this document does not show that the debts were successfully refinanced, nor does it show that these debts were paid. Applicant also provided a March 18, 2021 pay stub, a financial statement reflecting his income and expenses, and bank statements from a checking account that do not specifically address the SOR debts. Applicant did not respond to the FORM, so more recent information regarding his finances is not part of this record. (Items 1, 2, 4, 9, 10)

In November 2020, Applicant was issued a final written warning by his employer for violating its code of conduct. Applicant had to be confronted with the written warning by an investigator during a January 2021 phone interview.¹ Applicant claimed that he was given the written warning because his employer thought that he was not timely responding to e-mails and requests for information relating to his security clearance. Applicant claimed he did nothing wrong and has been working with his union representative to have the warning removed from his record. He claimed that he did not

¹ Any adverse information not alleged in the SOR, such as Applicant receiving a written warning from his employer or failing to volunteer the written warning to the investigator, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

voluntarily divulge the written warning during his December 2020 and January 2021 interviews because he thought it was baseless, was not “official,” and he was trying to have it removed from his record. (Item 10)

In the SOR, under Guideline E, the Government alleged Applicant’s failure to disclose all of the SOR debts he was required to in his SF 86. Applicant denied the Guideline E allegations with additional comments. (Items 1-10)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, 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(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.”

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 the 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 the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had several financial delinquencies totaling approximately \$56,000. These delinquencies included student loans and credit cards. The evidence is sufficient to raise the above disqualifying conditions and shifts the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant alleged that he has paid or resolved all of the debts listed in the SOR, but he provided insufficient documentation to corroborate his payments or resolution of these debts. Instead, his documents list his SOR accounts as "closed" without further amplification of why they were closed, such as through payment or because of fraud. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). He has not done so and has therefore failed to show that he acted responsibly under the circumstances or that he made a good-faith effort to repay overdue creditors or otherwise resolve debts.

While Applicant claimed to have hired an attorney to help him resolve his financial issues, he has not provided evidence of what the attorney has done to help. Moreover, he has not provided documentation corroborating the resolution of any of his debts. Therefore, there is insufficient evidence that the financial issues are being resolved.

Applicant disputed that he owes some of the SOR debts or a portion thereof. He has made inconsistent claims that the SOR accounts were fraudulently opened in his name, that charges on his accounts were fraudulently made, and that he was not delinquent on his debts. However, for each of these disputes, he either fails to provide documented proof to substantiate the basis of his dispute, or he fails to provide sufficient evidence of his efforts to resolve the issue. For example, he provided no documents regarding his fraud claims with his creditors or the credit reporting agencies. He also changed his stance on what fraud, if any, was involved with his SOR credit-card accounts. Despite initially claiming that his student loans were in good standing, he later admitted they were delinquent. He also failed to provide sufficient documentation confirming that he had resolved his student loan delinquencies. Instead, he merely provided documents that showed he was in the process of refinancing them.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to list his aforementioned delinquent student loans and credit cards on his SF 86 despite being required to do so. His justifications for failing to list his delinquencies are inconsistent. Initially, he claimed that he did not list his delinquent credit-card accounts because he had no credit cards. Later, he acknowledged the credit-card accounts were his, but claimed they were fraudulently opened. Subsequently, he admitted the credit-card accounts were his, but that some of the charges were fraudulent, and an attorney advised him not to list the fraudulent accounts. With respect to his student loans, he initially claimed he did not list them on his SF 86 because he did not believe they were delinquent. Later, he admitted they were delinquent, but that it did not occur to him to list them. These inconsistencies and shifting explanations detract from the veracity of his statements. Without being able to assess Applicant's credibility through his testimony, the inconsistencies cause me to question Applicant's truthfulness regarding his justifications for his omissions. I therefore find that Applicant deliberately omitted these delinquencies from his SF 86 and the above disqualifying condition is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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; 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) does not apply. Applicant failed to disclose the delinquent debts in his SOR until after his investigator confronted him. Even after Applicant began to freely discuss his delinquencies, his explanations for the debts' origination, status, and resolution were inconsistent to the point of appearing untruthful.

AG ¶ 17(b) does not apply. Applicant claimed during a December 2020 interview that he did not list his credit-card debts based on the advice of an attorney he hired because they were fraudulent. He did not mention this legal advice as a reason for failing to list these debts during his first two interviews. Instead, during his first interview, he claimed that he did not have any credit cards. Without a logical explanation for the change, he later acknowledged that all the SOR credit cards were his. This failure to mention an attorney's advice for four months after not alleging it during two prior interviews significantly undermines the veracity of that evidence. Instead, it suggests an attempt to falsely manufacture mitigating evidence.

AG ¶ 17(c) does not apply to Applicant's falsifications. Falsification of an SF 86 is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). Additionally, there is evidence that Applicant was again less than forthcoming with an investigator in January 2021 when he had to be confronted with his employer's November 2020 written warning. In light of all of his other inconsistencies and evolving justifications for his behavior, his explanation that the warning was not "official" is not satisfactory. These factors undermine Applicant's efforts to show that his deceptive or untruthful behavior is infrequent or unlikely to recur and cast doubt on his reliability, truthfulness, and good judgment. Personal conduct security concerns are not mitigated.

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 Guidelines F and E in my whole-person analysis.

The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations or personal conduct 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin Dorsey
Administrative Judge