



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 20-01689

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2022

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 June 19, 2019. (Item 3) On March 24, 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 hearing before an administrative judge. On April 3, 2022, Applicant subsequently requested a decision on the record without a hearing, and the Government did not object to the conversion. (Item 1) Department Counsel submitted the Government's written case on April 26, 2022. A complete copy of the file of relevant material (FORM) was sent to

Applicant, including documents identified as Items 1 through 7. 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 June 7, 2022, but he did not provide additional information after receiving the FORM. The case was assigned to me on September 22, 2022.

Findings of Fact

Applicant, age 36, is not married and has one minor child. He graduated from high school in May 2001. Applicant attended some college courses from 2012 to 2016, but he did not obtain a degree. He worked for his current employer since 2019. Applicant reported no unemployment. He served in the U.S. Navy (active reserve from 2002 to 2005.) He completed a security clearance application (SCA) on June 19, 2019. (Item 3)

The Statement of Reasons (SOR) sets forth security concerns under Guidelines F and E. The SOR ¶¶1.a through 1.r under Guideline F (Financial Considerations) lists 18 delinquent debts totaling approximately \$44,000. (Items 5, 6) Under Guideline E, the SOR alleges under SOR 2.a, that Applicant falsified his June 19, 2019 SCA by not disclosing his financial delinquencies in response to Section 26 of the SCA. (Item 2)

Financial

In his Answer to the SOR, Applicant admitted to all of the allegations under Guideline F and Guideline E, but he claimed that he has paid or is paying each of the accounts alleged. He provided no explanations in that answer. His 2020 and 2021 credit reports support the Guideline F allegations. (Items 5 and 6) The delinquent debts included consumer loans, medical accounts, and student loans.

In his 2019 subject interview, Applicant responded to questioning concerning his other military service. He explained that he was in the state National Guard from 2006 until 2011. He was discharged from the National Guard. He also stated that he had Army service. He could not remember dates of service or any other details. The record reveals that in 2006, Applicant received a clearance from the Army, with warning. (Item 7) Applicant's financial delinquencies on his credit reports were discussed. Applicant stated that he had consolidated his student loans into a payment plan and is currently making monthly payments of \$86. (Item 4)

Applicant explained that for the remaining consumer and medical accounts listed on the SOR, he had no knowledge of them. (Item 4) In essence, he provided no explanation for his indebtedness, or why his response was reasonable.

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 reported no circumstances beyond his control.

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. (Item 4)

Personal Conduct

As to SOR 2.a, it was alleged that Applicant falsified material facts on his June 19, 2019 SCA by responding “No” to Section 26-Financial Record Delinquency that he had no delinquent bills in the last seven years or had defaulted or failed to pay as agreed. Applicant answered “No” to all sub-items. (Item 3) Applicant admitted the allegation and did not discuss it in his answer or subject interview.

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 enter 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 delinquent debts that are not paid. The debts are recent.

AG ¶ 20(b) is not established. Applicant reported no circumstances beyond his control.

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 due to insufficient evidence and documentation. For these reasons, I find he has not 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.

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.

Based on Applicant's failure to disclose his financial issues on his SCA and admitting such in his SOR answer, I conclude he intentionally falsified his SCA. He provided no excuse for this conduct. He received a security clearance with warning in 2006 based on financial issues. He was aware of the financial concerns.

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.

In this instance, AG ¶ 16(a) 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.

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 commonsense 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 Applicant's military service, 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:

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