



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



In the matter of:)
)
) ISCR Case No. 21-01487
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts, or related personal conduct security concerns about his misuse of a company credit card. Allegations of falsification are not established. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 19, 2020. On July 19, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The CAF issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 24, 2021. He elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On February 17, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA mailed the FORM to Applicant on February 23, 2022. He had 30 days to file objections and submit material in refutation, extenuation, or mitigation. On or about March 14, 2022, Applicant contacted Department Counsel to report that he had received the FORM and to request additional time to respond.

Applicant subsequently provided an unsigned, undated narrative statement (FORM Item A) and four documents, marked as FORM Items B through D. On May 16, 2022, Department Counsel waived any objections. The case was then forwarded to the DOHA Hearing Office, and assigned to me on June 21, 2022. FORM Items A through D are admitted without objection. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence without objection.

Findings of Fact

In his response to the SOR, Applicant admitted the Guideline F allegations (SOR ¶¶ 1.a through 1.l), with narrative comments for each debt. He admitted the Guideline E allegation at SOR ¶ 2.a, also with an explanation. He "admitted" the two falsification allegations at SOR ¶¶ 2.b and 2.c, but I construe his explanation as a denial. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 61 years old. He and his wife have been married since 1998. They have two grown children. Applicant graduated from high school in 1979. He attended college from 1979 to 1983 but did not earn a degree. He attended subsequent schooling more than 10 years ago, some of which was financed by student loans at issue in this case, as discussed below. He served in the U.S. Navy from 1986 to 1996, and received an honorable discharge. (Item 2)

On his SCA, Applicant detailed his employment since 2006. From mid-2006 through late 2010, Applicant worked in Afghanistan as an avionics technician for a defense contractor. He returned home in November 2010 when his employer lost the contract that employed him. He was then unemployed until May 2011. He then returned to Afghanistan for a different contractor. He worked in Afghanistan until April 2017, when that contract ended. (Item 2) He then worked for the same employer in a new position as an aircraft mechanic in the U.S. from April 2017 to October 2018. He then took a break for personal reasons, and was unemployed for about four months, until February 2019. (Item 2) He then returned to the job in February 2019, and has worked there ever since. He did not indicate on his SCA that he holds a clearance but references a "10-year review" in his FORM Response, which suggests that his current SCA is a periodic reinvestigation. (Item 2, Item 3; SOR Response; AE A)

Applicant submitted an SCA in February 2020. In answering questions about his financial record, he disclosed that in April 2017, "I got behind on my payments on my travel card. I got a verbal counseling from my manager." He said the amount was about \$3,000, and he said he had paid the debt owed. (Item 2 at 37) (SOR ¶ 2.a)

Applicant explained in his background interview that he had been working in a large U.S. city (presumably on business) and had incurred charges on his company credit card. He owed "less than \$5,000" on the card and was two or three months late in paying the card due to financial issues. Company policy required that employees pay the card in full each month. He received a counseling letter from his manager for missing payments. He borrowed money from his company 401(k) plan and paid the money within 30 days of receiving the counseling letter. (Item 3 at 2) (SOR ¶ 2.a)

Applicant said he was not terminated as a result, nor did he resign in lieu of being fired. He explained that he left the company after the travel assignment in order to spend more time with his family. He later rejoined the company in February 2019. (Item 3 at 2; Item 2) The letter Applicant received is not in evidence, nor is the company credit card policy documented.

In answering SOR ¶ 2.a, Applicant said he was "in a financial struggle at the time and got in a bad situation with the company card." He has "cleared up the matter and there are no other work-related issues." He attested to an excellent work ethic and there are no concerns about his integrity. (FORM Response Item A)

In answering other financial questions on his SCA, Applicant did not disclose that he had any delinquent debts, such as judgments entered against him, debts reported for collection, or charged-off accounts. (Item 2 at 37-38) (SOR ¶¶ 2.b, 2.c)

Applicant subsequently had a background interview in July 2020. In reviewing his answers on his SCA with the interviewing agent, he noted that he was "getting by" financially, "and he may be 30-120 days late on some bills." He acknowledged having accounts in collections. He said he did not list the accounts because he did not know the account information to do so accurately on the SCA. He was then provided the account information from his credit report, and he discussed his debts in detail. (Item 3 at 3-4) In answering SOR ¶¶ 2.b and 2.c, Applicant explained that he did not intend to falsify his answers on his SCA, but got "overwhelmed with the questions." (Item 1)

Applicant explained in his background interview that between 2006 and 2010, when he was working overseas, he made a good income and was able to keep up with expenses. This changed when he returned to the U.S., and he made less money. He was unable to keep up with his bills and expenses, and he said he has been trying to address his debts by making money through increased overtime. (Item 3 at 4)

The debts alleged in the SOR total about \$34,000. (Item 1) The record includes two credit bureau reports (CBRs), dated June 2020 and May 2021, which establish the delinquent accounts alleged. (Items 4, 5) The debts are detailed as follows:

SOR ¶ 1.a (\$6,876) is an account that has been charged off by a bank. The account remains unpaid, though Applicant intends to settle the account. (Item 4, Item 5; Answer)

SOR ¶¶ 1.b (\$4,820), 1.i (\$883), and 1.j (\$420) are federal student loans that are past due. Applicant admits the debts, but was not aware that he still owed them. He thought they may be loans he cosigned for his daughter's education but he now believes they are his. He intends to contact the creditor to bring them current. (Item 4, Item 5; Answer) In his FORM Response, he indicates that he has begun repayments on his federal student loans, but he provides no details. (I note that since March 2020, federal student loans have been in forbearance status by presidential executive order due to the COVID pandemic. The forbearance program is scheduled to conclude at the end of December 2022).

SOR ¶ 1.c (\$4,167) is an account that has been charged off by a bank. Applicant explains that he incurred this debt, like others, during a time of financial hardship when he was "overwhelmed" and not able to pay his family's monthly bills. (Item 4, Item 5; Answer) In his FORM Response, he says he has set up a payment plan for this debt but he provides no details, and no corroborating documentation. (FORM Response Item A) This debt is unresolved.

SOR ¶ 1.d (\$2,789) is an account placed for collection by Bank C. Applicant said in his Answer that he is in a monthly payment plan. (Item 4, Item 5; Answer) With his FORM Response, he provided a statement from the creditor reflecting biweekly payments of about \$73 between August 2021 and March 2022. As of March 2022, the balance owed was \$954. (FORM Item D) This account is being paid.

SOR ¶ 1.e (\$2,673) is an account placed for collection by Bank B. Applicant said in his Answer that he is in a monthly payment plan. (Item 4, Item 5; Answer) With his FORM Response, he provided a statement from the creditor reflecting a payment in March 2022 of about \$90. As of March 2022, the balance owed was \$1,518. (FORM Item C) This account is being paid.

SOR ¶¶ 1.f (\$1,484) and 1.l (\$1,963) are accounts that have been charged off by Bank B. Applicant admits the two debts but believed that they were being handled by the collection agent for SOR debt ¶ 1.e. (Item 4, Item 5; Answer) He provided no documentation to support this.

SOR ¶ 1.g (\$1,188) is an account that has been charged off by Bank C. Applicant intends to address this debt in turn, but it remains unresolved. (Item 4, Item 5; Answer)

SOR ¶ 1.h (\$866) is an account placed for collection by a phone company. Applicant said he has made payments towards this debt, and provided documentation with his FORM Response that the account has been paid. (Item 4, Item 5; Answer; FORM Item B)

SOR ¶ 1.k (\$6,473) concerns a default judgment entered against Applicant by a credit card company in October 2019. (Item 5) As noted in the SOR, the account was resolved through wage garnishment, and the judgment was satisfied in June 2020. (Item 1) The Government's evidence includes the Notice of Satisfaction, a document Applicant provided during his background interview. (Item 3 at 5, Item 6) The debt was therefore resolved well before issuance of the SOR, albeit through garnishment.

In his FORM Response, Applicant acknowledges that he has accumulated debt and has struggled with paying it off. He says he and his wife have not made good financial choices in the past, but work hard to provide food and shelter for their family while addressing their debts as they can. He also helps his mother with her bills and food. He cannot pay all of his debts at once but will continue to address his debts as he can. He said he recently paid off his car and a phone debt (SOR ¶ 1.h), and he said he has set up a payment plan for SOR debt ¶ 1.c. He says he has begun repayments on his student loans. (Form Response Item A)

Applicant also states in his FORM Response that he did not intend to lie when he failed to disclose his debts on his SCA. He thought he had addressed his debts in a previous section of his SCA and was too hasty in answering the questions in an effort to complete the application in a timely manner. (FORM Response Item A)

Applicant states that he is not a security risk to his employer or to the country. He understands the security concern arising from his debts. He works hard, and volunteers to help others. He enjoys his job and would never compromise security. (FORM Response Item A)

Applicant did not provide any documents or other information about his current income and expenses to detail his ability to address his debts responsibly going forward.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has 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 relevant part, 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. . . .

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 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 has a long history of financial issues, going back to 2010, after he returned from Afghanistan. All of the debts alleged in the SOR are established by the credit reports in the record, and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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, or 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.

Applicant has resolved some of his debts in full (SOR ¶¶ 1.h and 1.k) and he is resolving others (SOR ¶¶ 1.d and 1.e). His debts otherwise remain outstanding. He indicates an intention to pay the others as he can but has set forth little documentation of his efforts or ability to do so. His debts are largely ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant stated in his interview that he fell behind on his bills after his income declined following his return from Afghanistan in 2010. For the most part, he has been gainfully employed, with the same company, ever since; the only exception being a brief period during the winter of 2018-2019, when he left the job for personal reasons. But his financial issues predate that time, as he used a company credit card for almost \$5,000 for what were presumably personal charges, since he was required to repay them. (This conduct is alleged under Guideline E and discussed further below, but is not alleged under Guideline F. As such, I have not considered it as Guideline F disqualifying conduct, though I can and do consider it here as part of Applicant's full financial history in weighing mitigation).

Applicant has not established that his debts are due to conditions beyond his control. The decline in income he experienced after returning from Afghanistan is too remote in time to be considered such a circumstance at this point. His SOR debts all post-date that experience. AG ¶ 20(b) does not apply.

Some of Applicant's debts have been paid. Others are in a payment plan. One debt was resolved before the SOR was issued, through wage garnishment following a judgment against him. However, resolution of a debt through garnishment does not establish good-faith efforts by an applicant. Applicant says he intends to address his remaining debts as best he can but he has not set forth enough sufficient evidence under AG ¶ 20(d) that he initiated and is adhering to a good-faith effort to pay or resolve his remaining debts. AG ¶ 20(c) does not apply, as Applicant has not shown that he has participated in credit counseling or that his debts are being resolved or are under control.

As Applicant notes, he is not required to pay his debts off all at once, or in any particular way. What is required, though, is a reasonable plan to address his debts, accompanied by documented efforts to do so. Applicant has taken some steps in this regard, but given his lengthy history of financial problems, he has not provided sufficient evidence that his financial issues are under control.

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. . .

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This

includes, but is not limited to, consideration of: . . . (4) evidence of significant misuse of Government or other employer's time or resources;

SOR ¶ 2.a reads as follows:

You received a written reprimand in about April 2017 from your employer, [name redacted], for violating your employer-issued credit card policies.

Applicant admitted the allegation with an explanation. He explained in his background interview that he received a written letter of counseling for missing payments on his credit card in April 2017. He also noted that company policy required that the amount owed on the company credit card was to be paid in full each month. Once he received the letter, Applicant borrowed from his 401(k) plan and paid the amount owed (something less than \$5,000) within a month. The counseling letter is not part of the record, nor are the company credit card policies, except as noted in the interview. Although Applicant was counseled, it is not established that he was reprimanded, notwithstanding his admission to the allegation. Nevertheless, the facts support a finding that Applicant violated company policy by failing to pay his company credit card bill in full each month on at least this occasion, in April 2017. Applicant's actions implicate the general security concern of AG ¶ 15, as conduct involving questionable judgment, as well as AG ¶ 16(d)(4), given his significant misuse of company resources. SOR ¶ 2.a is established.

The Government also alleged that Applicant deliberately failed to disclose his various delinquent debts (SOR ¶¶ 1.a-1.l), as listed on his June 2020 credit report (Item 5) when he submitted his February 2020 SCA. (Item 2 at 37-38) Applicant denied the allegations of intentional falsification in his Answer. While he failed to disclose his debts (as he should have), he did disclose his earlier April 2017 misuse of a company credit card, and noted that he had \$3,000 in debts on the card, later paid off. Applicant also raised the issue of his financial delinquencies at the start of the discussion of his financial record. He noted that he was "getting by" financially, "and that he may be 30-120 days late on some bills." He acknowledged having accounts in collections. He said he did not list the accounts because he did not know the account information to do so accurately on the SCA. This establishes AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts).

Applicant denied the allegations of deliberate falsification, so the Government has the burden to prove them. Given Applicant's explanations, the fact that he reported his credit card misuse on his SCA, and his early candor about his debts in his interview, I cannot conclude that falsification is definitively established under AG ¶ 16(a). SOR ¶¶ 1.b and 1.c are found for Applicant.

AG ¶ 17 sets forth the potentially applicable mitigating conditions under Guideline E. Of those, the following warrants discussion:

(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.

Though it is alleged as a personal conduct security concern under Guideline E, rather than a financial security concern under Guideline F, Applicant's misuse of a company credit card in 2017 occurred because he found himself in "a financial struggle" at the time, as he put it. That financial struggle continues, since Applicant has ongoing delinquent debt, as he has had for quite some time. Even though the conduct (misusing a company credit card for personal expenses and then failing to pay it in a timely manner) has not been repeated, the conditions that sowed the seeds for that conduct nonetheless remain ongoing, since he still has delinquent debts. Since that is the case, AG ¶ 17(c) does not apply to mitigate the credit card conduct at SOR ¶ 2.a.

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(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 incorporated my comments under Guideline F in my whole-person analysis.

Applicant did not provide sufficient evidence to mitigate his delinquent debts, or his related personal conduct. I considered his career in the defense industry including with his current employer as favorable whole person evidence. Since Applicant requested a decision on the written record, I did not have the opportunity to question him in a hearing about the allegations in the case, to better assess the reasonableness of his actions in addressing them. Given his financial record, Applicant needs to establish a longer track record of financial stability to establish that he is eligible for access to classified

information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude Applicant did not provide sufficient evidence to mitigate the financial 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.c:	Against Applicant
Subparagraphs 1.d, 1.e:	For Applicant
Subparagraphs 1.f, 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i, 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b-2.c:	For 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.

Braden M. Murphy
Administrative Judge