



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 20-00877 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

20-00877

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the personal conduct and financial considerations security concerns. He did mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant last submitted a security clearance application (SCA) on September 19, 2016. On April 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E – personal conduct, Guideline B – foreign influence, and Guideline F - financial considerations. He responded to the SOR on May 11, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On June 27, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-9. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on July 6, 2022, and provided a response on August 1, 2022. The case was assigned to me on October 3, 2022. Items 1 and 2 are the SOR and Applicant’s Answer, which are the pleadings in the case. Items 3-9 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted SOR allegations ¶¶ 1.c, 3.a-d, and 3.f-h. He denied allegations ¶¶ 1.a, 1.b, 1.d, 2.a, and 3.e. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 46 years old. He served in the Army National Guard from 1994-2000, and received an honorable discharge. He has taken some college courses, but has not earned a degree. He has held a security clearance since 2001, and his last clearance application was granted in 2011. He was married in 2005 and divorced in 2015. He has worked in IT for a large defense contractor since 2014. (Item 3)

After Applicants divorce, he pursued relationships with women he met through online dating sites. Some of these women were foreign nationals living in other countries. He would communicate with these women through email and video calls. There were occasions where he would use his work email address to correspond with them. He did not report his contacts with foreign women through the appropriate security channels at work. (Item 3, 4, 5, 6)

Although Applicant attempted to meet these women in person, there is no evidence in the record that he was successful. In his most substantial online dating relationship, the woman repeatedly withdrew right before the meetings were scheduled to take place. In a four-month period in 2016, he submitted about twelve vacation notices, which he canceled shortly before or after the start of his scheduled leave. This unusual behavior was noticed at work. He also shared details of these relationships with co-workers, including that he had met a Russian woman online. They notified security personnel out of concern for Applicant, and because of the potential security risk posed by his online activities. (Item 4, 5, 6)

After receiving reports about Applicant's contact with foreign women, his employer launched an investigation. It found that he failed to report his contact with foreign nationals, and that he was deliberately deceptive with investigators. Co-workers reported that he told them that he was talking to two Russian women, a woman from Colombia, and a woman from Costa Rica. Security personnel were concerned that he may be divulging too much information to these women, and that he may be targeted. They did an analysis of his work computer, and found that he used his work email account to correspond with two women, one who was a Russian national, the other was located in South Africa. Although he claimed that the Russian woman was like a pen pal, the investigation found correspondence stating that Applicant wanted her to come live with him, and discussed the potential of marriage. They also found blank immigration forms on his computer. (Item 3, 4, 5, 6)

Applicant asserted that the woman in South Africa was a U.S. citizen because she showed him her passport on a video call. He claimed that she was a fashion designer from Beverly Hills, who resided in South Africa for work. He claimed that she was unable to return to the U.S. because of passport and visa issues. In 2016, he took out personal

loans to send her money for living expenses and to support her clothing design business. He sent her money orders about 8-10 times, for a total amount sent between \$10,000 to \$20,000. He later learned that she had been deceiving him, and claims to have ended the relationship in 2016. (Item 4, 6)

In 2016, Applicant told security officials that he would stop all communications if he discovered the women he met online were foreign nationals. However, the record shows that he continued to contact foreign women until at least 2018. After the investigation concluded in June 2016, he was suspended for two days without pay. He was fired in 2018 for mischarging time. (Item 3, 4, 5, 6)

In his 2019 background interview with a government investigator, Applicant did not report that he was fired from his job. He told the investigator that he resigned so that he could take another job, and left on good terms. After the interview concluded, he sent an email later that day to the investigator and admitted that he had not been truthful about leaving his employment, and informed them that he had been terminated because of a time charging audit. (Item 4)

Applicant has about \$72,000 in charged-off debt. He stated that his financial problems started in late 2015, after meeting a woman online. The record shows that he is referring to the woman in South Africa. He reported that he took out personal loans to send her money for living expenses and materials to design clothes. He asserted that she was supposed to pay him back, but did not. (Answer; Item 4)

Applicant stated that he made mistakes that were neither in his best interest, nor that of his employer or the government. He asserted that it was not his intent to meet foreign women online, and it was not his intent to use his email for personal use outside of work. He claimed that he did not receive training from his employer about meeting foreign nationals on dating websites, and that he had no experience with foreign nationals prior to this time. He asserted that he did not discuss classified information with anyone outside of his job. He claimed that when he was terminated in 2018, he was told that it was an internal incident and could not be reported to the government. He stated that since the investigator did not discuss his termination in his background interview, he did not mention it first. He claims that he had no intent to deceive the government. He stated that for 27 years he has been in either the military or working as a contractor supporting the military, and he will do whatever it takes to continue to serve in this role. He reports that he has been married since November 2020, and has learned from his past indiscretions (Answer; Response)

The SOR allegations are as follows:

SOR ¶ 1.a: Applicant was the subject of an investigation by his employer in 2016, which confirmed that he used his work email address to correspond with foreign nationals that he encountered on dating websites, including two women who identified themselves as Russian nationals. He denied the allegation. In his Answer, he stated that the allegation is not entirely accurate. He admitted his lack of judgment using his work email address, and claimed that he was having trouble using his personal email address to send the

messages. He claimed that he did not continue to correspond with either of the Russian women, because they did not reply to him. (Item 4, 5, 6)

SOR ¶ 1.b: Applicant took out eight personal loans (listed in ¶¶ 3.a-h) to send money to a woman that he met on a dating website, who resided in South Africa. He denied the allegation. In his Answer, he claimed that the woman was a U.S. citizen who was living in California when they met. He claimed that although she did some work in South Africa, her permanent address was in California. He admitted taking out personal loans to assist her clothing design business. He claimed that some of the money from the loans was wired to her, and the rest he used for his personal expenses. He reported that they dated in 2016, but he terminated the relationship after finding out she was a liar and dishonest about her business practices. He claimed that he is working on paying his debt. (Item 4, 6)

SOR ¶ 1.c: Applicant was fired from his job in about 2018 for time mischarging. He admitted the allegation. (Item 4)

SOR ¶ 1.d: Applicant falsified material facts in his January 2019 background interview with a government investigator by stating that he resigned his job on good terms to accept another offer, and deliberately sought to conceal that he was fired in 2018 for time mischarging. He denied the allegation. In his Answer, he claimed that it was not his intent to conceal his termination. He thought that the government would have already known about his termination, since it occurred five months prior. He claimed that he was embarrassed and ashamed, but he should have been truthful. He claims that he wrote a letter of amendment immediately afterwards and sent it to the investigator, to inform them of his misinformation. (Item 4)

SOR ¶ 2.a cross-alleged SOR ¶¶ 1.a and 1.b as a foreign influence security concern. He denied the allegation. In his Answer, he stated that he was not aware of the reporting policies regarding online dating and reporting foreign contacts. He claimed that he had no experience with foreign nationals prior to this time. (Item 4, 6)

SOR ¶ 3.a is a charged-off account for \$10,352. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.b is a charged-off account for \$8,033. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.c is a charged-off account for \$11,823. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.d is a charged-off account for \$7,256. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.e is a charged-off account for \$4,465. He denied the allegation. In his Answer, he claimed that this debt was satisfied on February 25, 2021. He submitted an account statement with his Answer, dated March 6, 2021, which showed that this account had a zero balance. (Item 4, 7, 8, 9)

SOR ¶ 3.f is a charged-off account for \$6,633. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.g is a charged-off account for \$7,057. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

SOR ¶ 3.h is a charged-off account for \$16,394. He admitted the allegation, and claimed that he is working with the creditor to pay the debt. He did not provide sufficient evidence to support his claim. (Item 4, 7, 8, 9)

With the exception of SOR ¶ 3.e, Applicant did not provide documentation showing that any of his charged-off debts have been or are being paid, disputed, or otherwise resolved. He also submitted no documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He did not provide sufficient evidence showing that he has received credit counseling.

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 E, Personal Conduct

AG ¶ 15 details the personal conduct security concern:

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...

I have considered the disqualifying conditions for drug involvement under AG ¶ 16 and the following is potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

There is sufficient evidence in the record of Applicant's questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations. AG ¶¶ 16 (b) and (c) applies.

I have considered the mitigating conditions under AG ¶ 17. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

AG ¶ 17(a) partially applies. Applicant did make a prompt effort to correct his concealment and falsification. However, his explanation for his falsification is not credible. Also, considering the fact that his employer's investigation found that he was deliberately deceptive with investigators, he has shown multiple instances of lack of candor when he is being investigated. AG ¶ 17(a) does not fully apply.

AG ¶ 17(c) does not apply. Providing false or misleading information; or concealing or omitting information concerning relevant facts is not minor. This is the second instance in the record where Applicant was deceptive in an investigation. He has repeatedly demonstrated questionable judgment and unwillingness to comply with rules and regulations. There is insufficient evidence to find there is mitigation by the passage of time, the behavior is infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, and good judgment.

Guideline B, Foreign Influence

AG ¶ 6 details the security concern about "foreign contacts and interests" as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced

to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

There is no evidence in the record that Applicant maintains contact with any foreign nationals. He stated that he was remarried in 2020. He is not meeting foreign nationals on dating websites anymore. There is insufficient evidence to establish AG ¶ 7(a), so SOR ¶ 2(a) is found for Applicant.

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.

The SOR allegations evidencing Applicant's history of financial delinquencies are established by Applicant's admissions and the credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

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; and

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

SOR ¶ 3.e was resolved in February 2021, and is found in Applicant's favor. AG ¶ 20(a) does not apply to the remaining SOR debts. Applicant failed to provide sufficient evidence showing that any of the remaining SOR debts are resolved, or that they became delinquent under circumstances that are unlikely to recur. He failed to provide sufficient documentation of his current financial situation, or evidence which might establish his ability to address his debts responsibly. His failure to pay his delinquent debt is recent, ongoing, and not isolated. His failure to meet his financial obligations continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant did not provide sufficient evidence to find that the conditions that resulted in his charged-off accounts were largely beyond his control, and that he acted responsibly under the circumstances.

AG ¶ 20(d) does not apply. Applicant did not provide sufficient documentation of payment arrangements or of any payments made on his debts, other than for SOR ¶ 3.e.

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 considered Applicant's military service. I also considered that he was deliberately deceptive with investigators on at least two occasions. I have incorporated my comments under Guidelines E, B, and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's personal conduct and delinquent debts under Guidelines E and F.

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:

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| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.d: | Against Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Paragraph 3, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 3.a - 3.d: | Against Applicant |
| Subparagraph 3.e: | For Applicant |
| Subparagraphs 3.f - 3.h: | 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.

Ross D. Hyams
Administrative Judge