



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



In the matter of:)	
)	
)	ISCR Case No. 21-01738
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant’s recurrent and ongoing financial problems generate security concerns that he failed to mitigate. Conversely, the record evidence did not establish that Applicant intentionally omitted material information during either the security investigation process in 2008 or the current investigation process. Ultimately, I conclude that though there are no personal conduct security concerns, the lingering financial problems render him ineligible for a security clearance. Clearance is denied.

Statement of the Case

On November 30, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On March 20, 2021, Applicant answered the SOR, admitting all of the Guideline

F allegations, and denying all of the Guideline E allegations. He requested a decision based on the documentary record, instead of a hearing.

On May 27, 2022, Department Counsel submitted a file of relevant material (FORM), containing 12 attachments (Items 1 – 12) in support of the SOR allegations. Applicant received a copy of the FORM on June 15, 2022, and was given until July 15, 2022 to file a reply. Applicant did not submit a response. On August 3, 2022, the case was assigned to me.

Findings of Fact

Applicant is a 59-year-old married man with four adult children, two of whom are from a previous marriage. He is a veteran, serving in the inactive Army reserve from 1982 until 2002, when he retired honorably. (GE 5 at 20) Applicant's wife is also a military veteran. (Item 6 at 17) After retirement, Applicant completed a bachelor's degree in 2011. (Item 5 at 13) He was married from 2006 to 2018.

Since retiring from the Army, Applicant has worked for a federal contractor as a logistics analyst. Between 2006 and 2017, he worked overseas, supporting the U.S. military in several combat zones. (Item 4 at 14-15) While overseas, he typically worked 12 hours per day for seven days per week. (Item 4 at 14-15)

In 2006, Applicant and his wife relocated to another state and purchased their first home. After the move, his wife was unable to find another job. Consequently, the family income decreased by \$50,000. (Item 6 at 7) The move also created unanticipated challenges for their two children. Specifically, both are autistic and struggled to adjust to the change. (Item 6 at 7) The problems with their children compelled Applicant's wife to stay home and support them. (Item 6 at 9) Consequently, the loss of her income and the stress it created on the family evolved from a temporary problem to a persistent one. (Item 6 at 7)

By the time Applicant returned home between overseas assignments in May 2008, his delinquent bills had increased to the point where he could not afford to satisfy them. Consequently, he consulted an attorney who helped him file for Chapter 13 bankruptcy protection, as alleged in subparagraph 1.b. (Item 6 at 7; Item 10) Approximately \$81,000 was included in the payment plan. (Item 6 at 7-8) By November 2013, Applicant had successfully completed the court-mandated payment plan, and the following month, the case was discharged. (Item 10 at 5)

When working overseas, Applicant earned approximately \$140,000 annually. (Item 6 at 16) In 2017, he did not pass a physical that his job required to enable its employees to work overseas. (Item 6 at 16) His employer did not fire him; however, they transferred him to a position at a U.S. location. This transfer resulted in an \$80,000 annual pay cut for Applicant. (Item 6 at 16)

Unable to adjust to this pay cut, Applicant fell behind on his mortgage in 2017. (Item 6 at 16 - 17) He contacted the mortgage company who told him to apply for their mortgage assistance program. (Item 6 at 16) Applicant applied but was not accepted into the program.

In early 2019, the mortgage company moved to foreclose. In response, Applicant contacted a bankruptcy attorney. The attorney advised him to file a motion for Chapter 13 bankruptcy protection. Applicant did as advised and filed the petition in February 2019. It included the debts alleged in the SOR. (Item 9 at 25-26) As part of the requirements to file the petition, Applicant completed credit counseling. (Item 9 at 11)

Per the bankruptcy plan, Applicant was supposed to pay \$3,500 monthly. (Item 9 at 16) Initially, Applicant made the payments, as ordered. Then, his wife, who by then was receiving disability payments through the Department of Veterans Affairs, experienced a disability rating change, followed by a decrease in monthly pay. Then, one of his children received a reduction in Supplemental Security Income benefits. Consequently, Applicant was unable to make the monthly payments through the bankruptcy plan, and the court dismissed the petition. (Item 1 at 16)

As for the unsecured debts that were included in the bankruptcy, Applicant is aware that the creditors could reach out to him to obtain payments since the petition has been dismissed, but he suspects that these debts had all been charged off his credit report. (Item 16 at 20) As of March 2021, these debts remained outstanding. ((Item 3 at 2-3)

As for the mortgage, Applicant has not made a mortgage payment since 2017. (Item 6 at 17) Applicant sought a refinance after the dismissal of the bankruptcy petition. The mortgage company denied his request. (Item 6 at 17) However, the mortgage company, in late July 2019, allowed Applicant to participate in a financial hardship forbearance plan. (Item 6 at 17) During the forbearance period, Applicant did not have to make any payments.

The mortgage has been out of forbearance since August 2021. (Item 6 at 17) The current mortgage delinquency totals \$97,977. (Item 3 at 3) Since the forbearance expired, the mortgage company refuses to accept partial payments towards satisfaction of the delinquency. Although the home's value is worth approximately \$38,000 more than he owes, Applicant has no plans to sell the home, or otherwise resolve the mortgage. (Item 6 at 18)

Applicant maintains a budget. He has \$10,000 deposited in a savings account, approximately \$3,100 invested in a retirement account, and he has \$2,127 in after-expense monthly income. (Item 9 at 18)

Applicant completed a security clearance application in April 2018. He did not disclose any delinquent debts, as required, in response to Section 26 of the application. (Item 5 at 35-36) During an interview a few months later, in October 2018, Applicant

disclosed his delinquent debt to the investigative agent after being confronted about it, and attributed his failure to include his delinquent debt on the application to unintentional oversight. (Item 6 at 12-13)

Applicant completed a security clearance application in November 2020. He disclosed all pertinent financial information about his financial problems, as required in response to Section 26, and stated in response to a request to provide steps that he was taking to resolve his financial problems, that he was “working on the situation.” (Item 4 at 36)

The SOR alleges that Applicant falsified material facts during a 2009 interview with an authorized DOD investigator when he denied having any derogatory financial information or accounts. Per the agent’s summary of the interview, Applicant “was confronted with derogatory financial information as directed under special interview [and] he provided the following explanation.” (Item 6 at 7) Applicant proceeded to discuss his financial difficulties in depth, identifying multiple debts that were included in a bankruptcy that he had filed.

The SOR alleges that Applicant failed to report to his company’s facility security officer that he was experiencing financial hardship. In support thereof, the Government submitted a continuous evaluation report, dated April 2020, disclosing several delinquent debts and noting that Applicant did not self-report them. (Item 12)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 ¶ 1(d) requires that “[a]ny 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. 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18) Applicant’s history of recurrent financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially applicable under 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . 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 first experienced financial problems after struggles with his two autistic children compelled his wife to quit her job to care for them. His financial problems recurred approximately ten years later after he failed a physical, prompting a transfer to a job within the company that paid \$80,000 less than the job that required him to pass a physical.

Applicant has provided no evidence of any steps that he is currently taking to resolve his financial problems. His most recent Chapter 13 petition was dismissed for failure to comply with the plan, and he has not made a mortgage payment on his home since 2017. Consequently, the issues with his children, and the major pay cuts he has taken over the years trigger the partial application of AG ¶ 20(b), but the failure to provide any evidence of rehabilitation of his financial problems, render the remainder of AG ¶ 20(b), as well as any of the other mitigating conditions, inapplicable. I conclude that Applicant has not mitigated the financial considerations security concerns.

Guideline E: Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (*Id.*)

The Government contends that Applicant falsified his April 2018 security clearance application by omitting relevant information about his delinquent finances, and that he lied to an investigative agent when asked about the omissions in a follow-up interview in October 2018. These allegations raise the issue of whether 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,” applies.

Proof of an omission alone does not establish a deliberate falsification. In order to establish falsification, the Government must establish that the omission was deliberate. (ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)). Here, Applicant’s unintentional omission was, at worst, careless. As such, I conclude that AG ¶ 16(a) is inapplicable to Applicant’s omissions on his 2018 security clearance application. I resolve subparagraph 2.a in Applicant’s favor.

As for Applicant’s follow-up interview with an investigative agent in October 2018, there is nothing in the investigator’s summary that indicates that he believed Applicant falsified material facts. Consequently, AG ¶ 16(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,” does not apply. I resolve subparagraph 2.b in Applicant’s favor.

Similarly, during the interview 13 years ago in 2009, as referenced in subparagraph 2.c, the investigative agent does not raise the issue of falsification in the summary statement. Consequently, I conclude that Applicant did not falsify financial information to an agent during a 2009 interview, and that AG ¶ 16(b) is inapplicable. I resolve subparagraph 2.c in his favor.

The fact that debts appeared on a 2020 continuous evaluation report before Applicant reported them to his employer does not establish that he intentionally withheld this information from his employer, as alleged in subparagraph 2.d, particularly given that he discussed the same debts during an investigative interview two years earlier. I conclude that allegation set forth in subparagraph 2.d does not trigger any security concern.

Whole-Person Concept

Applicant deserves credit for his military service and for the 12 years he spent working in various combat zones as a federal contractor after retiring from the military. However, absent evidence that substantiates that Applicant is satisfying, or otherwise resolving his financial delinquencies, any positive inference about his character that can be gleaned from his service to the government are insufficient to carry the burden. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the 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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge