



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



In the matter of:)
)
) ISCR Case No. 21-02576
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Brittany D. Forrester, Esq.

05/10/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the criminal conduct or financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct) and Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on March 17, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on January 18, 2023.

The hearing was originally scheduled for March 23, 2023. For good cause, I continued the hearing until April 20, 2023. The hearing was convened as rescheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 15 and Applicant Exhibits (AE) A through S without objection. Applicant testified on his own behalf at the hearing. I received a transcript (Tr.) of the hearing on April 28, 2023.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked since March 2019. He is once divorced. He was married from 2005 until 2014. He has been remarried since October 2017. He has two stepchildren, ages 26 and 23. He earned a bachelor's degree in 2015. (Tr. 17-19, 53; GE 1, 2; AE A, C, J-L)

In 2017, Applicant purchased a ring for his wife that contained a moissanite main stone for about \$2,000 from a jeweler who is an acquaintance of his. When he purchased the ring, he knew the main stone was moissanite and not a diamond. At the time of purchase, the jeweler's estimated replacement value for the ring was about \$2,600. In February 2017, Applicant insured two rings under a personal property policy with an insurance provider (Insurance Provider). Neither of the rings he covered under this insurance policy contained a main stone that was moissanite. (Tr. 20-23, 45-53; Answer; GE 1-9, 14)

In February 2019, Applicant's wife lost the moissanite ring at a theme park. On February 8, 2019, pursuant to his personal property insurance coverage, Applicant filed a fraudulent insurance claim with the Insurance Provider to cover the loss of the ring. He falsely claimed that the ring his wife lost contained a main stone that was a two-carat diamond and falsely claimed its value at about \$18,000. At the time, he knew that he was misleading the Insurance Provider by inflating the value of the lost ring. The Insurance Provider suspected that the lost ring was a moissanite ring rather than a diamond ring, so it asked him to provide the original purchase receipt for the ring. Applicant forged the ring's purchase receipt to further his false claim. The receipt he forged claimed that he paid about \$19,000 for a two-carat diamond ring. The Insurance Provider also obtained a copy of the actual receipt and valuation of the moissanite ring from the seller. In April 2019, when the Insurance Provider confronted him with the valuation discrepancy between the moissanite ring he lost and the two-carat diamond ring he claimed he lost, he falsely claimed that he did not know the main stone on the ring he lost was not a diamond. He also later changed his story and told the Insurance Provider that he made a mistake and made a claim for the wrong ring. (Tr. 20-23, 45-53; Answer; GE 1-9, 14)

The Insurance Provider referred the claim to the relevant state insurance fraud division, and it investigated the matter. Based upon the insurance fraud division's investigation, on June 26, 2019, the relevant state prosecutor's office charged Applicant with fraudulent insurance act, a felony, and forgery, also a felony. In September 2019, he pleaded guilty to lesser misdemeanor charges of false or fraudulent insurance claim and forgery. In November 2019, the court convicted him of these misdemeanor charges, sentenced him to 544 days in jail (all suspended), placed him on probation for two years, fined him \$1,400, and required him to take a moral reconnection therapy course. He also must notify the relevant state insurance department before filing any future insurance claim. He has satisfied all the sentencing requirements. Before this conviction, he had no prior criminal history. (Tr. 20-23, 45-53; Answer; GE 1-9, 14)

At the hearing, Applicant testified that an insurance claims adjuster with the Insurance Provider told him that he should inflate the value of the diamond in his engagement ring, because the Insurance Provider purchases replacement diamonds at wholesale value. He further testified that the claims adjuster informed him that inflating the value of the diamond in the engagement ring would make him whole for his loss. He did not provide this excuse for inflating the value of the ring during the Insurance Provider's investigation or the state insurance fraud division's investigation. He claimed that he may have made this claim to the judge when he was sentenced, but he also testified that he could not recall if he did or not. During his testimony, he could not adequately explain why he discussed the valuation of a diamond with the claims adjuster when he knew the ring he lost contained a moissanite stone. The first time this explanation of following the claims adjuster's advice to overvalue appears in the record is on his August 2020 Electronic Questionnaire for Investigations Processing (e-QIP). He provided no corroborating evidence for this explanation. He could not provide the claims adjuster's name. Based upon my observation of him during his testimony, the late timing of this explanation, the lack of corroboration, and his inconsistent excuses to justify his behavior, I find his explanation that a claims adjuster for the Insurance Provider advised him to inflate the value of the ring lacks credibility. (Tr. 20-23, 45-53; Answer; GE 1-9, 14) Any adverse information not alleged in the SOR will not be considered for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

Applicant's former brother-in-law opened, placed balances on, and became delinquent on numerous financial accounts in Applicant's name without his permission or consent. There were 15 delinquent accounts totaling about \$28,000. These fraudulently opened accounts are alleged in SOR ¶¶ 2.b through 2.p. Applicant claimed that he first became aware of these accounts in early 2019. However, he did not realize that his former brother-in-law was responsible until sometime after he submitted his e-QIP in August 2020, but before his security interview in April 2021. He confronted his brother-in-law, who confessed to the identity theft. Applicant did not file a police report because he did not want his former brother-in-law to face criminal charges. Instead, he and his brother-in-law have either paid the relevant SOR accounts or are in the process of repaying them. All the relevant SOR accounts have either been resolved or are being resolved. Applicant believes that his former brother-in-law found Applicant's personal information in Applicant's house. He now secures his personal information in a safe, and, other than dealing with these accounts, he no longer associates with his former brother-in-law. (Tr. 23-37, 40-44; Answer; GE 1-2, 10-13, 15; AE M-S)

Applicant had a judgment entered against him in 2018 in the approximate amount of \$1,086 that consisted of overpayment of unemployment benefits. The Government listed this debt in SOR ¶ 2.q. He satisfied this judgment in January 2019. (Tr. 36-37; Answer; GE 12)

Applicant claimed that he accepts full responsibility for his actions. He claimed that he knows what he did was wrong, he has learned his lesson, and he is now trustworthy and shows better judgment. He provided character reference letters from acquaintances and colleagues who attested to his dedication, professionalism, honesty, reliability, and integrity. Some of the individuals who wrote these character reference letters hold a security clearance. He has volunteered his time helping an organization devoted to assisting those with mental illness and has been active in his church. He has received promotions and performance awards at work, and he has completed training for securing protected information. He is also working on obtaining a master's degree in business administration. (Tr. 20-23, 37-39, 49-50; AE A-J)

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 J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In 2019, Applicant engaged in criminal conduct when he filed a fraudulent insurance claim and forged a document in furtherance of that claim. After criminal charges were filed, he pleaded guilty to misdemeanor charges of false or fraudulent insurance claim and forgery. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher

education, good employment record, or constructive community involvement.

While it has been almost four years since Applicant filed his false insurance claim and forged a document, I note that his criminal acts included a sustained commitment to dishonesty and untruthfulness. Furthermore, his testimony that a claims adjuster for the Insurance Provider advised him to inflate the value of his claim lacks credibility. I believe he is being untruthful about a material fact relevant to a security clearance adjudication. Providing untruthful material information in a security clearance adjudication is a criminal offense under 18 U.S.C.A. § 1001. Therefore, Applicant continues to engage in criminal behavior, undercutting his efforts at mitigation under AG ¶ 32(a) and AG ¶ 32(d), which require the passage of time without recurrence of criminal acts. Given the recency of criminal activity and his continued dishonesty, AG ¶ 32(a) does not apply.

There is evidence that Applicant has met some of the elements of AG ¶ 32(d), such as job training, a good employment record, compliance with the terms of his sentence, volunteering, and working on a master's degree. However, these factors are outweighed by Applicant's continued untruthfulness to attempt to excuse his criminal acts. He has not provided sufficient evidence of successful rehabilitation. AG ¶ 32(d) does not apply. He has not mitigated the criminal conduct security concerns.

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;
- (c) a history of not meeting financial obligations; and
- (f) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant filed a fraudulent insurance claim involving the intentional financial overvaluation of his personal property. He also forged a document that evidenced a financial transaction. He had 16 financial accounts that were either delinquent or had been delinquent, totaling about \$28,000. The evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

With respect to Applicant's fraudulent insurance claim and forgery, for the same reasons I referenced in my analysis of this behavior under Guideline J, I cannot find that this behavior is unlikely to recur, and that it does not cast doubt on his current reliability, trustworthiness, or good judgment. None of the Guideline F mitigating conditions apply to this behavior.

Without Applicant's consent, his former brother-in-law opened and made charges on the accounts listed in SOR ¶¶ 2.b through 2.p. He has worked with this former brother-in-law to pay or make payments on those accounts. He has a reasonable basis to dispute those debts and provided evidence of his actions to resolve the issue. I find in his favor with respect to those allegations pursuant to AG ¶¶ 20(a), 20(b), 20(d), and 20(e). Applicant resolved the judgment listed in SOR ¶ 2.q by paying it prior to the Government issuing the SOR. I find in his favor with respect to this allegation pursuant to AG ¶ 20(d).

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 have incorporated my comments under Guidelines J and F in my whole-person analysis. I have also considered Applicant's positive character references, volunteer activities, good job performance, job training, and continuing education.

Overall, 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 criminal conduct or financial considerations 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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b-2.q:	For 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 R. Dorsey
Administrative Judge