



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



In the matter of:)
)
) ISCR Case No. 23-00753
)
Applicant for Security Clearance)

Appearances

For Government: John Renehan, Esq., Department Counsel
and Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

04/12/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 7, 2022. On May 10, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DCSA CAS acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 8, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 1, 2023, and the case was assigned to me on February 1, 2024. On February 8, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on March 14, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until March 29, 2024, to enable him to submit documentary evidence. He timely submitted Appellant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on March 22, 2024.

Amendment of SOR

At the hearing, Department Counsel moved to withdraw SOR ¶¶ 2.a, 2.b, and 2.e. I granted the motion. (Tr. 6-8)

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.d. He denied the allegations in SOR ¶¶ 1.e through 1.i and 2.a through 2.e. His admissions are incorporated in my findings of fact.

Applicant is a 31-year-old calibration technician employed by a defense contractor since August 2020. He served on active duty in the U.S. Navy from June 2012 to February 2017 and received an honorable discharge. He has never married. He has a two-year-old child. He graduated from high school in May 2010. He attended college from August 2010 to May 2011, but he did not receive a degree. He received a security clearance in 2020. (Tr. 17)

Applicant was involuntarily discharged from the Navy because the number of sailors in his year group with his rate and rating was overmanned. (Tr. 23) After he was discharged, he was unemployed until he was hired by a construction materials company in September 2018. His job was to check the quality of concrete for government projects. He testified that he was "let go" in March 2019, because he was accused by his supervisor of approving defective materials. He believes that his termination was racially motivated. (Tr. 20-21) When he responded to DOHA interrogatories in May 2023, he stated that he left this job for a new job. (GX 2 at 7)

Applicant worked for a highway construction company from June to December 2019. He worked 60-70 hours per week and was terminated after he took a "few days" off because he was "entirely tired." (Tr. 19-20) When he responded to the DOHA interrogatories, he was asked if he had been fired, quit after being told he would be fired, or left my mutual agreement following charges or alleges of misconduct or notice of unsatisfactory performance. He responded, "None of the above." (GX 2 at 8)

Applicant worked as an appraisal technician for a used-car dealership from January to March 2020 and was “let go” because he took too much time off during the COVID-19 pandemic. (Tr. 17-18) When he responded to DOHA interrogatories in May 2023, he stated that he left this job because of COVID-19. He also stated that he was fired. (GX 2 at 9)

The SOR alleges nine delinquent debts reflected in credit reports from April 2023 (GX 3), October 2022 (GX 4), and October 2022 (GX 5), and three court records. (GX 5, 6, and 7). The evidence of these debts is summarized below.

SOR ¶ 1.a: credit-union debt placed for collection of \$11,113. This debt was for a credit card that Applicant used for living expenses. (Tr. 37) It was placed for collection in April 2019 (GX 3 at 3). It is not resolved.

SOR ¶ 1.b: credit-union debt placed for collection of \$583. This debt was for an overdrawn bank account. (Tr. 41) It was placed for collection in July 2019. (GX 3 at 4) It is not resolved.

SOR ¶ 1.c: credit-union debt placed for collection of \$14,459. This debt was for a second credit card from the credit union alleged in SOR ¶ 1.a. (Tr. 42-43) It was placed for collection in April 2019. (GX 3 at 4) It is not resolved.

SOR ¶ 1.d: finance company debt charged off for \$1,404. This debt was for a secured loan from a commercial finance company. The last payment was in March 2019. (GX 8 at 8) It was charged off in June 2019. (GX 3 at 6) It is not resolved.

SOR ¶ 1.e: delinquent rent payment placed for collection of \$1,259. Applicant testified that he paid his rent two or three days after the due date. According to Applicant, the landlord accepted the late payment and then returned a week later and told him he was being evicted. (Tr. 47) He was evicted from an apartment and a default judgment was entered against him. (GX 2 at 20-22)

SOR ¶ 1.f: judgment for \$203. The SOR alleges that this was a judgment. However, the evidence reflects that it is a past-due fine and court costs for a speeding ticket in July 2018. (GX 6) It is not resolved.

SOR ¶ 1.g: judgment for \$1,837. This judgment was entered in March 2020. The basis for the judgment is not reflected in the record. It is not satisfied. (GX 5)

SOR ¶ 1.h: judgment for \$134. The SOR alleges that this debt was reduced to a judgment. However, the evidence reflects that this was not a civil judgment. It is a past-due fine and court costs based on a citation for defective equipment on a vehicle. (GX 7) It is not resolved.

SOR ¶ 1.i: unemployment compensation benefit warrant for \$27,283. Applicant testified that he was concerned about contacts with other people and their

vehicles during the COVID-19 pandemic, and he stopped going to work at the car dealership for about a month, but he kept in contact with his manager. He provided a copy of a text message from his employer on April 7, 2020, which states,

I wanted to let all of you know that tomorrow, 4/8, we're delaying the opening of the store until 1:00 pm (this affects all departments). It's critical that you log in to Workday tomorrow morning at 10:00 am to receive an important update from [supervisor] about our response to the Coronavirus pandemic. While I do not have any additional information to share at this time, please contact me directly if you have questions or concerns. I also ask that you respond to this text to acknowledge you understand the guidance for tomorrow.

Several recipients acknowledged receipt of this message, but there is no indication that Applicant acknowledged receipt. (AX A) Applicant testified that when he was unable to log into the system, he went to the work site and learned he was not in the "Workday" system. He contacted his manager, who told him, "We let you go." In his response to DOHA interrogatories, he stated that he was fired. (GX 2 at 9) He testified that he is working with a lawyer to overturn the decision, but the issue is not resolved. (Tr. 51-53)

Applicant has not taken any steps to resolve any of the debts alleged in the SOR ¶¶ 1.a-1.h. The debt for unemployment compensation is being collected by garnishment. (Tr. 55)

When Applicant was interviewed by a security investigator in January 2023, he reported that net monthly income was about \$5,361 and that his net remainder after paying all his living expenses was \$3,161. (GX 2 at 15) At the hearing, he testified that his monthly expenses have gone up somewhat, because he has expenses related to supporting his child, but he still has a net monthly remainder. He does not pay court-ordered child support, but he contributes about \$600 per month for daycare and shares the cost of food and clothing. (Tr. 29, 61) He is seeking to buy a home, and he has been advised by a mortgage lender that resolving the charged-off debts reflected on his credit reports is not necessary. (Tr. 64)

When Applicant submitted his SCA in August 2022, he listed two addresses where he had lived during the last ten years in Section 11, but he did not list the two most recent addresses. This omission was alleged in SOR ¶ 2.a, which was withdrawn.

In Section 13A of the same SCA, pertaining to his employment record, he listed his current employment, his military service, and one job that he held before enlisting in the Navy. He did not list his employment by the construction materials company, the highway construction company, and the car dealership. This omission was alleged in SOR ¶ 2.b, which was withdrawn.

In Section 26 of the same SCA, he answered "No" to questions asking if, in the last seven years, he had been delinquent on alimony or child support payments, had a

judgment entered against him, or had a lien placed against him for failing to pay taxes or other debts. He did not disclose the judgment against him alleged in SOR ¶ 1.g and the unemployment compensation benefit warrant filed against him alleged in SOR ¶ 1.i.

Applicant also answered “No” to questions in the same section, asking if, in the last seven years, he had any possessions or property repossessed; had defaulted on any loans; had any bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay the debt as agreed; been evicted for non-payment; had wages, benefits, or assessed garnished or attached for any reason; and if he was currently over 120 days delinquent on any debt. He did not disclose the debts alleged in SOR ¶¶ 1.a-1.i. These omissions were alleged in SOR ¶ 2.c.

In Section 28 of the SCA, Applicant answered “No” to a question whether, in the last ten years, he had been a party to any public record civil court action not listed elsewhere in the SCA. He did not disclose the judgement alleged in SOR ¶ 1.g. This omission was alleged in SOR ¶ 1.e, which was withdrawn.

When a security investigator questioned Applicant about his debts in January 2023, he said that he did not know he was required to report his financial problems and that he did not intend to resolve his debts or contact his creditors. He told the investigator that mortgage lenders told him not to worry about his debts because they were charged off. He told the investigator that he would satisfy his delinquent debts only if it was required to keep his security clearance. (GX 2 at 15)

At the hearing, Applicant testified that he was deployed when he submitted his SCA, did not pay attention to questions, and “entirely blew” the section about delinquent debts. He testified that he would “definitely consider” paying off his delinquent debts if necessary to keep his job or his security clearance. (Tr. 57-59)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's discharge from the Navy was a condition largely beyond his control. His termination in March 2019 may have been a condition beyond his control. However, his loss of employment in December 2019 and March 2020 were both due to his decisions to absent himself from work without approval of his supervisor. Furthermore, he has not acted responsibly toward the debts he incurred while unemployed. He submitted no evidence of contacts with creditors, payments, or payment agreements.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments, payment agreements, or other efforts to resolve his debts. His debt for the unemployment benefits is being collected by garnishment, which is not a "good-faith effort" to resolve a debt. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(e) is not established. While Applicant may have mistakenly believed he was entitled to unemployment benefits, the evidence shows that he was "let go" because he failed to come to work for a month. He testified that he intends to contest the effort to recoup the unemployment benefits, but he provided no documentation of any effort to do so.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition is AG ¶ 16(a):

[D]eliberate 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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An

administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant's testimony at the hearing reflected that he did not appreciate the relationship between his delinquent debts and his suitability for a security clearance. He also did not appreciate the importance of the SCA in the adjudication process. He did not take the time to properly complete Sections 11, 13A, 26, and 28 of the SCA. He admitted that he "blew" the financial part of the SCA, but he has offered no plausible explanation for failing to disclose that he left three jobs under unfavorable circumstances.

The SOR allegations of falsifying Sections 11, 13A, and 28 were withdrawn by department counsel and may not be the basis for denying Applicant's application. However, I may consider these omissions from his SCA to determine whether he has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; to assess credibility, or to provide evidence for whole person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's failure to fully disclose information in Sections 11, 13A, 26, and 28 for these limited purposes. In this regard, I have noted that the Directive provides that "any failure" to provide truthful and candid answers during national security investigative processes "can raise questions about a person's eligibility for a clearance." It does not expressly limit the concern to deliberately false statements. See ISCR Case No. 17-02520 at 4 (App. Bd. Jun. 27, 2019).

Based on the foregoing considerations, I conclude that AG ¶ 16(a) is established by the falsifications alleged in SOR ¶¶ 2.c and 2.d. The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant did not acknowledge his delinquent debts until he was confronted with the evidence by a security investigator in January 2023.

AG ¶ 17(c) is not established. Applicant's falsifications were recent, involving his current SCA, and they were not minor. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance

investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable military service. I have also considered his lack of understanding of the relationship between financial responsibility and suitability for a security clearance. I have considered his lack of appreciation for the necessity of complete and accurate information in an SCA so that the government can make sound decisions, based on complete and accurate information, about who will be granted access to classified information. After weighing the disqualifying and mitigating conditions under Guidelines F and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and his lack of candor in his SCA.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: **Withdrawn**

Subparagraphs 2.c and 2.d:

Against Applicant

Subparagraph 2.e:

Withdrawn

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge