



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



In the matter of:)
)
) ISCR Case No. 23-01592
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Department Counsel
For Applicant: *Pro se*

04/30/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Security clearance eligibility is denied.

Statement of the Case

On September 29, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On October 13, 2023, Applicant answered the SOR, admitting the allegations and requesting a decision based on the evidence on file instead of a hearing. On November 1, 2023, Department Counsel prepared a file of relevant material (FORM), a brief with 12 attachments (Item 1 – Item 12) supporting the Government’s contention that Applicant should be precluded from having access to classified information. Applicant received the FORM on November 12, 2023. On December 13, 2023, Applicant filed a reply. The case was assigned to me on January 4, 2024.

Findings of Fact

Applicant is a 62-year-old, married man from Hungary. He immigrated to the United States as a refugee in 1983 and became a naturalized citizen in 1988. (Item 12 at 3, 8) He is a veteran of the U.S. Army, serving from 1984 to 1988. He was discharged honorably. (Item 12 at 1) He is a high school graduate who has earned some college credits. He works with various DOD contractors in the field of business development.

Personal Conduct:

After Applicant finished his stint in the Army in 1988, he joined the Army National Guard (the Guard) later that year. (Item 12 at 10) In November 1989, while stationed in Germany with the Guard, Applicant requested to travel to his home country over the ensuing weekend to visit family. (Item 10 at 2) His request was rejected because he did not meet the regulatory deadline for requesting permission to travel to a communist country. (Item 10 at 2) Applicant then requested leave to travel to another part of Germany, ostensibly to visit family members. This request was approved. About three weeks later, it came to light that Applicant had in fact traveled to his country of birth during the time that he was supposed to have traveled to Germany. (Item 10 at 2-3) Moreover, he had driven his personally owned vehicle and left it at his brother’s home in his country of birth without authorization and without going through the proper U.S. customs protocols. (Item 10 at 2-3) These activities prompted an investigation. Applicant then went absent without official leave (AWOL), failing to report for duty and leaving the base without permission or informing anyone of his whereabouts. Approximately six weeks later, the Army dropped him from the rolls. (Item 11 at 1)

Applicant lived in his home country for seven years until he was detained and arrested in a United States airport after returning to visit friends. (Item 12 at 12) Subsequently, he was charged with misuse and abuse of privileges, crossing an international border without appropriate travel documentation, and failure to obey an order or regulation. In October 1996, he was administratively separated from the Guard with an Other Than Honorable Discharge. (Item 4 at 1)

Applicant contends that he left his unit because of “constant humiliation and public shaming . . . by the company commander, and general hostility . . . that point[ed] to discrimination by national origin. . . .” (Item 4 at 1) While living in his country of birth, Applicant worked for U.S. multinationals. In December 2022, Applicant petitioned the

Department of Veterans Affairs for an upgrade in the character of his discharge to honorable, and it was granted. (Reply at 2)

Financial Considerations:

Over the years, Applicant incurred multiple delinquent debts totaling approximately \$81,000. He attributes his financial problems to an extended unemployment period during the COVID-19 pandemic when, unable to make ends meet, he turned to using credit cards to pay for his routine living expenses. (Item 6 at 10; Item 12 at 2) During an April 2023 investigative interview, Applicant was confronted with his SOR delinquencies. (Item 6 at 10-11) He promised to begin making payments on the debts alleged in the SOR as subparagraphs 1.b through 1.j, within 30 days, and he promised to pay the debt, alleged in subparagraph 1.a, within one year of the interview. (Item 6 at 10) He did not begin to make any payments on the debts within the promised time frames. However, in 2023, he did follow through on his promise to pay the debt alleged in subparagraph 1.j, a \$548 delinquency owed to a credit card company. (Reply at 2-5) It is now in current status. (Reply at 2-5) He has yet to address any of the other SOR debts. He states that he has been working with a debt consolidation company to help him reduce his debts as of March 2023, but had not yet reached an agreement. (Item 12 at 2) Moreover, he stated that he has tried over the years to negotiate payment plans with the SOR creditors, but his efforts have been unsuccessful. (Item 12 at 22) Since 2022, he has traveled abroad twice to visit friends. (Item 5 at 37-38)

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. 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.” 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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “[f]ailure 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 admissions and the record evidence of the ten delinquent accounts alleged under Guideline F support the application of AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20, listed below, are potentially applicable in this case:

(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;

(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’s financial problems are ongoing, therefore, AG ¶ 20(a) does not apply. Applicant’s financial problems coincided with unemployment that he experienced during the COVID-19 pandemic, which was a circumstance beyond his control. However, despite his promise to begin satisfying the debts within 30 days of his 2023 subject matter interview, he has only addressed one debt, a credit card account delinquent in the amount of \$548. Moreover, during the time that these debts have been outstanding, Applicant chose to use his money to finance two trips abroad to visit friends rather than resolving his indebtedness. Consequently, Applicant’s resolution of the debt alleged in subparagraph 1.j is enough to mitigate this single allegation. However, his failure to contact creditors and arrange a

reasonable payment plan or settlement for the remaining nine delinquent debts is not sufficient to conclude that Applicant acted responsibly to address his financial responsibilities in their entirety, particularly in light of the traveling abroad while these debts were outstanding. Under these circumstances, the applicability of AG ¶ 20(b) is limited to its first prong with respect to Applicant's financial problems stemming from circumstances beyond his control.

Applicant presented no evidence that he is working with a credit counseling company or has ever worked with a credit counseling company. AG ¶ 20(c) does not apply. Applicant's satisfaction of the delinquency set forth in subparagraph 1.j is sufficient to trigger the application of AG ¶ 20(d); however, its applicability has limited probative value, given the nominal amount of the debt in comparison to the other SOR debts. On balance, I conclude Applicant has failed to mitigate the financial considerations security concerns.

Guideline E, Personal Conduct

Under this guideline, "[c]onduct 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) Applicant went AWOL from the Guard, traveling to his home country after his command denied his official request to travel there, circumventing the order by lying about his destination. After leaving the Army base without authorization, he avoided accountability by disappearing for the next seven years. AG ¶ 16(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," applies.

Nearly 35 years have passed since the AWOL episode. Since then, Applicant has worked with various U.S. multi-national companies, and he successfully applied for the character of his discharge to be upgraded to honorable. Conversely, going AWOL is a profound breach of duty, which, in Applicant's case, was compounded by his lying about the destination of where he was traveling to his command. Consequently, given the extraordinary nature and seriousness of Applicant's conduct, it is not mitigated by the passage of time. Under these circumstances, I conclude that none of the mitigating conditions apply.

Whole-Person Concept

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.

In reaching my conclusion, I considered the whole-person factors and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for 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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge