



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



In the matter of:)
)
) ISCR Case No. 12-07729
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 16, 2012. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on November 20, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he submitted a notarized, written response to the SOR allegations dated February 28, 2015. He requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on August 20, 2015. Applicant received the FORM on August 25, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response which was timely received. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 13, 2015. The Government submitted 11 exhibits, which have been marked as Items 1-11 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Procedural Ruling

Motions

Department Counsel filed a Motion to Amend the SOR in her brief. Applicant has not objected to the motion, and he has filed a response to the motion. The SOR is amended as follows:

2. Guideline E: 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Available information raising this concern shows that:

- a. You falsified material facts on an Electronic Questionnaire or Investigations Process (e-QIP), signed by you on March 12, 2012, in response to the following subsection of Section 13A - Employment Activities regarding your employment at [Company A]:¹ "Provide the reason for leaving the employment activity." You answered "Got laid off due to project ended" and deliberately failed to report that you quit your job at [Company A] after being told you would be fired."
- b. You falsified material facts during your personal subject interview on April 2, 2012, with a DoD authorized investigator, when you stated that you were laid off from your position at [Company A] in January 2004 due to a project ending, when you then knew and sought to conceal that you

¹For security reason, specific identifying information about employers and creditors in the amended SOR has been redacted.

quit your job at [Company A] after being told you would be fired.

- c. You falsified material facts on a Questionnaire for Public Trust Positions (SF85P) signed by you on August 30, 2010, in response to the Section 12 Your Employment Record Has any of the following happened to you in the last 7 years? . . . (1) Fired from a job, (2) Quit a job after being told you'd be fired, (3) Left a job by mutual agreement following allegations of misconduct, (4) Left a job by mutual agreement following allegations of unsatisfactory performance, (5) Left a job for other reason under unfavorable circumstances." You answered "No," and deliberately failed to report that you quit your job at [Company A] after being told you would be fired.
- d. You falsified material facts on a Questionnaire for Public Trust Positions (SF85P) signed by you on August 30, 2012, in response to the Section 22 Your Financial Record Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government. You answered "No," and deliberately failed to report that you were over 180 days delinquent on at least the following accounts: (1) a student loan account with [omitted] the approximate amount of \$3,431, (2) an account with [omitted] in the approximate amount of \$6,004, (3) a student loan account with [omitted] in the approximate amount of \$30,917, (4) a student loan account with [omitted] in the approximate amount of \$23,563, (2) a line of credit with [omitted] in the approximate amount of \$2,084.

Findings of Fact

In his Answer to the SOR, Applicant neither admitted nor denied the factual allegations in ¶¶ 1.a and 1.b of the SOR. Rather, he attached a document showing the status of these debts. Based in the contents of this document, his response is viewed as a denial of the factual allegations in the SOR.² In his response to the factual allegations

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17,

set forth in the amended SOR, he admitted the allegations in ¶¶ 2.a - 2.c, but denied the allegation in ¶ 2.d. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 35 years old, works as a systems engineer for a DOD contractor. He began his current employment in December 2011 after being unemployed for about five months. Applicant previously worked as an internet protocol (IP) field specialist for about one year, as a support services technician for three years, a legal clerk for two and one-half years, in sales, and as an account manager.³

Applicant graduated from high school. He received an associate's degree from a technical institute in March 2003, and he received his bachelor's degree in March 2007. Applicant is single.⁴

From June 2003 until January 2004, Applicant worked as an account manager for a large corporation (Company A). Applicant worked in a call center. His job duties required him to receive or handle a specific number of calls each day and each month and to sell credit protection to customers. Some months his call numbers were lower than expected. He received coaching on how to increase his numbers, but he was never disciplined for his low numbers. In December 2003, a co-worker told him how to disconnect calls as the calls came to Applicant's work station, but still have the calls count towards his daily and monthly numbers. This conduct violated company rules and regulations. Management learned about this activity. In January 2004, Applicant met with an individual from human resources, who told him he had a choice of being involuntarily terminated for this conduct or resigning before being involuntarily terminated. Applicant chose to resign immediately. The human resources individual told him that his records would not show the reason that he left. Future employers would only be told that he worked at Company A and the dates of his employment.⁵

Applicant relied upon education loans to help pay for his education. After he lost his job in January 2004, he stopped making his monthly payments. Although he obtained another job shortly thereafter, he did not resume his monthly payments because his new job paid him on a commission basis. When he obtained employment with a steadier income, he contacted a representative of the student loan creditor to work out a payment arrangement. This creditor sought a substantial one-time payment to bring his student loans current. Applicant did not have the money. Between August 2010 and March 2011, he made monthly payments of \$500. These payments stopped when he learned he might be laid off from his then job. Applicant provided

2009).

³Item 7.

⁴Item 7.

⁵Item 3; AE A.

documentation showing that he fully paid his student loans listed in the SOR after reaching a resolution on the amount of the debt owed with the creditor currently holding the debt. His evidence is support by the June 24, 2015 credit report, which shows the current creditor (same account numbers) having a zero balance and a notation that the debt is paid.⁶

Applicant completed and signed a Standard Form (SF) 85P on August 30, 2010. Section 12 asked him if, in the last seven years, had any of the following happened to him: (1) fired from a job; (2) quit a job after being told you would be fired; (3) left a job by mutual agreement following allegations of misconduct; (4) left a job by mutual agreement following allegations of unsatisfactory performance; and (5) left a job for other reasons under unfavorable circumstances. He answered “no” without acknowledging his departure from Company A in January 2004 because of misconduct. Applicant met with an investigator from the Office of Personnel Management on April 26, 2012 for his personal subject interview (PSI) related to the completion and submission of his SF85P in August 2010. During the interview, he told the investigator that he was laid off from his job with Company A in January 2004 because the project ended. He did not further discuss his job with Company A. Just prior to his April 2012 PSI, Applicant completed an e-QIP on March 12, 2012. He again stated that he was laid off from his job with Company A in January 2004 due to the end of a project.⁷

When he met with an OPM investigator in 2014, Applicant told the investigator that he incorrectly listed the reason for his departure from Company A. In his response to the FORM, Applicant acknowledged that he was not truthful about the reason for his departure from his job with Company A in January 2004. He admitted being ashamed of the real reason for his immediate resignation. Because his employer advised that it would only provide the dates of his employment to prospective employers, he decided to indicate that he was laid off as the reason for his departure. He continued to use this reason for consistency when having to explain the reason for leaving the job. He acknowledge that his decision showed a lack of judgment. He regrets his decision and promised he will never falsify any application, document, record or anything else again.⁸

Concerning his finances, the amended SOR alleges that Applicant falsified his 2010 SF85P when he failed to report that three student loans, a line of credit and a credit card were more than 180 days delinquent as requested in Section 22 of the SF85P. In his response to the FORM, Applicant states that it was his understanding that once these accounts were charged off, the accounts were no longer considered delinquent. For this reason, he did not acknowledge that the accounts were more than 180 days past-due. The September 2010 credit report indicates that the line of credit account was charged off in July 2008; that one student loan account was charged off in September 2008; that the remaining two student loan accounts were charged off in

⁶Item 2; Item 6, p. 3-4.

⁷Item 7; Item 9; Item 10.

⁸Item 3; AE A.

June 2009, and that the credit card account was charged off in February 2010.⁹ The record lacks any evidence of financial counseling.

Policies

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 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, these guidelines are applied 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 access to classified information will be resolved in favor of 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

⁹Item 11; AE A.

Section 7 of Executive Order 10865 provides that 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 F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems beginning in 2004 when he lost his job and later worked on commission sales. Two student loans, totaling approximately \$68,000, remained unresolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not received financial or credit counseling. He, however, provided documentation showing that he has paid his student loan debt. AG ¶ 20(c) applies. Applicant contacted the creditor currently holding his student loan debts and negotiated a resolution of the debts, then paid this amount. His actions reflect a “good-faith effort” to resolve his debts. AG ¶ 20(d) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government alleges Applicant falsified his 2010 SF85P (SOR ¶¶ 2.c and 2.d) when he provided incorrect information about his debts and his 2004 job termination. The Government also alleges falsification by Applicant on his 2013 e-QIP (SOR ¶ 2.a) when he provided incorrect information about his 2004 job termination, and when he provided false facts to the OPM investigator about his 2004 job termination (SOR ¶ 2.b). For AG ¶ 16(a) and 16(b) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2010 SF85P when he answered "no" to questions asking about delinquent debts and about job terminations. Applicant denied intentionally falsifying his answers on his SF85P about his finances. He, however, admitted that he deliberately provided false information on his SF85P and to the OPM investigator about the reason for the termination of his employment at Company A in January 2004. With this admission, SOR allegations in ¶¶ 2.a - 2.c are established.

When the allegation of falsification is controverted, as Applicant has done with SOR ¶ 2.d, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹⁰ Applicant mistakenly thought that when debts are charged off, the debts are no longer considered delinquent. His mistaken understanding of this fact is sufficient to establish that Applicant did not deliberately intend to withhold information about his past debts. The Government has not established a security concern about SOR ¶ 2.d, which is found in favor of Applicant.

The personal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and I find that none apply. Personal conduct concerns are not mitigated.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

¹⁰ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” *See, e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. *See, e.g.*, ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant experienced financial difficulties when he lost his job in 2004. Although he immediately found another job, his income was based on commission sales, making his income erratic. When his income stabilized, he worked with his creditors to resolve his debts, particularly his student loan debt. He has established a track record for resolving debts. When he met with the OPM investigator in 2014, Applicant provided detailed information about the reasons for his job loss. He acknowledged in his response to the FORM that he had not been truthful during the investigation process. He admitted that he showed his poor decision-making and a lack of judgment when he concealed the reason for his job termination from Company A. Applicant’s recent ownership of his past falsification is admirable and a factor I have considered. Given the number of times over a nearly 10 year period of time he chose not to be forthright about the reason for his departure from his job with Company A, his recent admissions and acceptance of his obligation to be truthful are insufficient to overcome the Government’s security concerns about his ability to be truthful.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F, but he has not mitigated the security concerns about his personal conduct under Guideline E.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant
Subparagraph 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is denied.

MARY E. HENRY
Administrative Judge