



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



In the matter of:)	
)	
)	ISCR Case No. 12-08132
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

09/23/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 12, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on October 16, 2014, and elected to have his case decided on the written record. On August 13, 2015, Department Counsel submitted the

Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on December 10, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and did not submit any additional information. The Government's documents identified as Items 4 through 8 are admitted into evidence. The case was assigned to me on March 31, 2016.

Findings of Fact

Applicant admitted all 18 of the delinquent debt allegations in the SOR, but failed to admit or deny the allegation in SOR ¶ 2.a. I will consider his failure to respond as a denial. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He earned a college degree in 2010. He married in 2002 and divorced in 2006. He remarried in 2010. He has a 14-year-old stepchild and a 6-year-old son. He served on active duty in the military from 1999 to 2005 and was honorably discharged. He has been employed since August 2010. He indicated he was unemployed while he was attending college from November 2007 through August 2010. He supported himself and his family during this time through the GI Bill and his wife's income.¹

In May 2012 Applicant was interviewed by a government investigator as part of his background investigation. He disclosed to the investigator that after his discharge from the military in 2005 he had difficulty finding employment. His security clearance application (SCA) does not reflect a period of unemployment, but rather he disclosed he was employed from August 2005 when he was discharged from active duty until December 2006 with the same employer. Applicant has resided at the same home since May 2009. Applicant also attributed mismanagement for causing his financial difficulties.²

Applicant completed an SCA on March 9, 2012. In response to questions about financial delinquencies and whether in the past seven years he had bills or debts turned over to a collection agency, he answered "no." The debts alleged in SOR ¶ 1.b, 1.c, 1.e, and 1.m through 1.t had been turned over to collection agencies at that time. Applicant disclosed on his SCA that he had a vehicle repossessed in August 2007, but he indicated the debt was resolved in September 2007. No other debts were disclosed.³

The 18 delinquent debts alleged in the SOR total approximately \$15,772. During his background interview, Applicant denied he was aware he had most of these debts, but did acknowledge he was aware of the debts in SOR ¶¶ 1.b (\$1,020), 1.c (\$482) and

¹ Items 5 and 6.

² Items 4, 5 and 6.

³ Item 5.

1.p (\$85), which he incurred for medical services in 2009 when he was unemployed and did not have medical insurance. He could not afford to pay the medical bills when they became due and indicated he kept putting them aside intending to pay them at a later date. They were eventually turned over to a collection company. He told the investigator that he does not dispute the debts and intended to contact the collection company to pay the debts as soon as he was able. He stated that he forgot about the past-due medical bills and had not checked his credit report prior to submitting his SCA, so he did not list them on it. Applicant did not provide any evidence that the bills are paid.

Credit reports from March 2012 and February 2014 confirmed the debts in the SOR. They listed the earliest date of delinquency as 2006, and most are from 2010.⁴

Applicant admitted owing the debt alleged in SOR ¶ 1.r (\$3,771). During his 2012 background interview, he acknowledged the debt and indicated he fell behind on payments in 2010, but said the account was paid in full. He failed to provide proof the debt was paid.⁵

Regarding the remaining debts alleged on the SOR, Applicant indicated during his background interview that he did not recognize the debts, but intended on contacting the creditors and if he was responsible for the debts, he would pay them. He acknowledged in his answer to the SOR that the debts belonged to him, but failed to show evidence that he has paid or resolved them.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

⁴ Items 4, 5, 7, 8.

⁵ Items 4, 5.

⁶ Item 5.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁷

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has 18 delinquent debts that total approximately \$15,722. He began accruing the majority of them in 2010. His delinquent debts are unpaid and unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated 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.

Applicant failed to provide evidence that any of the debts in the SOR have been paid or resolved, despite being put on notice in 2012 during his background interview

⁷ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

that they posed a security concern. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant indicated his financial problems were due to unemployment because he chose to return to school and also through mismanaging his finances. He told the government investigator that he had difficulty getting a job after he left the military, but information he provided in his SCA shows he was employed after leaving active duty and his only period of unemployment was when he was attending school. Choosing to go back to school may have been the right decision for Applicant, but it was not a condition beyond his control. He used his GI Bill and his wife's income to support the family during this time. He did not provide other evidence to show his financial problems were beyond his control. AG ¶ 20(b) does not apply.

Applicant did not provide evidence that he has received financial counseling. There is insufficient evidence to conclude he made good-faith payments to creditors or otherwise resolved his delinquent debts. There are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant stated in his interview to a government investigator that he paid certain debts and also admitted all of the debts in his answer to the SOR. He did not, however, provide proof that he disputed them because they were already paid. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 a condition that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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.

Applicant indicated that when he was unemployed while attending school he did not have medical insurance and subsequently was unable to pay his medical bills. He was aware these bills were turned over to a collection agency. However, when confronted about the delinquent debts during an interview, he stated he failed to disclose them because he had forgotten about them. In addition to these delinquent debts, Applicant has numerous other delinquent debts that accrued when he was attending school. Applicant disclosed on his SCA he had a vehicle repossession that was resolved. I did not find Applicant's explanation for not disclosing the 18 delinquent debts to the investigator credible. It is not believable that Applicant acknowledged that his unemployment and financial mismanagement caused him financial difficulties, and he disclosed he had a vehicle repossessed, but then indicated that he was unaware he had other delinquent debts that were turned over to a collection agency because he simply forgot them. I find Applicant deliberately failed to disclose he had some delinquent debts turned over to a collection agency when he completed his SCA. The above disqualifying condition applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not provide evidence to show he made a good-faith effort to correct the omissions before being confronted with the facts. Failure to disclose information on an SCA is not a minor offense and there is insufficient evidence to conclude it happened under unique circumstances. AG ¶ 17(a) and 17(c) do not apply. The evidence does not support the application of AG ¶¶ 17(d) and 17(e).

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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 35 years old. He served in the military and was honorably discharged. He experienced financial difficulties when he returned to college and was unemployed. He and his wife supported their family with the GI Bill and her income. Applicant also admitted that he mismanaged their finances. He was aware he did not pay his medical debts and they were sent to a collection agency. He deliberately failed to disclose that he had delinquent debts turned over to a collection agency. Applicant had an opportunity to provide substantiating documentation of actions he may have taken to resolve his delinquent debts, but did not provide it. He has failed to meet his burden of persuasion. 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 failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

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.r:	Against 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 national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge