



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



In the matter of:)	
)	
)	ISCR Case No. 12-08417
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro se*

04/15/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On May 9, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The action was taken under Executive Order 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), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on April 2, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated February 11, 2015¹. Applicant received the FORM on February 24, 2015. Applicant timely submitted a response and documentation to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted five items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F. He denied the allegations under Guideline E, and provided explanations.

Applicant is 31 years old. He graduated from high school in 2002. Applicant joined the United States Air Force (USAF) in June 1982, and received a General Discharge, (Under Honorable Conditions) for Misconduct in 2008. Applicant is single and has no children. Applicant has held a security clearance since his time in the military. He has been employed with his current employer since 2008. (Item 3)

The SOR alleges 16 delinquent debts, including collection accounts totaling about \$17,000. (Item 5) It also alleges incidents in 2007 and 2008, including Applicant's abuse of a government credit card. In 2010, there is an allegation that Applicant uttered a check without sufficient funds, and was ordered to pay a fine of \$2,850. (SOR 1.s) He states that he settled the debt and paid the fine. He did not provide any proof of payment.

Applicant has been on notice since at least 2012, about the delinquent debts listed on the SOR. He acknowledged the many unpaid collection accounts, some from 2001. He also stated that he sought a consolidation loan, but was refused due to his poor credit. (Item 4) He also acknowledged in 2012 that he is aware that he displays a pattern of fiscally irresponsible behavior with regards to finance and credit. He admitted that he has taken personal loans and opened credit cards with no intention of paying the monies. He gave no reason for the delinquent debts.

During an investigative interview in 2012, Applicant acknowledged using his government issued credit card for personal reasons on two separate occasions. In October 2007, he knew the action was unauthorized, but he believed he could repay the money before being discovered. He received non-judicial punishment for both incidents, was reduced in rank, forfeited pay, and eventually was separated from the USAF with a General Discharge (Under Honorable Conditions for Misconduct. (SOR 1.q and 1.r)

Applicant stated that he was currently paying accounts listed in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, 1.l, and 1.o. Applicant stated that the accounts would be settled or paid in full by the end of 2015. (Response to FORM) The debts that are noted as having been paid in full or in a plan as Applicant intended in 2012, do not have any corroborating evidence.

Applicant submitted receipts for the accounts listed in SOR ¶¶ 1.h, 1.i, 1.j, 1.k, and 1.m. The receipts totaled about \$1,200. Applicant also submitted a settlement letter dated, March 17, 2015 for an account not listed on the SOR. It is not clear about the settlement amount. Nor, is it clear if this is for the account listed in 1.m.

Personal Conduct

When Applicant completed his April 2012 security clearance application, he disclosed in several sections that he abused his government credit card and was eventually separated from the USAF. He listed his reason for discharge from the military as "GTC" abuse. He also answered "yes" under Section 15 that he received military discipline for an action in 2008 with his credit card. Applicant also noted in another section that due to a reduction in rank in 2007, he had some financial difficulty.

Applicant denied that he intentionally falsified his security clearance application in 2012. He responded to Section 15 and listed the 2008 abuse of government credit card. However, he noted the 2007 incident in another section.

Applicant objected to the argument and stated that he had no intention of misleading the government about the credit card abuse. He believes he misunderstood section 13c. He listed the abuse in section 13a and again in section 15. He realized that this was a mistake and during his interview he discussed the incidents.

Applicant also objected to the allegation that he deliberately omitted the 2010 incident of uttering a check without sufficient funds, and was ordered to pay a fine of \$2,850. He disclosed all information relating to bad checks written in Section 22 and again in the 2012 investigative interview.

Applicant stated that he has not written any other checks since 2010 that have caused him difficulty. He is sorry for the mistakes and is seeking counseling from friends. He believes that these incidents no longer negatively affect him.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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; and

(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 person may not properly safeguard protected information.

In this case AG ¶ 16 (c) applies. Applicant's misuse of his government credit card on two occasions and his 2010 uttering a check without sufficient funds is cause for concern. I do not believe that he intentionally falsified his 2012 security clearance application. He put information pertaining to all the incidents in the application. He also disclosed more information during his interview.

Applicant's 2010 incident, in addition to his abuse of his government credit card, leave me with doubts about his eligibility for a security clearance. Any doubts must be resolved in favor of the Government. After considering the mitigating factors, Applicant has not mitigated the personal conduct concerns under Guideline E. After considering the mitigating conditions, none of them apply.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he had delinquent debts. He also abused his government credit card on two occasions. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved debts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant has given no reason for his delinquent debts. He has not acted responsibly. He has known about the debts since at least 2012, however, he produced no documentation of a plan for the majority of the debts despite his statement that he is paying on accounts. He provided receipts for some small accounts, but I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant's statements that he is making progress are not supported by documentary evidence. FC MC AG ¶ 20(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) does not apply.

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 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is a young man who served in the USAF. However, due to incidents in 2007 and 2008 concerning government credit card abuse, he was separated from the military. Applicant also received non-judicial punishment for both incidents. He has given no reason as to why he had financial difficulties. He also wrote a check in 2010 that incurred a fine because there was not sufficient funds available to cover the check. He acknowledged his lack of responsibility with financial matters. It is disturbing that he also stated in his 2012 interview that in some cases he had no intention of repaying a credit card bill or a loan.

Applicant has not provided sufficient information concerning the payment plan with the accounts that he stated that he is repaying. He submitted some documentation for the small accounts. He also stated that he made a mistake and apologizes for his misuse of government credit cards. Although, I do not find that he falsified his 2012 security clearance application, I cannot find for him under personal conduct due to the seriousness of the issues connected with the 2007 and 2008 incidents while in the military. The 2010 check written without sufficient funds is also of concern because there is no documentation that the fine was paid.

Applicant did not persuade me that he refuted or mitigated the Government's case concerning the personal conduct and financial considerations security concerns. Any doubts must be resolved in the Government's favor. For all these reasons, clearance is denied.

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.g:	Against Applicant
Subparagraphs 1.h-m:	For Applicant
Subparagraphs 1.n-1.s:	Against Applicant
Paragraph 2, Guideline E :	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge