



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



In the matter of:)	
)	
)	ISCR Case No. 12-11330
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2015

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 June 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 10, 2015. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2015. I convened the hearing as scheduled on November 17, 2015. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. In addition, the Government submitted a copy of an exhibit list that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibit (AE) A, which was admitted into evidence without objection. The record was held open until December 1, 2015, to allow Applicant to submit additional documents. He submitted a document that was marked AE B and it was admitted without objection. On November 30, 2015, Applicant requested he be provided more time to submit documents. He was granted an additional week and the record closed on December 7, 2015. Applicant provided AE B through I, which were admitted without objection.¹ DOHA received the hearing transcript (Tr.) on November 30, 2015.

Procedural Issues

The Government moved to amend the SOR and add ¶ 1.p to read: “You failed to file your 2014 federal income tax return as required. As of the date of the SOR the return remains unfiled.”² There was no objection and the motion was granted.

Findings of Fact

Applicant admitted the allegations in the SOR ¶ 1.b through 1.o. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old. He graduated from high school in 1978. He served on active duty in the military from 1978 to 1983 and was honorably discharged. He served in the National Guard from 1983 to 1985. He married in 1982 and divorced in 1983. He has a 32-year-old son from the marriage. He remarried in 1988 and divorced in 1989. He has a 26-year-old son from the marriage. He remarried in 1994 and has a 21-year-old son and 16-year-old daughter from the marriage. He has worked for his present employer since 2009.³

Applicant completed a security clearance application (SCA) on June 30, 2010. Question 22(a) asked if in the last seven years he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding or was he awaiting trial on criminal charges or currently waiting to be sentenced for an offense. Applicant responded “no.” Question 22(b) asked if in the last seven years had Applicant been arrested by any police officer, sheriff, marshal, or any other type of law enforcement

¹ HE II through HE VI are the Government’s email memoranda regarding Applicant’s exhibits noting there were no objections. The hearing exhibits also included other email correspondence and a request that the record remain open longer, the Government’s responses, and my ruling.

² Tr. 71-72.

³ Tr. 61-64.

officer. Applicant responded “no.” Question 22(c) asked if Applicant had “EVER” been charged with any felony offense. He answered “no.” Question 22(e) asked if he had “EVER” been charged with any offense(s) related to alcohol or drugs. He responded “no.”⁴

In April 1991, Applicant was arrested and charged with felony possession of drug equipment, and felony possession of cocaine. In his answer to the SOR, Applicant admitted he was charged with these offenses, but indicated he was not convicted. In March 1992, Applicant was arrested and charged with driving under the influence (DUI). In his answer to the SOR, Applicant admitted he was charged with DUI. In March 1992, Applicant was arrested and charged with a probation violation related to possession of drug paraphernalia. Applicant denied this offense and testified he did not remember this charge. In March 2007, Applicant was arrested and charged with DUI and endangering a child by driving under the influence of alcohol or drugs. In his answer to the SOR, Applicant admitted he was charged, but indicated he was not convicted. In May 2007, Applicant was issued a citation and charged with operation of watercraft under the influence of alcohol. In his answer to the SOR, Applicant admitted this charge.⁵

Applicant indicated in his answer to the SOR that he did not intentionally falsify information on his SCA. He believed the questions only required information from the past seven years. At his hearing, he stated he checked the wrong box on his SCA and made a mistake when he answered the questions incorrectly. He was aware he had been arrested and charged with a felony in 1991 and charged with DUI in 1992. He believed the felony was nolle prosequi. He stated he went to court and stood before a judge, but he did not plead. He testified he pled guilty to the DUI charge and was sentenced to six months of probation. He stated he did not remember the probation violation from 1992.⁶

Applicant testified that in March 2007 when he was arrested he had been drinking alcohol, but he did not fail “the test.” He admitted he was consuming alcohol when he was arrested in May 2007. He testified he made a mistake about his criminal background. The allegations in SOR ¶ 2.a (3) and (4) are within the past seven years of the date he completed the SCA. Applicant testified he believed he thought these offenses occurred outside of the seven-year reporting requirement. I did not find Applicant’s testimony credible. Applicant intentionally failed to disclose his past felony arrest and his alcohol and drug related arrests and charges. He intentionally failed to disclose the arrests and citation that were within the seven-year reporting period.⁷

⁴ GE 1, 5.

⁵ GE 5.

⁶ Tr. 16-17.

⁷ Tr. 16-17, 23-44; GE 1, 5.

The debts alleged in the SOR are supported by credit reports from August 2012, September 2014, and May 2015.⁸

The SOR alleges a state tax lien (SOR ¶ 1.a, \$16,009) from a state where Applicant claims he has never lived. Applicant testified he has been disputing this debt with the state for many years and has had difficulty resolving it. He provided employment and tax documents to support that he has maintained his residence in another state. I find Applicant provided sufficient evidence to conclude the debt does not belong to him.⁹

Applicant admitted he owed the 2010 state lien in SOR ¶ 1.b (\$1,848). He testified at his hearing the lien was paid, and he would provide proof. He did not provide proof the debt was paid.

Applicant admitted he failed to timely file his 2014 federal income tax return. He stated he had filed an extension, but had missed the extension deadline. He provided documentary proof the return was filed on November 15, 2015.¹⁰ In his post-hearing documents, Applicant indicated that he owes taxes for 2014. He provided an email explaining he had arranged a payment plan with the Internal Revenue Service (IRS) to pay the taxes he owes. He provided proof that he made a \$50 payment to the IRS on December 3, 2015. It is unknown how much he owes.¹¹

Applicant admitted he owes the medical debts alleged in SOR ¶¶ 1.c through 1.e and 1.g through 1.o, totaling approximately \$5,600. Applicant testified he had paid some of these debts a little at a time, and he would provide documents to show his efforts. He indicated he had some surgeries earlier in the year and at the end of 2014 and put some of these bills aside while he paid his household expenses. He also stated that some of the medical debts date back to 2010. Post-hearing, Applicant provided a document to show he has a payment arrangement to pay \$50 a month for “one of the medical bills.”¹² He did not specify which creditor he is paying. He provided proof he made a \$50 payment on December 2, 2015. He also stated that his wife had tried to pay their medical debts, but never had enough money to do so after paying their household expenses.¹³

⁸ GE 2, 3, 4.

⁹ Tr. 17-21, 44-47; AE C, D, F.

¹⁰ Tr. 51-52, 67-70; AE G. In his post-hearing documents, Applicant stated he also failed to timely file his 2014 state tax returns. He indicated his state taxes are now filed. I have not considered this information for disqualifying purposes, but will consider it when analyzing Applicant’s credibility and whole person.

¹¹ AE D, G, I, J.

¹² AE E.

¹³ Tr. 17, 21- 23, 50-51, 60-61, 66; AE B, E. GE 2 shows many of the debts were reported delinquent in 2012.

The debt in SOR ¶ 1.f (\$831) is for communication services. Applicant did not provide information on what action, if any, he has taken to resolve this debt.¹⁴

Applicant testified his wife keeps a budget. He is not familiar with it and does not coordinate with her regarding their finances. She works full time at a convenience store. He sought credit counseling in 2008, but decided the cost was prohibitive. He purchased a car for \$2,700 for his 16-year-old daughter last year so she could commute to college while living at home. He obtained a car loan and paid it. He purchased a 2008 truck about four or five months ago for approximately \$5,900. He stated that he is current on the monthly payment for the truck. Applicant stated he has no other delinquent debts.¹⁵

Applicant provided a character letter from his supervisor. He has observed Applicant since May 2012. He described Applicant as extremely diligent and conscientious. He tackles all of his assignments with determination. He is attentive to those around him and connects with people of all ages, backgrounds, and experience levels. His supervisor noted that he appreciated Applicant's professionalism, leadership, expertise, and initiative. He considers him respectful of his superiors and subordinates.¹⁶

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

¹⁴ Tr. 47-50; GE 3 4.

¹⁵ Tr. 52-61.

¹⁶ AE A.

on the evidence contained in the record. Likewise, I have not drawn 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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.” 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 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has numerous delinquent debts that are unpaid or unresolved. His delinquencies began in 2007. He also has a state tax lien that was entered in 2010. He failed to timely file his 2014 federal income tax return. The above disqualifying conditions apply.

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 has numerous debts that have been unpaid and unresolved for years. Post-hearing he provided a document to show he has arranged a payment plan with one of the medical creditors and made a \$50 payment. He also filed his 2014 federal income tax return days before his hearing. He has a payment arrangement with the IRS. Applicant has started to address some of his past financial problems. Applicant did not address these issues until he was put on notice his finances were a security concern. Insufficient evidence was provided to conclude his financial problems occurred under unique circumstances and are unlikely to recur. Applicant's behavior casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Although not specifically raised, it appears some of Applicant's financial problems were due to medical issues. I have considered that many of the debts in the SOR are

for medical expenses. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide sufficient evidence of any actions he took to resolve his delinquent debts prior to his hearing. He arranged a payment plan with one creditor after the conclusion of his hearing, but did not provide information about the resolution of the other debts. AG ¶ 20(b) partially applies.

Applicant's delinquent debts remain unpaid and unresolved. He indicated that in 2008 he sought financial counseling, but did not follow through with it. He presented evidence that he made a \$50 payment toward one of his medical debts and has a payment plan with the IRS. He did not provide evidence of his current financial state or a reasonable plan on resolving his other delinquent debts. AG ¶ 20(c) marginally applies to the extent that he sought some financial counseling, but there is insufficient evidence to conclude his financial problems are under control or are being resolved. I cannot find that Applicant initiated good-faith efforts to repay overdue creditors because his actions are limited to his post-hearing efforts. AG ¶ 20(d) does not apply.

Applicant provided sufficient evidence to conclude that the state lien in SOR ¶ 1.a does not belong to him. AG ¶ 20(e) applies to this debt. He failed to provide proof that he resolved the state lien in SOR ¶ 1.b (\$1,848) that he testified he paid. AG ¶ 20(e) does not apply to this debt.

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 conditions 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 deliberately failed to disclose his past felony charge and his past alcohol, and drug-related citations, arrests, and charges. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

Applicant deliberately failed to disclose on his 2010 SCA his felony arrest and charge for cocaine possession in 1991. He deliberately failed to disclose his 1992 DUI arrest and his DUI arrest in 2007, along with endangering a child by driving under the influence of alcohol or drugs charge. He deliberately failed to disclose he received a citation in 2007 and was charged with operation of a watercraft under the influence of alcohol. His explanation that he made a mistake is not credible. His explanation that he believed he only had to disclose arrests or charges that occurred within the past seven years is not credible. The 2007 arrests and charges were within the past seven years. His explanation that he believed the 2007 offenses were beyond the seven-year period is not credible. He did not make a prompt, good-faith effort to correct his omissions prior to being confronted with the facts. His omissions are serious and did not happen under unique circumstances that are unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do 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 the 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.

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 54 years old. He has worked for a federal contractor since 2009. He served in the military and was honorably discharged. His supervisor characterizes him as diligent, professional, and conscientious. Applicant has numerous delinquent debts that are not paid or resolved. Actions he has taken to arrange a payment plan for a medical debt occurred after his hearing. He failed to timely file his federal income tax return and completed it days before his hearing. He successfully mitigated a state tax lien that was in error, but did not provide documents to show he resolved another state tax lien that he admitted. Applicant did not provide sufficient evidence to show he has an established track record of being fiscally responsible. Applicant has a history of alcohol, and drug-related arrests and charges dating from 1991 to 2007. It is not believable that Applicant made a mistake on each question that asked him about his past alcohol, and drug-related charges, even those that fell within seven years. His deliberate omissions about his past conduct raise questions about his reliability, trustworthiness, and judgment. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.p:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge