



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



In the matter of:)	
)	
)	ISCR Case No. 12-11933
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2016

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 July 24, 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; Department of Defense 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 18, 2015. He did not request a hearing before an administrative judge. On September 21, 2015, the government requested a

hearing before an administrative judge. The case was assigned to me on January 22, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2016. I convened the hearing as scheduled on March 16, 2016. The Government offered exhibits (GE) 1 through 10, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 24, 2016.

Findings of Fact

Applicant admitted all of the allegations in the SOR with explanations.¹ After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 46 years old. He earned some college credits, but did not receive a degree. He married in 1995 and divorced in 2015. He has two children from the marriage, ages 20 and 17. Applicant pays child support for his younger child.² He served in the military from 1988 to 2008 and retired in the paygrade E-6. His ex-wife is entitled to a portion of his military retirement pay. From 2008 to November 2011 he worked for a federal contractor overseas. From November 2011 until February 2012 he was intentionally unemployed. From February 2012 until May 2012 he worked for a department store. He has worked for his current employer since May 2012 and has a part-time job as a barber.³

Applicant completed a security clearance application (SCA) in July 2012 and answered “no” in the section which asked if he had ever had a security clearance eligibility/access authorization denied, suspended or revoked. He deliberately failed to disclose that his security clearance was revoked and access to sensitive compartment information (SCI) was withdrawn in 2005 by his military branch. His security clearance was revoked, and his access to SCI was withdrawn in part, due to deliberately omitting delinquent financial accounts on his previous SCA. Applicant requested the revocation decision be reconsidered. In his request for reconsideration, he indicated that he answered “no” to questions about his financial delinquencies. He denied he was intentionally attempting to hide his financial problems.⁴ He stated he had asked his security officer about the questions that inquired about his finances, and he was told the government would review his credit report so he believed the inquiry was asking if his financial burdens would cause him to betray his country. His reconsideration request was denied. Applicant’s explanation for failing to disclose on his 2012 SCA that his SCA

¹ SOR ¶¶ 1.b and 1.c refer to debts Applicant failed to disclose. Those debts are listed as ¶ 1.a through 1.t. This is clearly a typographical error and should refer to debts in SOR ¶¶ 2.a through 2.t. I will refer to the debts as such.

² AE C.

³ Tr. 22-31.

⁴ Applicant's delinquent debts began in 2003.

had been revoked in the past was because he was distracted by interruptions when he was completing it.⁵

Applicant also failed to disclose on the July 2012 SCA that in the past seven years he had debts that had been over 120 days delinquent or were currently 120 days delinquent. Applicant testified he believed his wife was taking care of the bills and he did not have delinquent debts. He was working in the United States at the time he completed this SCA. He explained he was in a monitoring mode in 2012 and believed his “local” debts were paid. That is, his monthly expenses. He testified he did not believe he had other delinquent debts. His testimony was not credible.⁶

Applicant completed a previous SCA in July 2009 and failed to disclose he had been 180 days delinquent on any debt or that he was currently over 90 days delinquent on any debt; or that he had any account or credit card suspended, charged off, or canceled for failing to pay as agreed.

Applicant’s explanation for his failure to disclose his financial delinquencies on his July 2009 SCA was that he was working overseas and assumed his wife was paying their bills. He testified he had no knowledge of the delinquent debts until the government investigator advised him of them. He stated that he was aware he had two car payments that were past due and a student loan that was 30 days past due, but believed the others were being paid by his wife. He said he did not have a credit report to review while overseas, and he wanted to be specific with his disclosures. He stated his wife had a power of attorney and was opening accounts without his knowledge, and he was unaware of the debts alleged. He also testified that he had knowledge of some delinquent debts, but did not know how many there were or the extent of them.⁷

Applicant further explained that when he was interviewed by a government investigator in 2009 he was confronted with a credit report that listed his delinquent debts. He stated he subsequently printed his own copy of the credit report, showed it to his wife, and told her to pay the bills while he was overseas. He instructed her to pay the small bills first. He stated she failed to do so. Applicant also told the investigator that he believed his wife was the victim of identity theft.⁸

Applicant testified that when he and his wife divorced the decree indicated each of them would be responsible for only their individual accounts. The divorce judgment only comments on credit card debts indicating: “Each party shall be responsible for any credit card issued in their sole name.”⁹ It does not indicate which party is responsible for

⁵ Tr. 74-79, 88-89; GE 1.

⁶ Tr. 78-88.

⁷ Tr. 31-42.

⁸ Tr. 31-42, 47-48; GE 5.

⁹ AE A.

joint accounts. Applicant testified he had no idea who would assume responsibility after the divorce for the joint accounts.¹⁰

Credit reports from August 2009, August 2012, December 2014, and June 2015 support the debts alleged in the SOR. The debts in SOR ¶¶ 2.c through 2.t are listed as individual accounts. The debts in ¶¶ 2.a and 2.b are listed as joint accounts. Applicant provided a document to show the credit card debt in SOR ¶ 2.d was paid in 2014.¹¹ He also provided a document to show the debt in SOR ¶ 2.c is a student loan that was deferred for a period when he was attending school. He provided proof that he has been making \$100 payments on the debt since February 2014.¹²

Applicant provided a credit report from March 2016 that does not reflect the status of the delinquent debts alleged, indicating they have dropped off his current credit report. Applicant testified he paid some debts listed on the SOR, but did not have receipts. He did not provide proof that certain debts are the responsibility of his ex-wife or why he is not responsible for joint accounts. He indicated he does not have the money to pay the delinquent debts. There is no documented proof, other than what is previously mentioned, that he paid his delinquent debts. There is no evidence Applicant disputed any delinquent debts alleged on the SOR.¹³

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.

¹⁰ Tr. 43-48.

¹¹ GE 4, 7, 9, 10; AE B reflects two letters referring to two different account numbers. These numbers are different than the account alleged in the SOR. I will give Applicant the benefit of the doubt that this account is paid.

¹² AE D.

¹³ Tr. 49-74.

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 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 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, on his July 2012 SCA, that in 2005 his security clearance was revoked and his access to SCI was withdrawn. He also deliberately failed to disclose, that in the past seven years he had accounts suspended, charged off, or canceled for failing to pay them as agreed. He did not disclose that in the past seven years he had debts that were over 120 days delinquent or were currently over 120 days delinquent. Applicant failed to disclose the debts alleged in SOR ¶¶ 2.a, 2.b, and 2.d through 2.t.

Applicant deliberately failed to disclose on his July 2009 SCA that he had accounts that had been suspended, charged off, or canceled for failing to pay as agreed. He also deliberately failed to disclose he had been over 180 days delinquent on any account or that he was currently over 90 days past due on any debts. He deliberately omitted the information in SOR ¶¶ 2.a, 2.e, 2.f, 2.h, 2.j and 2.j through 2.t.

Applicant deliberately failed to disclose requested information in his July 2012 SCA and his July 2009 SCA. I did not find Applicant's testimony credible that he was distracted and he did not have a credit report while overseas so he wanted to make sure he was specific in his answers. I did not find Applicant's explanation credible that he was unaware of any of his delinquent debts, and they were all attributed to his wife. His testimony that he was aware of some debts, but not the extent of them raises questions about his truthfulness and reliability. Applicant has a long history of financial delinquencies and completing SCAs. It is not believable that he would not know he needed to provide information about his delinquent finances when he completed a SCA. Applicant indicated that he is only responsible for individual debts. Most of the debts alleged are for individual accounts in his name. 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's repeated falsifications on his 2012 and 2009 SCAs are not minor, infrequent, and did not happen under unique circumstances. Applicant was aware his security clearance was revoked in 2005, in part, because he deliberately failed to

disclose his delinquent financial accounts. His repeated failure to be honest casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(b) do not apply.

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.

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.¹⁴

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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of unwillingness to satisfy financial delinquencies starting when his security clearance was revoked in 2005 due, in part, to his financial delinquencies that began in at least 2003. He again experienced financial problems in 2009 and his delinquent debts were reflected on credit reports from 2009, 2012, 2014, and 2015. 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

¹⁴ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 a long history of failing to pay his debts and meeting financial obligations. He provided proof that he is paying his student loan reflected in SOR ¶ 2.c and paid the debt in SOR ¶ 2.d. Although his delinquent debts are not reflected on his latest credit bureau report, he failed to provide proof that he paid any of the remaining SOR-listed debts. Applicant's behavior is recent and there is significant evidence his conduct is likely to recur and did not occur under unique circumstances. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be evidence that conditions beyond Applicant's control resulted in a financial hardship. Applicant attributed some of his financial problems to his wife opening accounts that he was unaware of and her failure to pay the debts while he was overseas. It has been several years since he returned from overseas. He indicated he is only responsible for individual accounts. Most of the debts alleged in the SOR are individual accounts. He failed to provide evidence that the joint accounts are not his responsibility or that he paid his individual accounts. AG ¶ 20(b) does not apply.

There is no evidence Applicant received financial counseling. Applicant has resolved one account and is current on his student loans. There is evidence that the debts alleged in the SOR are not on his most recent credit report, but there is no evidence he has paid or resolved these debts. AG ¶ 20(c) applies to the extent that creditors are no longer actively pursuing him for his delinquent debts.

AG ¶ 20(d) applies to SOR ¶ 2.c and 2.d because they are paid or current. There is no evidence Applicant paid the other delinquent debts. Therefore, AG ¶ 20(d) does

not apply to them. Applicant disputes that he is responsible for joint debts alleged. He did not provide documentary evidence to show actions he has taken action to dispute the debts or show why he is not responsible. AG ¶ 20(e) 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 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 46 years old. He is retired from the military. Applicant has a history of financial difficulties dating back to at least 2003. He had his security clearance revoked in 2005, due in part, to his financial delinquencies. Although, the debts alleged in the SOR may no longer be enforceable, Applicant did not provide evidence that he paid or resolved them, except for the ones in SOR ¶¶ 2.c and 2.d. He has a poor track record of being fiscally responsible. Of greater concern, are his repeated and deliberate omissions about his past financial delinquencies on two SCAs in 2009 and 2012. His failure to be truthful during the security clearance process is a serious security concern. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with significant 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.d:	For Applicant
Subparagraphs 2.e-2.u:	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