



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



In the matter of:)
)
) ISCR Case No. 12-12139
)
Applicant for Security Clearance)

Appearances

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

06/28/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 28, 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 May 31, 2015; July 31, 2015; and August 8, 2015, and requested a hearing before an administrative judge. The case was assigned

to me on March 31, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 21, 2016. I convened the hearing as scheduled on May 12, 2016. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through D, which were admitted into evidence without objection. The record remained opened until May 26, 2016, to allow Applicant to submit additional documents, which he did. They were marked AE E through K and were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 23, 2016.

Procedural Issues

Department Counsel moved to amend SOR ¶ 2.b deleting the language “through 1.e” and adding the language “and 1.d.” It now reads, “paragraphs 1.a, 1.c, and 1.d.” There was no objection and the motion was granted.²

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e. He denied the allegations in SOR ¶¶ 2.a and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 65 years old. He retired from the military in 1989 after 20 years of service. He holds a master’s degree earned in 2004. He was married from 1971 to 1981 and has two adult children from the marriage. He remarried in 1983 and divorced in 2005. He has two adult children from the marriage. He remarried in 2009 and was widowed in 2014. He has no children from this marriage. He is engaged and cohabits with his fiancée. He provides financial assistance to her unemployed adult daughter, who resides with them. He also provides financial support to his second wife’s son. Applicant’s fiancée does not work and receives a monthly disability payment of \$732.³

Applicant worked full time for the same employer from 2002 to 2008. In 2009 he was unemployed for six months and received unemployment compensation. He then began work later in 2009 for his current employer. He chose to work part time in 2012 for about 20 to 25 hours a week. He chose to work these hours due to his wife’s medical condition. He estimated his income from work in 2015 was about \$28,000. He receives about \$26,000 for his military pension, about \$19,000 for Social Security benefits, and about \$2,700 annually from another pension. His total annual income is between \$73,000 and \$76,000.⁴

¹ Hearing Exhibit I is Department Counsel’s email memorandum.

² Tr. 10-11.

³ Tr. 27-31, 85.

⁴ Tr. 31-33, 80-88.

Applicant attributed his financial problems to his 2005 divorce. He testified his ex-wife left him with the children, \$135,000 in debt, two car payments and the mortgage payments. He also no longer had her income to address the debts. He was able to pay some of the debts until he lost his job in late 2008. He negotiated settlements with many of the creditors and in some cases received an Internal Revenue Service (IRS) form 1099C (cancellation of debt) for the amount he did not pay.⁵

Applicant completed a security clearance application in May 2012. He answered “no” in response to questions about whether he had any bills or debts turned over to a collection agency; if any account or credit card had been suspended, charged off, or cancelled for failing to pay as agreed; if he had been over 120 days delinquent on any debt; or if he was currently over 120 days past due on any debt. He also answered “no” to a question that asked if he had a judgment entered against him in the last seven years.

Applicant was interviewed by a government investigator from the Office of Personnel Management (OPM) in August 2012. During the interview the credit card debts alleged in SOR ¶¶ 1.a (\$21,882), 1.c (\$17,972), and ¶ 1.d (\$3,278) were brought to his attention by the investigator. Applicant acknowledged the debts in SOR ¶¶ 1.a and 1.d and indicated they became past due in approximately 2005 or 2006. He did not recall any collection information about the accounts. He further advised the investigator that his future intention was to check to see if any amount was still owed on the accounts and to pay them as soon as possible. Regarding the account in SOR ¶ 1.c, he indicated he could not recall when the account was opened, when it went past due or the amount owed. He indicated that he had made payment arrangements with the creditor to pay \$250 a month to resolve the debt. His intention was to pay off the account as soon as possible.⁶

During his interview, Applicant explained the reason he had financial difficulties was because his household income was greatly reduced after his second divorce in 2005. He felt the debts were tied to conditions that were beyond his control. He assumed the mortgage on a house and took responsibility for the credit card debts. He stated that he lost his job in 2008. In 2009, he sought financial counseling with a debt consolidation service operated by an attorney in a different state. At the time of the interview, he deemed his financial situation as “tough.” He concurred with the accounts that the investigator brought to his attention. In addition to the delinquent accounts alleged in the SOR, he was confronted with collection accounts from different creditors in the amounts of \$10,635; \$20,169; \$20,895; \$25,073; and \$9,200. Applicant agreed

⁵ Tr. 33, 49-50.

⁶ Tr. 70-73; GE 3 reflects that he told the investigator that he obtained a copy of his credit report after he completed his SCA and there were collection accounts listed.

these accounts belonged to him and indicated that he either paid the debts in full, or had payment arrangements with the creditors.⁷

In Applicant's May 2015 answer to the SOR, he wrote that the debts in SOR ¶¶ 1.a, 1.c, and 1.d were settled and closed. He further stated: "Account was not delinquent at time of completion of questionnaire." His answer contradicts the information he provided the government investigator in August 2012. Applicant's credit report from July 2012 reports the last activity for the debts in SOR ¶¶ 1.a and 1.d was March 2008. The last activity date for the collection account in SOR ¶ 1.c was May 2012. A credit report from December 2014 reports the debt in SOR ¶ 1.e was opened in May 2012 and was past due August 2014.⁸

In Applicant's July 2015 SOR answer he stated:

I deny I deliberately failed to report or disclose this information. While my memory is not as good as it used to be, completion of the original application was completed during the time that my mother had suffered a severe stroke resulting in her death (March 2012) as well as my wife's diagnosis of terminal Stage 4 emphysema (died February 2014).⁹

At Applicant's hearing, he testified that he was aware of the delinquent debts in SOR ¶¶ 1.a, 1.c and 1.d when he completed the SCA. Applicant was aware he had financial problems when he completed his SCA and that in the past seven years he had bills turned over to collection agencies, and some had been or were more than 120 days delinquent or past due. He explained that his failure to disclose his delinquent debts was because he was going through an emotional time due to the passing of his mother and his wife's medical diagnosis, and he was not paying attention. He also stated he was reading the questions too quickly, and he does not know why he did not answer the questions correctly. Applicant's testimony is not credible. I find he deliberately failed to disclose his financial problems on his SCA.¹⁰

The SOR also alleged that Applicant failed to disclose he had a judgment entered against him. Applicant testified he never received notice of a civil proceeding regarding the debt in SOR ¶1.b and did not disclose it because he was unaware a judgment had been entered against him. In his post-hearing submission, he provided a document from the creditor regarding a "collection litigation account(s)." He was advised that the creditor entered an agreement with the U.S. Consumer Financial Protection Bureau in July 2015, the State's Attorney General, and Office of the Comptroller of the Currency in September 2013. Based on that agreement the creditor agreed to stop any

⁷ Tr. 37-38, 45-48. These debts were not alleged and will not be considered for disqualifying purposes, but will be considered when analyzing Applicant's credibility, in mitigation, and the whole person.

⁸ GE 2, 4.

⁹ Applicant's answer to the SOR.

¹⁰ Tr. 36, 49-53, 70-71.

effort to enforce the judgment and would not attempt to collect any money from Applicant based on the account and it would not sell the account. It would also notify the credit reporting agencies not to report the judgment. It is unknown whether the account in SOR ¶ 1.b was for a legitimate debt by Applicant. Based on the information provided I find that it was possible that Applicant was unaware a judgment had been entered against him. The judgment is no longer enforceable and this debt is resolved.¹¹

Applicant stated that the debt in SOR ¶ 1.a was settled and the account closed. He estimated he paid about \$10,000 toward the charged-off amount of \$21,895. In his post-hearing submissions he provided a copy of IRS form 1099C. It lists the amount of debt cancelled as \$18,471 for tax year 2015. Applicant testified that he filed the form with his 2015 federal income tax return.¹²

Applicant testified that he paid about \$2,500 on the debt in SOR ¶ 1.c. In his post-hearing submissions he provided a copy of IRS form 1099C. It lists the amount of debt cancelled as \$10,972 for tax year 2014. Applicant testified that he filed the form with his 2014 federal income tax return.¹³

Applicant testified that the account in SOR ¶ 1.d belonged to his mother and he was an authorized user. The credit report shows it was an individual account. Applicant's post-hearing documents shows the account was settled for less than the full balance. The last payment made was June 2012. The total amount of the settlement is unknown.¹⁴

SOR ¶ 1.e alleged the debt was past due \$242 with a total balance of \$7,430. Applicant explained that this past due debt was for a loan he cosigned for his son. In his post-hearing letter and supporting documents, Applicant stated that "while this account is annotated as charged off, I am continuing to reduce the balance which is currently at \$3,382."¹⁵ The document from the creditor states: "Your account charged off on April 21, 2015 (\$7,343)" The creditor confirmed that as of May 2016 the charged-off balance was reduced to \$3,382.¹⁶

Applicant disclosed at his hearing that sometime before 2009 he purchased a timeshare. The account for the timeshare is delinquent and has been in collection since

¹¹ Tr. 45, 69; AE E, G.

¹² Tr. 40-41, 55-59; GE 2; AE E, F.

¹³ Tr. 41, 67-68; GE 2; AE E, H.

¹⁴ Tr. 42, 60-66; GE 2; AE E, I.

¹⁵ AE E.

¹⁶ Tr. 44-45, 59-60, 75-79; GE 4; AE E, J. I.

2014. He indicated he is making payments of \$100 and believes the delinquent balance is about \$1,500.¹⁷

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. 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.

¹⁷ I will not consider this information for disqualifying purposes, but will consider it in analyzing Applicant's credibility, mitigation, and the whole person.

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 his delinquent debts when he completed his SCA. Applicant was aware that he had delinquent debts when he completed his 2012 SCA. He testified that after his 2005 divorce he was responsible for about \$135,000 of debts, two car payments, and a mortgage. He was managing his debt until he lost his job in late 2008. He negotiated settlements with many of the creditors. Although Applicant may have been going through a difficult time, he was aware that he had debts that were delinquent when he completed his SCA. In his answer to the SOR, he continued to deny he had delinquent debts when he completed the SCA. The above disqualifying condition applies to the delinquent debts alleged. I find Applicant was unaware a judgment was entered against him and therefore did not deliberately fail to disclose it. He has refuted the allegation in SOR ¶ 2.a.

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 falsifications are not considered minor and do not rise to the level of occurring under unique circumstances. His failure to disclose his delinquent debts on his SCA casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) 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.¹⁸

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 financial delinquencies that began in at least 2009. 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:

¹⁸ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 experienced financial problems after his 2005 divorce and when he was unemployed in 2009. He has settled some debts for less than the balance owed and received IRS 1099C forms, which he filed with his tax returns. He is making payments to reduce the charged-off balance owed in SOR ¶ 1.d. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control that resulted in the financial hardship, and he must have acted responsibly under the circumstances. Applicant attributed his financial problems to a 2005 divorce and 2009 unemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has steadily been resolving his delinquent debts by settling them and in some cases receiving IRS 1099Cs. Although it has taken a long time, and he still has some financial issues, I find he has acted responsibly in addressing his delinquent debts. AG ¶ 20(b) applies.

There is no evidence Applicant received financial counseling, but he did employ a debt consolidation company for a period. He has resolved all but one debt alleged in the SOR and apparently others that were not alleged. The remaining debt has been charged off, but he has reduced the balance owed with payments. Although his financial situation is not perfect, he has shown that he is addressing his obligations, and he is slowly bringing it under control. AG ¶ 20(c) applies.

Applicant settled the debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e and received an IRS 1099C for some of them. AG ¶ 20(d) applies. Applicant disputed the judgment in SOR ¶1.b and provided evidence to show it is no longer enforceable. AG ¶ 20(e) applies to this debt.

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 65 years old. He is retired from the military. He has a history of financial difficulties dating back to 2005. He has settled many of his delinquent debts and some that were not alleged. He has another delinquent debt for a timeshare that he is making payments towards. His financial situation is still shaky, but he has made obvious strides in reducing his overall delinquent debt. Of greater concern is his deliberate falsification about his delinquent debt. His failure to be truthful during the security clearance process is a security concern. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. 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 mitigated the financial considerations guideline security concerns, but failed to mitigate personal conduct guideline security concerns.

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
Subparagraphs 1.a-1.e:	For 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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge