



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



In the matter of:)
)
) ISCR Case No. 13-00137
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On July 2, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On August 13, 2013, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On October 24, 2013, Department Counsel compiled

the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 16.

On October 29, 2013, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a copy of the FORM with instructions to submit any additional information or file any objections within 30 days of its receipt. Applicant received the FORM on December 11, 2013, and timely submitted a response that has been marked as Item 17. Applicant submitted no objections to Items 1-16 and Department Counsel had no objections to Item 17. All offered items were admitted into the record. The case was assigned to me on January 15, 2014.

Findings of Fact

Applicant is a 57-year-old cultural advisor/linguist employed by a federal contractor. He was born in Afghanistan, entered the United States in 1982, and became a U.S. citizen in 1994. He has worked for his current employer since April 2012. He earned an associate's degree in 1986. He is married and has three children, ages 9, 22, and 24. He has held a security clearance in the past.¹

Under Guideline F, the SOR alleged that Applicant had two delinquent debts, totaling \$20,873 (SOR ¶¶ 1.a and 1.b). Under Guideline E, the SOR alleged that he was involuntarily terminated from a job in June 2009 for falsifying a timecard (SOR ¶ 2.a) and that he later falsified two Electronic Questionnaires for Investigations Processing (e-QIP) by deliberately omitting information about that termination of employment (SOR ¶¶ 2.b and 2.c). In his answer to the SOR, Applicant admitted one Guideline F allegation (SOR ¶ 1.b – a \$15,183 delinquent debt) and denied the remaining allegations. His admission is incorporated as a finding of fact.²

SOR ¶ 1.a – collection account for \$5,690. In his Answer to the SOR, Applicant denied this debt, claiming that it was paid, and provided a credit report that did not list this debt. Of note, none of the other credit reports in the FORM listed this debt.³

SOR ¶ 1.b – collection account for \$15,183. This account was opened in August 2006 and had a date of first delinquency/date of last activity of November 2008. It was assigned to a collection company in March 2011. This debt was listed in credit reports in the FORM. Applicant stated that this debt was a \$7,000 bank loan that he obtained to pay rent and purchase food. He attributed this debt to his and his wife's unemployment, a bad economy, and his children's education costs. Applicant was unemployed from April 2005 to October 2005. In his Answer, he stated that he started making payments on this debt in March 2010 and made about six or seven months of payments before it

¹ Items 5 and 6.

² Items 1 and 4.

³ Items 1, 4, 9, and 10.

was transferred to another bank. He indicated the next bank did not give him credit for earlier payments. He further stated that he lost contact with the creditor while he was working in Afghanistan, but noted that he recently contacted the creditor and entered into a repayment arrangement. Under that arrangement, he agreed to pay \$3,905 in four consecutive monthly payments starting in August 2013. In his Answer to the SOR, he did not provide proof of any payments. In his Response to the FORM, he stated that he made one payment of \$3,905 under the repayment arrangement and, due to a reduction in his annual income in September 2013 and payment of his children's college loans, was unable to pay off the alleged debt by November 2013. He attempted to extend the monthly payment arrangement, but the creditor refused to modify it. Applicant indicated that creditor agreed to accept a lump sum payment of \$6,300 to resolve this debt. He stated that he planned to make that lump sum payment by the end of December 2013. He failed, however, to provide proof of the repayment arrangements or of any payments made toward this debt.⁴

Applicant has been continuously employed since October 2005. In August 2013, he submitted a personal financial statement (PFS) that reflected his net monthly income was \$7,250, that his total monthly expenses were \$800, and that his total monthly debt payments were \$2,510, which left him a net monthly remainder of \$3,940. The PFS also indicated that he had \$70,000 in bank savings. Based on the monthly gross salary reported in the PFS, his annual salary was approximately \$117,000. He offered no evidence of financial counseling. No proof was provided that his wife has worked outside the home in the past.⁵

Applicant worked as a cultural advisor/linguist for Company A, a defense contractor, from September 2008 to June 2009. His employer was a subcontractor on a DOD contract. For the week of June 8-14, 2009, he was working for the prime contractor at a military base in the United States. The time sheet for that week was contained in the FORM. The time sheet was on the prime contractor's letterhead and reflected in part the following information.

Position	MON	TUE	WED	THU	FRI	SAT	SUN	Total Hours
PU Linguist	12	12	12	12	12	12	12	84
Initials	XX*	XX	XX	XX	XX	XX	XX	XX
TOTAL HOUR						84	**	84

XXXXXXXX***
 EMPLOYEE NAME: XXXXXXXXXXXX XXXXXX**** OPERATIONS MANAGER: XXX XXXX⁶

* The "XX's" in the initials boxes represent Applicant's initials. His initials were hand printed in each box. Of note, there is an obvious difference in the printing style of the

⁴ Items 1, 4, 5, 9, 10, and 17.

⁵ Items 1, 4, 5, and 6.

⁶ Items 5 and 12.

initials entered for Monday through Thursday and those entered for Friday through Sunday and in the Total Hours box.

** This block contained Applicant's initial that were blacked out. Applicant's initials can still be seen below the blackout.

*** These "X's" represent Applicant's hand-printed name. The printing style of his name is similar to the initials entered in the initial boxes for Friday through Sunday and in the Total Hours box.

**** These "X's" represent Applicant's and his operations manager's typed names.

Printed on the bottom of the time sheet was the following message:

False statement Individual left [military base's name] to go home on 12 June without anyone's knowledge. He lost his ID card + could not get on plane for return flight on 14 June. Falsified hrs for Fri/Sat + Sun.⁷

Administrative notice is taken that June 12, 2009, was a Friday. The printing style of the message at the bottom of the time sheet is similar to the printing of the initials entered in the initial boxes for Friday through Sunday and the Total Hours entries.⁸

On June 15, 2009, the Operations Manager of the prime contractor sent an email to Company A that stated Applicant went home on June 12, 2009, without informing the prime contractor's staff. The Operations Manager also reported that Applicant falsified his weekly time sheet. It also indicated that June 12-15 were military training holidays. The prime contractor's policy was to allow linguists to go home at their own expense on those training holidays and not be paid for them. Applicant reportedly departed on June 12th and could not board his return flight due to losing his ID card and turned in a falsified timesheet with hours worked when he was not at the military base.⁹

Company A issued a "termination of employment" for Applicant on June 15, 2009. It indicated that Applicant was not asked back due to trying to submit a falsified timecard. It also reflected that Applicant left the military base on Friday, June 12th without notifying the site manager and attempted to submit for hours that he was not on the base. It stated that Applicant was asked not to return based on the prime contractor's request. Of note, if Applicant left the military base on Friday, June 12th and did not return, it is not explained how he then submitted the time sheet on or before June 15th.¹⁰

In his Answer to the SOR, Applicant stated that he was informed before his termination that the prime contractor lost the DOD contract. After learning that

⁷ Item 12.

⁸ Items 1, 4, 12.

⁹ Items 4, 12, and 13.

¹⁰ Item 11.

information, he began looking for another job. He stated that he went home for the weekend and learned he was hired by another company. He further stated that he left his job with Company A on short notice and did not submit a false time sheet. He also indicated that, within four months after beginning his next job, a manager from Company A asked him to come back to work for that company again, but he declined that offer.¹¹

In his e-QIP dated October 15, 2009, Applicant did not list in Section 13A a reason for leaving his job with Company A. He also responded “No” to the question in **Section 13C – Employment Record** that asked:

Has any of the following happened to you in the last 7 years?

- Fired from a job
- Quit a job after being told you would be fired
- Left a job by mutual agreement following charges or allegations of misconduct
- Left a job by mutual agreement following notice of unsatisfactory performance
- Left a job for other reasons under unfavorable circumstances
- Laid off from job by employer¹²

In his e-QIP dated April 17, 2012, Applicant indicated in Section 13A that he left his job with Company A because “Company lost contract.” He also responded “No” to the question in **Section 13C – Employment Record** that asked:

Have any of the following happened to you **in the last seven (7) years** at employment activities that you have not previously listed? (If ‘Yes’, you will be required to add an additional employment in Section 13A.)

- Fired from a job?
- Quit a job after being told you would be fired?
- Have you left a job by mutual agreement following charges or allegations of misconduct?
- Left a job by mutual agreement following notice of unsatisfactory performance?
- Received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?¹³

¹¹ Items 4 and 17.

¹² Item 6.

¹³ Item 5

On December 5, 2012, U.S. Army Central Personnel Security Clearance Facility issued Applicant a Letter of Intent to Deny Sensitive Compartmented Information (SCI) Access Eligibility. This letter raised only financial issues. It indicated that Applicant was granted a SECRET security clearance in February 2010 conditioned on him resolving the delinquent debt in SOR ¶ 1.b, which was being held by a different creditor at that time. It also indicated that the debt in SOR ¶ 1.b was still reported as delinquent in a credit report dated April 19, 2012. The SOR also listed the debt in SOR ¶ 1.a and indicated that it was charged off in September 1997 by the original creditor.¹⁴

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

¹⁴ Item 8.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant acquired a delinquent debt (SOR ¶ 1.b) that he was unable or unwilling to pay over an extended period. The evidence is sufficient to raise the above disqualifying conditions. Substantial evidence was not presented to establish the debt alleged in SOR ¶ 1.a. The only evidence presented of that debt is contained in a prior SOR and that prior allegation does not prove the present allegation.

Four financial considerations 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was unemployed from April to October 2005. He also attributed his financial problems to his wife not working outside the home, a bad economy, and his children's educational expenses. While his unemployment and the poor economy were conditions beyond his control that contributed to his financial problems, Applicant has failed to show that he acted responsibly under the circumstances. He has not provided proof that he received financial counseling. Since October 2005, he has been employed. In February 2010, he received a security clearance conditioned on him resolving his financial problems. In his personal financial statement dated August 2013, he indicated that he had a net monthly remainder of \$3,940 and had \$70,000 in bank savings. Despite his favorable financial situation, he failed to show that he has made a repayment arrangement for the debt in SOR ¶ 1.b or made any payments towards resolving that debt. In short, he had failed to show that this debt is being resolved. This long-standing, ongoing delinquent debt casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) partially applies.

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. The following disqualifying conditions under that paragraph are potentially applicable:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; 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.

The SOR alleged that Applicant was terminated from a job for submitting a false timecard in June 2009. Applicant denies that he submitted a false timecard. He indicated that, because he heard the prime contractor lost the DOD contract that he was working on, he then sought and obtained another job. A review of Applicant's timecard supports his contention. The printing of his initials in the reported false entries (June 12 through 14 (Friday-Sunday)) on the timecard are markedly different from his initials in the earlier entries (June 8 through 11 (Monday-Thursday)). Moreover, the printing of Applicant's name in the employee signature block is similar to the printing of his initials for June 12 through 14 and similar to the handwritten statement on the bottom of the time sheet. Applicant's claim that he did not submit a false time sheet is believable. I find in favor of Applicant under Guideline E. If he was not terminated from his job in June 2009, then he did not submit false entries on his 2009 and 2012 e-QIPs when he indicated that he had not been fired from a job in the last seven years.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis and considered all the information contained in the FORM. I also considered that Applicant has worked in Afghanistan in support of U.S. military forces. Nonetheless, his handling of the delinquent debt in SOR ¶ 1.b leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has mitigated the security concerns arising under Guideline E, but failed to mitigate the security concerns under Guideline F.

Formal Findings

Formal findings 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
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge