



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 13-01263
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Gregory L. Sandler, Esq.

07/17/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the criminal conduct security concerns, but failed to mitigate the financial considerations and personal conduct concerns. He has over \$30,000 in delinquent debts. He amassed this debt after being granted a Chapter 7 bankruptcy discharge five years ago. He took no action to address his finances after repeatedly promising to do so during the course of the current security clearance process. He has a long track record of traffic offenses, even while on probation, that raises concerns he may similarly disregard rules and regulations regarding the proper handling of classified information. Clearance is denied.

Statement of the Case

On December 13, 2013, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under the financial considerations, personal conduct, and criminal conduct guidelines (Guidelines F, E, and J).

On January 21, 2014, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information (Answer). Applicant

appended to his Answer exhibits (Ex.) A – G, which were admitted at the hearing without objection. On March 3, 2014, Applicant’s counsel supplemented the Answer by providing further clarification regarding his client’s responses.

On April 3, 2014, Department Counsel indicated the Government was ready to proceed with a hearing in the case. On April 15, 2014, a notice was issued setting the hearing for May 14, 2014. The hearing was held as scheduled. Department Counsel offered Government Exhibits (Gx.) 1 – 28, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (Ax.) 1 – 10, which were admitted without objection. I granted Applicant’s request for additional time post hearing to submit matters in support of his case. He timely submitted Ax. 11 and 12, which were also admitted without objection.¹ The hearing transcript (Tr.) was received on May 27, 2014, and the record closed on May 28, 2014.

Findings of Fact

Applicant is in his late forties. He is a computer systems engineer for a defense contractor. He received an associate’s degree in information technology (IT) in 2002 and since then has worked as a contractor in the defense industry. He has performed his work in an exemplary and professional manner. Based on his work history, Applicant was selected to assist senior U.S. military officers and DOD civilian employees with their IT needs. He has held a security clearance since about 2003.²

Applicant is divorced and lives with his girlfriend. He has custody of his two teenage children from his previous marriage. He does not receive child support from his former spouse.³

Applicant’s financial trouble started in about 2006 when he divorced. In 2009, he filed and had about \$40,000 to \$45,000 in debt discharged through Chapter 7 bankruptcy. He states the debts were primarily medical debts related to his former marriage.⁴ The bankruptcy is alleged at ¶ 1.a in the SOR.

The SOR lists 20 delinquent debts that have been reduced to judgments or are in collection status. Applicant submitted proof refuting one of the alleged debts, a state tax debt (1.r). The remaining SOR debts remain unresolved and total over \$30,000. The majority of this amount is for a delinquent student loan totaling about \$23,000. Applicant defaulted on his student loan obligation in about 2005.⁵

¹ Department Counsel’s position regarding Ax. 10 was marked Hearing Exhibit (Hx.) V and made a part of the record. Hx. I – IV are identified at page 3 of the transcript.

² Tr. at 20-30, 54, 93; Gx. 2; Ax. 1, Ax. 2; Ax. 12.

³ Tr. at 21, 95-97; Gx. 2.

⁴ Tr. at 91-95; Gx. 2; Gx. 3 (number of delinquent medical debts reported on 2002 credit report); Gx. 6.

⁵ Tr. at 89-91.

In May 2013, Applicant submitted a security clearance application (SCA). He disclosed his student loan debt and said he was working on resolving the debt. He was asked about the status of the student loan debt during his security clearance background interview, in questions posed to him in a financial interrogatory, and at hearing. He claimed to be negotiating a payment plan to resolve the debt. He submitted no documentation of his efforts to resolve his student loan debt or the majority of his debts.⁶ The SOR debts and their respective status are set forth in the table below.

Allegation	Amount	Status	Information	Reference
b. Judgment	\$3,821	Unresolved	In 2012, Applicant's former landlord secured a judgment. Applicant was made aware of the judgment during his clearance interview. He contacted his former landlord after receiving the financial interrogatory. No agreement has been reached to resolve this debt.	Tr. at 36-43; Gx. 4-6; Ax. 8
c. Judgment	\$1,290	Unresolved	In 2011, Applicant's former landlord secured a judgment. Applicant did not submit proof that the debt is paid.	Tr. at 36-43; Gx. 4-6
d-f, h-m, q-u. Medical Debts	\$2,854	Unresolved	Fourteen delinquent medical debts ranging from a \$35 collection account to a \$389 debt. Applicant was asked about the debts during his clearance interview and in the financial interrogatory. He submitted no documentation regarding his efforts to resolve the debts.	Tr. at 48-51.
g. Collection Account (cable)	\$166	Unresolved	Past-due cable bill that is in collection status. Applicant was previously asked about the debt. He submitted no documentation regarding his efforts to resolve the debt.	Tr. at 48-51; Gx. 6
n. Collection (telephone)	\$130	Unresolved	Past-due telephone bill that is in collection status. Applicant was previously asked about the debt. He submitted no documentation regarding his efforts to resolve the debt.	Tr. at 48-51; Gx. 6
o. Student Loan	\$23,901	Unresolved	In 2005, Applicant defaulted on his student loan. His tax returns were intercepted to offset the debt. He submitted no proof of voluntary efforts to resolve the debt.	Tr. at 43-46, 83, 89-91; Gx. 6; Ax. 3
p. State tax lien	\$4,380	Resolved	Applicant testified that the state tax lien was the result of a past-due child support account that he has since resolved. He submitted proof that his only outstanding state tax obligation is less than \$12.	Tr. at 46-48, 83-86; Ax. 4; Ax. 9

Applicant has not received financial or debt counseling. His income has remained relatively stable over the past few years. He states that he pays his monthly recurring expenses on time, does not have any credit card debt or consumer loans, and is living within his means. In November 2013, Applicant submitted a personal financial

⁶ Tr. at 80, 83, 89-91; Gx. 2; Gx. 6; Answer.

statement claiming \$200 a month in disposable income. He testified that his monthly disposable income doubled to about \$400, when his girlfriend moved in with him earlier this year.⁷ He was unable to explain why he had not used this discretionary income to address the smaller debts listed in the SOR, such as the medical debts for \$50 and \$35 listed at 1.l and 1.m.⁸

Applicant has a lengthy police record. In 1995, he was charged with possession of marijuana. The charge was later dismissed. He did not disclose this drug-related criminal charge on his original or current SCA, because he did not realize it needed to be listed.⁹

In 2005, Applicant was charged with issuing bad checks. He was convicted and received a 90-day suspended jail sentence. He was placed on probation for a year. He was required him to remain on “good behavior” for the entire period of his probation. The term “good behavior” was defined to Applicant in writing and included “no moving violations.”¹⁰ Five months later, Applicant violated the terms of his probation when he was charged with driving on a suspended license.¹¹ He was convicted of the driving offense and received a 90-day suspended jail sentence. He was placed on probation for three years, which again required him to remain on good behavior for the entire term of his probation.¹² Applicant omitted these convictions and probation violations on his recent SCA, because he did not recognize that the matters needed to be listed in response to several questions on his current application.¹³

Between 2009 and 2014, Applicant was charged and convicted of 14 driving offenses. Applicant testified about taking a safe driver course and other remedial steps he has taken to avoid committing further traffic violations. His last driving infraction occurred in January 2014.¹⁴

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to

⁷ Tr. at 51-54, 80-82, 95-96; Gx. 6.

⁸ Tr. at 93-94.

⁹ Tr. at 55-58; Gx. 1, Gx. 2, Gx. 8.

¹⁰ Ax. 5.

¹¹ Gx. 13; Ax. 7.

¹² Ax. 6. *See also*, Gx. 11-12.

¹³ Tr. at 58-70, 85-89, Gx. 2.

¹⁴ Tr. at 70-79, 97-98; Gx. 14-25, Gx. 27-28. *See also*, Gx. 9 (In March 2001, Applicant was convicted of two misdemeanor traffic offenses).

classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.¹⁵ However, as the Appeal Board, has unequivocally stated there is no *per se* rule in security clearance cases requiring disqualification. Instead, a judge must decide each case based on its own merits.¹⁶

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. 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 an 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

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O.

¹⁵ See *also*, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”)

¹⁶ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹⁷ ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments about an individual’s ability and willingness to protect and safeguard classified information). See *also*, ISCR Case No. 11-12202 at 5 (The “Adjudicative Guidelines are designed to *predict*. The prediction in nonsecurity violation cases is made by identifying and then evaluating behaviors or circumstances that have an articulable nexus to the ability or willingness to safeguard classified information.”) (emphasis in original).

10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern regarding an applicant with financial problems is explained at 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 debts alleged in the SOR are established through Applicant's admissions and the other evidence submitted at hearing, to include his current SCA and several credit reports. Applicant's history of failing to pay his debts raises the Guideline F concern and establishes the disqualifying conditions at:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts date back several years and continue to the present day. His present financial situation is, in part, due to a lack of financial support from his ex-wife for their children. However, he has been gainfully employed since 2002 and was granted a bankruptcy discharge in 2009. Following the bankruptcy discharge, Applicant accumulated a significant amount of delinquent debt. He has yet to address the vast majority of the SOR debts, to include a significant student loan debt that he defaulted on nine years ago and repeatedly promised to rectify during the course of the current security clearance process. Applicant's failure to address and, more importantly, provide documentation of his efforts to resolve his past-due debts undermines the favorable evidence he presented of resolving a state tax lien. He has not received financial counseling and his finances are not under control. None of the mitigating conditions apply. His financial situation remains a security concern.¹⁸

Guideline E, Personal Conduct

The SOR alleges two types of conduct that purportedly raise the Guideline E security concern. The first set, which are alleged at 2.a, 2.b, 2.d – 2.o and 2.r – 2.t, involve Applicant's past criminal conduct and traffic violations. The second set, which are alleged at 2.c and 2.p – 2.q, raise the prospect that Applicant deliberately failed to disclose pertinent information regarding his police record on his initial and current SCA. Both sets of allegations raise the security concern under the personal conduct guideline, which is explained at AG ¶ 15:

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.

Applicant's extensive police record, to include long track record of committing traffic violations, directly implicates the above concern because it raises questions about his judgment and willingness to follow rules and regulations. Applicant's extensive police record establishes the following disqualifying condition under Guideline E:

AG ¶ 16(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

¹⁸ See, e.g., ISCR Case No. 12-11660 (App. Bd. July 9, 2014) (adverse decision sustained because applicant did not pay his debts while gainfully employed and failed to submit documentation that he paid, settled, or otherwise resolved the debts listed on his SOR).

regulations, or other characteristics indicating that the person may not safeguard protected information.

Applicant can mitigate the security concern raised by his police record by establishing one or more of the mitigating conditions listed under the guideline. I have considered all the mitigating conditions and only the following are potentially applicable:

AG ¶ 17(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; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's offenses, when considered in total, are not minor. Traffic infractions in and of themselves would *not* normally raise a security concern. However, in this case, Applicant's past criminal offenses and long track record of disregarding traffic laws paint a troubling picture of an individual who may similarly be unable or unwilling to abide by rules and regulations regarding the proper handling of classified information.¹⁹

Security clearance adjudications are "not an exact science, but rather predicative judgments about a person's security suitability," where an applicant's past history is the best indicator of future conduct.²⁰ Applicant has twice been sentenced to jail, the last following a conviction for a serious traffic offense. The convictions, jail sentence, and the imposition of probation had no discernible effect on his conduct. Of note, Applicant's probation required him to remain on "good behavior." He was advised in writing that this specific term required him to refrain from committing further traffic offenses. Yet, even under such circumstances, Applicant was incapable of reforming his conduct.

Applicant continued to commit traffic offenses after being issued an SOR and being placed on notice that such conduct could jeopardize his clearance.²¹ Applicant clearly does not appreciate the security significance of his conduct and is either unwilling or unable to reform his behavior to what is required to maintain a security

¹⁹ See, e.g., ISCR Case No. 10-09281 at 4 (App. Bd. March 5, 2012) (upholding denial of security clearance under Guideline E because individual had a seven year track record of traffic violations); ISCR Case No. 01-25941 (App. Bd. May 7, 2004) (sustaining adverse decision due to applicant's long track record of traffic violations, namely, 13 violations over 10 year period).

²⁰ ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Department of the Navy v. Egan*, 484 U.S. 518, 528-529 (1988)].

²¹ I have only considered the post-SOR traffic offenses in evaluating Applicant's "claim of extenuation, mitigation or changed circumstances." ISCR Case No. 10-00922 at 3 (App. Bd. Nov. 3, 2011).

clearance. His past history leaves me with concerns that this type of conduct will recur. His conduct also leaves me with doubts about his judgment and ability to follow rules and regulations regarding the proper handling of classified information. Accordingly, I find that none of the mitigating conditions apply to the first set of allegations under the personal conduct guideline.

On the other hand, I find that Applicant mitigated the potential security concerns raised by the omission of his past drug-related offense and other criminal matters from his initial and current SCA. When confronted with the omission of material, adverse information on a SCA, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.²² Applicant did not list these matters because he genuinely believed they did not need to be listed either because he mistakenly thought they were over seven years old or, as in the case of his probation violations, was under the mistaken impression they were not serious enough to warrant listing on his application. Although Applicant's inability to comprehend the seriousness of his past conduct and legal ramifications that have befallen him due to such conduct seems implausible, it is this lack of appreciation and concern that appears to be at the core of his inability to reform his behavior. Therefore, I find Applicant's assertion that he did not deliberately falsify his SCAs credible, but his lack of regard for the security significance of his past conduct and inability to reform his behavior continues to raise a security concern under Guideline E.

Guideline J, Criminal Conduct

Applicant's past criminal conduct is alleged as a security concern under Guideline J. The security concern regarding individuals who engage in criminal activity is addressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant has not committed a criminal offense since his probation violation for driving with a suspended license over seven years ago. Although he has a long track record of violating local traffic laws, he has not engaged in any criminal activity since 2006. He has been gainfully employed throughout this entire period and is raising his teenage children on his own. Notwithstanding Applicant's long track record of violating traffic laws, I find that it is unlikely he will engage in criminal activity in the future.²³ His past criminal conduct no longer raises a security concern under Guideline J.

²² See generally, ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

²³ See, AG ¶¶ 32(a) and 32(d).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I gave due consideration to Applicant's work as a federal contractor and that he is a loving and responsible father. However, Applicant's reckless disregard for his personal finances and traffic laws raise doubts about his judgment, reliability, and ability to follow security rules and regulations. As noted above, *any* doubt concerning an applicant must be resolved in favor of national security. Accordingly, I find that the favorable whole-person factors present in this case do not outweigh the security concerns at issue. Overall, the record evidence leaves me with questions and doubts about Applicant's continued eligibility for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q – 1.u:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a, 2.b, 2.d – 2.o and 2.r – 2.t:	Against Applicant
Subparagraphs 2.c and 2.p – 2.q:	For Applicant
Paragraph 3, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge