



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



In the matter of:)
)
) ISCR Case No. 14-02832
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/19/2015

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated two delinquent credit card debts totaling over \$50,000 that he was unable to begin resolving until 2012, due to some circumstances beyond his control. He paid one debt and is repaying the other, demonstrating a good-faith effort to resolve financial obligations. In 2001 Applicant’s employer reprimanded him for accessing and distributing inappropriate materials through emails on his work computer. In 2013 Applicant’s employer reprimanded him for accessing inappropriate materials on his work computer, misusing company time, and disseminating information from the company’s website to the public without authorization. Financial security concerns are mitigated. Personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 26, 2013. On July 25, 2014, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On August 18, 2014, Applicant answered the SOR (Answer), and requested a hearing. On November 24, 2014, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On January 2, 2015, DOHA issued a hearing notice, setting the case for January 21, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits (GE) and Applicant offered seven exhibits (AE) into evidence. All were admitted. DOHA received the hearing transcript (Tr.) on February 2, 2015, and I received it on February 23, 2015.

Findings of Fact

Applicant denied the two allegations contained in SOR ¶¶ 1.a and 1.b, and offered explanations. He admitted the four allegations contained in SOR ¶¶ 2.a through 2.d. His admissions are accepted as factual findings.

Applicant is a 51-year-old employee of a defense contractor, where he was hired in 1988. He is a test engineer and has held a security clearance for about 25 years. (Tr. 20.) He has a bachelor's degree in technical engineering and a master's degree in business. (Tr. 17.) He was married to his first wife from 1998 to 2000. They have two children, ages 17 and 21, whom he supports. He married his second wife in 2005. She was previously married and has two children with her former husband. Both children have special needs and live with Applicant and her. (Tr. 21-22.) Applicant and his wife have one eight-year-old child together. (Tr. 19.)

Applicant began experiencing financial difficulties after their child was born in 2006 and his wife stopped working. In 2010 or 2011 the situation worsened when his wife's former spouse developed health problems and was unable to provide child support for his two children. Around the same time, Applicant lost a significant amount of money from his investments when the stock market collapsed. Subsequent to these events, Applicant started becoming delinquent on credit card payments. (Tr. 22-23.) In 2012 his wife began working, which allowed him to begin addressing delinquent debts. (Tr. 23.)

Applicant submitted his performance evaluation for 2014 that gave him a "Met Expectations" rating. His supervisor stated that Applicant "has been an important contributor to the team's achievements this year. His skills, expertise, and problem solving capabilities have been important to the success of our program customers." (AE

7.) Applicant stated that his supervisor and wife are unaware of this proceeding, but his security officer knows about it.¹ (Tr. 20.)

Financial Considerations

Based on credit bureau reports (CBR), dated January 22, 2014, and June 23, 2014, the SOR alleged two delinquent debts that totaled \$51,417 and became delinquent in 2011. (GE 2, GE 3.) The status of each debt is as follows:

SOR ¶ 1.a: The \$29,252 judgment entered in 2012 was paid in October 2014. Applicant negotiated a settlement amount of \$7,700 with the credit card company in October 2012, and subsequently made monthly payments for two years. (Tr. 24-25; AE 2.)

SOR ¶ 1.b: The \$23,165 delinquent debt owed to a credit card company is being resolved. Applicant has been making monthly payments of \$250 on this account since February 2012. (Tr. 27.) The balance as of September 2014 is \$21,415. (AE 3, AE 4.) He intends to continue making payments until it is paid. (Tr. 29.)

Applicant submitted a budget. He and his wife have a net monthly income of \$7,023. Their expenses are \$7,002, essentially leaving no remainder at the end of the month. (Tr. 30; AE 5.) He makes monthly payments on five open credit card accounts, whose balances total about \$10,000. (Tr. 42.) He anticipates having a federal income tax debt for 2014 of approximately \$4,000 that he will pay with his yearly bonus. (Tr. 32.) Between 2011 and 2012, he negotiated and paid two settlements for other credit card debts. He paid \$6,000 to settle an \$11,000 debt, and \$4,000 to settle a \$10,000 debt. (Tr. 38-39.) In 2014 he borrowed \$19,000 from his 401(k) to pay 2013 taxes and other household expenses. (Tr. 30.)

According to the June 2014 CBR and information presented at this hearing, Applicant is managing his debts. (GE 2.) His utilities, mortgage and other ongoing expenses are current. He acknowledged that his financial situation is strained, but he does not want to file a bankruptcy. He is trying to make “a good faith effort to honor all of my obligations.” (Tr. 36.) He contacted a credit counseling company for assistance, but learned that their fees were not financially reasonable. (Tr. 40.)

Personal Conduct

The SOR alleged four incidents that raised security concerns under this guideline. They are as follows:

¹ Applicant's supervisor is aware of the personal conduct security concerns in this case because she was involved in the 2013 investigation giving rise to them. (GE 4.) It is unclear whether she has knowledge of the financial concerns.

SOR ¶ 1.a. Applicant admitted that on October 22, 2013, he received a written reprimand from his employer for accessing and viewing sexually explicit material on his company's computer. He was suspended for one day. (GE 4.) He admitted that he inappropriately accessed his personal email account on the company's computer for a period of three months, from July to September 2013. He denied that he used his personal email account to view pornography. He said that he forwarded sexually explicit materials from his personal email to a non-employee on only one occasion. He stated that he did not know the email contained sexually explicit material until he opened it. He further explained that he knew it was against company policy to forward inappropriate materials to other employees through the company's email. However, he did not think that forwarding inappropriate content from his personal email to another while using his work computer was a violation of the company's policies. (Tr. 61-68.)

SOR ¶ 1.b. Applicant admitted that on October 22, 2013, he received a written reprimand from his employer for the misuse of company time. He was suspended for nine days and required to complete a training course. The Employee Corrective Action Memo issued to him on that day stated, "Per your own admission and company records, you have spent 1.5 hours per day over approximately three months viewing non-work related material on the Internet on your company computer." (GE 4.) Applicant said he spent that time on the Internet because he did not have enough work. He did not request more work from his supervisor. (Tr. 59.) He admitted that his misconduct was a lapse in judgment. (Tr. 61.)

SOR ¶ 1.c. Applicant admitted that on October 22, 2013, he received a written reprimand from his employer for posting on August 6, 2013, sensitive proprietary information of the company on an external website without his employer's approval. (GE 4.) He explained that the information came from the company's website and he was unaware that "it was not for public distribution or sensitive in nature," because "there was no disclaimer or anything about it" on the website. (Tr. 51-52.) He said that his training regarding this issue taught him not to disseminate information labeled proprietary or sensitive. The information he distributed was not labeled as either. (Tr. 53.) This was the only time he posted company information on an outside website. (Tr. 56.)

SOR ¶ 1.d. Applicant admitted that on October 4, 2001, he received a written reprimand from his employer for sending emails on his work computer that contained materials that were sexual and/or racial in nature. He was suspended from October 5, 2001 through October 18, 2001, and was required to complete a training video. (GE 4.) Applicant testified that he did not originate the emails, but received them from employees and forwarded them to other employees. (Tr. 47.) He did not recall how many emails he received or forwarded. (Tr. 50.) The company subsequently warned him not to have those materials on his computer. (Tr. 48.)

In his Answer to this allegation, Applicant denied that he generated or distributed inappropriate materials to other employees. However, while testifying he admitted that

he made an error in his Answer when he stated that he had not distributed the materials. He was uncertain why he misstated that information, but acknowledged that when he completed his Answer, he believed all materials relating to the 2001 incident were redacted from his employment file. (Tr. 50.)

Since receiving the reprimands in October 2013, Applicant has been more careful and conscientious at work and while using his work computer. He no longer accesses his personal email at work. (Tr. 69.) He testified that he is aware of the seriousness of this situation. He never disclosed information that “was clearly presented to [him] as secret or classified or even proprietary.” (Tr. 70.) He apologized for his conduct and said it would not “happen again.” (Tr. 71.) He has not told his wife about these issues because he feels embarrassed by his conduct. (Tr. 68.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Between 2010 and 2011, Applicant began accumulating credit card debts that he was unable to resolve until 2012 and later. The two delinquent debts alleged in the SOR totaled \$51,417. The evidence is sufficient to raise both potential disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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 offered some evidence that his financial problems arose as a result of his wife's period of unemployment, the loss of child support, and a downward spiral in the investment markets. Those may have been circumstances beyond his control. However, he did not provide sufficient documentation that he attempted to address his debts while they were accumulating, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not document participation in credit or other financial counseling. He submitted evidence that he resolved one SOR-listed delinquent debt and is resolving the other SOR-listed debt. He provided evidence that he also resolved two delinquent debts not listed on the SOR over the past couple years. He stated that he anticipates a 2014 income tax delinquency that he believes he can pay with his bonus. The status of the repayment of his 401(k) is unknown. He provided a budget that does not accommodate discretionary spending or saving, but addresses current bills. As he pays off debts he will have additional monies to address other issues. The evidence establishes that there are some indications that his delinquent debts are slowly being resolved. AG ¶ 20(c) has limited application.

Applicant settled the \$29,252 delinquent debt alleged in SOR ¶ 1.a, and is paying the \$23,165 alleged in SOR ¶ 1.b. Applicant's efforts to pay those debts, demonstrate a good-faith effort to resolve financial obligations. AG ¶ 20(d) applies to both debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 two conditions that could raise a security concern and may be disqualifying:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information 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. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant admitted that he misused his employer's time and equipment in the four instances alleged in SOR ¶¶ 2.a through 2.d. His conduct raises security concerns under AG ¶ 16(d), because it documents credible adverse information that is not explicitly covered under any other guideline, and is sufficient when combined with all available information to raise questions about Applicant's judgment, trustworthiness, and willingness to comply with rules pertinent to the safeguarding protected information. In August 2013 he disseminated sensitive or proprietary information belonging to his employer without authorization. He accessed and viewed sexually explicit material on his company computer in 2001 and 2013. He misused company time and equipment for three months in 2013. He was disciplined for violating the company's policy for each incident. The evidence is sufficient to raise potential disqualifications under AG ¶¶ 16(d)(1), (2), (3), and (4).

Applicant's misconduct at work and concealment of it from his wife create a vulnerability to exploitation or duress because it is the type of behavior, specifically the accessing and distributing of sexually or racially inappropriate materials on his work computer, which if known may affect his personal and professional standing in the

community. The evidence is sufficient to raise potential disqualifications under AG ¶ 16(e).

AG ¶ 17 includes three conditions that could mitigate security concerns arising from Applicant's personal conduct:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The evidence does not support the application of any of the above mitigating conditions. Applicant's conduct is not minor, occurred once in 2001 and again in 2013 despite formal discipline for the first incident, and casts doubt on his trustworthiness and good judgment. Other than his employer's mandated training, and his admission of wrongdoing and assertion that similar conduct will not recur, he did not present evidence of positive actions he has pursued to alleviate the stressors or factors that may have contributed to the misconduct. Because Applicant has not disclosed information regarding this hearing to his supervisor or told his wife of the financial or personal conduct security concerns, he has not taken basic positive steps to reduce his vulnerability to exploitation, manipulation, or duress. Mitigation under AG ¶¶ 17(c), (d), and (e) was not established.

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.

According 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 pertinent facts and circumstances surrounding this case. Applicant is a 51-year-old engineer, who has worked for a defense contractor since 1988 and held a security clearance for most of that time. According to a 2014 performance evaluation, he is meeting his employer's expectations. Applicant is married and supporting five children, two of whom are stepchildren with special needs. While his financial situation is strained, he is managing expenses and debts according to CBRs. There is no evidence that would indicate he will not continue honoring repayment agreements or ignore other obligations. He has established a pattern of paying debts since 2012.

Although Applicant mitigated the financial security concerns, he did not mitigate the personal conduct security concerns. There are three troubling aspects about these concerns. The first is the fact that he was disciplined twice for misusing his work computer, once in 2001 and again in 2013, raising serious questions about his judgment and ability to adhere to his employer's rules and regulations. The second aspect was raised during his testimony as it became clear that he lied in his Answer when he denied redistributing salacious materials to coworkers because he believed the Government would not learn of it. The third aspect is his concealment of the personal conduct incidents and financial issues from his wife. Although he exhibited sincere remorse for his actions, he did not provide sufficient evidence of rehabilitation from which to conclude that similar conduct will not recur.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge