



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-00236
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 24, 2013. On March 12, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD acted 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on March 23, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 14, 2014, and the case was assigned to me on May 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 27, 2014, scheduling the

hearing for July 11, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Department Counsel also submitted a demonstrative exhibit summarizing the evidence, which was attached to the record as Hearing Exhibit (HX) I. Applicant testified, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until July 21, 2014, to enable Applicant to submit additional evidence. He timely submitted AX C and D, which were admitted without objection. At Applicant's request, I extended the deadline for post-hearing submissions to August 4, 2014, and Applicant timely submitted AX E, which was admitted without objection. Department Counsel's comments regarding AX C-E are attached to the record as HX II. DOHA received the transcript (Tr.) on July 21, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old armed security guard employed by a defense contractor. He did not complete high school, but he obtained a general educational development certificate in 1996 or 1997. (GX 4 at 2.) He attended college from January 2000 to October 2001 and received an associate's degree. After receiving his degree, he was unemployed until January 2003. He worked for a heating and air conditioning company from January 2003 to January 2004. He worked as a building superintendent from February 2004 to September 2008. He worked as an armed security guard from September 2008 to June 2013, when he began his current job. He has never held a security clearance.

Applicant married in December 2005. He and his wife have a 23-year-old son who was born before they married. He also has a 13-year-old step-daughter who was born during his wife's relationship with another man before Applicant and she were married. (GX 4 at 5.) His son and step-daughter live with him and his wife. (Tr. 27.) His son pays the cable bill and electric bill for the home. (Tr. 38.)

When Applicant submitted his SCA, he answered "No" to a question asking if, during the past seven years, he had any bills or debts turned over to a collection agency. He did not disclose any of the debts alleged in the SOR, even though all the debts alleged in the SOR had been turned over to collection agencies before he submitted his SCA. (GX 1 at 32.) The evidence indicates that the student loan alleged in SOR ¶ 1.g is included in SOR ¶ a, and the collection accounts alleged in SOR ¶¶ 1.c, 1.e, 1.f, 1.h, and 1.i pertain to the same cellphone account.

During a personal subject interview (PSI) on August 28, 2013, Applicant told the investigator that he owed about \$7,173 in past-due rent and that he had an informal agreement with his landlord to perform extra janitorial duties in the apartment building in return for reducing the past-due rent by \$200 per month. (GX 4 at 2.) The past-due rent is not alleged in the SOR.

During his PSI, Applicant told the investigator that he did not disclose the student loan in SOR ¶¶ 1.a and 1.g, the credit card account in SOR ¶ 1.d, and the cellphone bill in SOR ¶¶ 1.c, 1.e, 1.f, 1.h, and 1.i because he had forgotten about them. (GX 4 at 7-8.) He told the investigator that he did not disclose the delinquent bill for satellite television service in SOR ¶ 1.b, because he did not discover it until August 2013, after he submitted his SCA. He explained that he obtained the satellite service for his sister-in-law and was unaware that she was not making the payments for the service as she had agreed. (GX 4 at 7.)

Applicant told the investigator that the cellphone account in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, and 1.i was obtained for himself, his nephew, and his cousin. He paid his share of the bill but the other users did not. When Applicant found out that the bill was delinquent, he paid \$700 but could not afford to pay the debt in full. (GX 4 at 7-9.)

At the hearing, Applicant admitted that he knew he had delinquent debts and he had received notices from collection agencies before he submitted his SCA. He testified that he thought he had answered “Yes” to the question about debts turned over to collection companies, but that he was rushing to complete the questionnaire and had to redo parts of the questionnaire so many times that he inadvertently answered “No” to the question. He testified that he did not print out a copy of his questionnaire and check it for errors before submitting it. (Tr. 47-49.)

In March 24, 2014, the day after Applicant answered the SOR, Applicant contacted a debt-management company, and he signed a contract with the company on July 11, 2014, the day of his hearing. The plan includes all the debts in the SOR. His debt-management plan provides for monthly payments of \$236, beginning on July 21, 2014. (AX A; AX C.) He has another student loan not alleged in the SOR, on which he is paying \$114 per month by automatic deduction from his bank account. (Tr. 38.) Applicant has been in a no-pay status since April 28, 2014, and unable to make any payments. When he was in a pay status, his take-home pay every two weeks was about \$1,600. (Tr. 37.) He testified that his debt-management plan is “on standby.” (Tr. 30.)

A friend and neighbor of Applicant for more than 20 years submitted a letter on his behalf, describing him as dependable, hardworking, responsible, honest, respectful, and trustworthy. Applicant confided in him about the mistakes he has made by cosigning for family members, his intent to obtain financial counseling, his quest for a better-paying job, and his desire to pay off his delinquent debts. (Answer to SOR, Enclosure 1.)

A senior credit manager for a large corporation has known Applicant for almost 20 years, and she described Applicant’s concern for his neighborhood as a pre-teenager, earning a reputation as the “neighborhood watch kid.” She has watched him grow into being a responsible father and husband, and she has been impressed by his continuing interest in contributing to his community. (AX D.)

A senior manager from Applicant's previous company, where Applicant was an armed guard transporting and protecting cash, jewelry, artwork, and bonds, described him as dependable, hardworking, honest, punctual, and well-liked by his coworkers. (AX B.) Applicant's current supervisor has "great respect" for him and states, "He has always displayed a high degree of integrity, responsibility, [and] trustworthiness since the day he started to work here." (Answer to SOR, Enclosure 2.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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.

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

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 about potential, rather than actual, risk of compromise of classified information.

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." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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 therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[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 concern under this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The SOR alleges nine delinquent debts. The delinquent student loan in SOR ¶ 1.a includes the debt in SOR ¶ 1.g. The delinquent cellphone account alleged in SOR ¶ 1.c is duplicated in SOR ¶¶ 1.e, 1.f, 1.h, and 1.i. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶¶ 1.e-1.i for Applicant.

Applicant's admissions, corroborated by his credit reports, establish four delinquent debts: a student loan for \$1,075, alleged in SOR ¶¶ 1.a and 1.g; the satellite

service account for \$346, alleged in SOR ¶ 1.b; a cellphone account for \$2,209, alleged in SOR ¶¶ 1.c, 1.e, 1.f, 1.h, and 1.i; and a credit card account for \$440, alleged in SOR ¶ 1.d. His delinquent debts establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially applicable:

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.

AG ¶ 20(a) is not established. Applicant’s delinquent debts are ongoing, numerous, and did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is partially established. Applicant’s delinquent debts were caused by periods of unemployment and underemployment and the failure of family members to pay debts for which Applicant was a cosigner or jointly liable. However, he has not acted responsibly. He started his current job over a year ago and was drawing full pay, but he took no significant action to resolve his debts until after he responded to the SOR in late March 2014.

AG ¶ 20(c) is partially established. Applicant’s receipt of financial counseling and enrollment in a debt management plan are steps in the right direction. However, because he is not able to start making payments under the plan and has not established a track record of financial responsibility, the second prong of this mitigating condition is not established.

AG ¶ 20(d) is not established. A “good-faith effort” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Even though Applicant has worked for his current employer since

June 2013, he took no meaningful action to resolve the debts alleged in the SOR until after he answered it in March 2014, and he did not sign the contract with the debt-management company until the day of his hearing. Although he now has a plan for resolving his debts, he has been unable to initiate payments under the plan.

Guideline E, Personal Conduct

The SOR alleges that Applicant intentionally falsified his SCA by answering “No” to a question whether he had any debts or bills turned over to a collection agency within the last seven years. The concern under this guideline is set out in 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.

The relevant disqualifying condition in this case is “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.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Although Applicant had difficulty understanding some of the questions on the SCA, the question at issue was simple, and he has not claimed at any time that he did not understand it. During his PSI, he told the investigator that he had forgotten about the debts. At the hearing he admitted that he knew about his delinquent debts and had received notices from collection agencies before submitting his SCA. He claimed that he inadvertently changed a “Yes” to a “No” while attempting to correct his other mistakes on the SCA. He has not explained his contradictory explanations for answering “No” to the question. His contradictory explanations are not plausible or credible. I conclude that AG ¶ 16(a) is established.

Two mitigating conditions under this guideline are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

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.

AG ¶ 17(a) is not established. Applicant acknowledged during the PSI that he should have disclosed the delinquent debt for satellite service, but he claimed that he did not discover this debt until after he submitted his SCA. He falsely told the investigator that he had forgotten about the student loan in SOR ¶ 1.a; the cellphone account in SOR ¶¶ 1.c, 1.e, 1.f, 1., and 1.i; and the credit card account in SOR ¶ 1.d.

AGA ¶ 17(c) is not established. Applicant's falsification of his SCA was not minor, because it undermined the integrity of the security clearance process. It was recent because it pertained to his current SCA. It was not infrequent because he compounded his false statement on his SCA by giving false explanations during the PSI and at the hearing. His falsification did not occur under unique circumstances making it unlikely to recur.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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's financial problems arose from his unemployment, underemployment, financial naïveté, and misguided generosity to untrustworthy family members. He has obtained financial counseling and has a plan to resolve his debts, but he cannot execute his plan without adequate income. His lack of candor during the security clearance process raises serious doubts about his reliability and trustworthiness.¹

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge

¹ Applicant's delinquent rent and his false statements to the investigator during his PSI were not alleged in the SOR. Thus, they cannot be an independent basis for denying his application. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered his delinquent rent and lack of candor during his PSI for these limited purposes.