



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



In the matter of:)
)
) ISCR Case No. 14-00449
)
)
Applicant for Security Clearance)

Appearances

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

07/28/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 18, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F and Guideline E. DOHA acted under Executive Order (EO) 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 24, 2014, and requested a hearing before an administrative judge. The case was assigned to me on May 14, 2014. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2014, and the hearing was convened as scheduled on June 4, 2014. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through I, which were admitted into the record without objection. The record was held open for Applicant to submit additional information, and he submitted AE J through O, which were admitted into evidence without objection. Department Counsel's transmittal memorandum was marked HE II and Applicant's transmittal document was marked HE III. DOHA received the hearing transcript (Tr.) on June 12, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations listed in SOR ¶¶ 1.b and 1.e-1.h. Those admissions are adopted as findings of fact. He denied the allegations listed in SOR ¶¶ 1.a, 1.c-1.d, 1.i, and 2.a. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 34 years old. He is married and has one child. He has worked as an analyst for his current employer, a defense contractor, since July 2007. He is a high school graduate who has taken some college courses. He served on active duty in the Navy from 1999 to 2007 and received an honorable discharge.¹

The SOR lists nine delinquent debts: a home mortgage account past due 120 days in the amount of about \$4,879 (SOR ¶ 1.a); consumer credit accounts in the amounts of \$11,919 (SOR ¶ 1.b), \$1,685 (SOR ¶ 1.c), \$7,728 (SOR ¶ 1.e), \$4,012 (SOR ¶ 1.f), \$3,145 (SOR ¶ 1.g), \$1,147 (SOR ¶ 1.h); a utility company debt in the amount of \$150 (SOR ¶ 1.d); and a telecommunications debt in the amount of \$318 (SOR ¶ 1.i). These debts are supported by a credit report from October 2013.²

Applicant experienced financial difficulties when his wife lost her job in mid-2012. Additionally, he was furloughed in October 2013 for approximately a week and a half. Because of these events, he missed several mortgage payments with his last payment occurring in August 2013 (See SOR ¶ 1.a). Applicant was able to pay back the missed mortgage payments in November 2013, which put the account back in good standing. He provided documentary proof that he has made his monthly payments from December 2013 through June 2014. His current monthly mortgage payment is approximately \$1,200. This debt is resolved.³

¹ Tr. at 6, 27, 52; GE 1.

² GE 2.

³ Tr. at 27-32; AE A, K.

Applicant set up a payment plan to pay SOR debt ¶ 1.b. This debt was charged off by the creditor in April 2013. He produced documentation showing that he made one \$50 payment in June 2014. This account is being resolved.⁴

SOR debt ¶ 1.c was charged off by the creditor in February 2013. Applicant stated that part of the debt resulted from him being a victim of identity theft. He presented documentation showing he was absolved of that portion of the debt. As for the remaining part of the debt that he is responsible for, he presented documentation showing that he paid \$421 in April 2014 to settle this debt. This debt is resolved.⁵

SOR ¶ 1.d is a utility company debt that Applicant has been unable to resolve, despite his efforts to contact the company through email correspondence in April 2014. He believes the company is no longer doing business under the previous name. He is willing to pay this debt, but is unable to reach the creditor of record. Applicant has attempted to resolve this debt.⁶

The debts listed in SOR ¶¶ 1.e-1.h are all credit card debts that were all assigned to collection agencies for nonpayment during the timeframe of March to August 2013. Applicant has reached out and established payment plans to deal with the respective delinquent debts. He presented documentation showing that he has made at least one monthly payment for all these debts. These debts are being resolved.⁷

SOR ¶ 1.i was assigned to a collection agency in February 2013. Applicant presented a receipt showing that he paid \$158.42 to the original creditor of SOR ¶ 1.i. The receipt indicated that his new balance was "\$0.00." Applicant testified that paying this amount resolved the delinquent debt. This debt is resolved.⁸

On September 19, 2013, Applicant completed his security clearance questionnaire. Four days later, on September 23, 2013, he signed the signature page for the application thereby certifying that his answers were "true, complete, and correct to the best of my knowledge and belief and are in good faith." He answered "no" to questions concerning whether he had defaulted on any type of loan; whether he had any debts turned over to a collection agency; whether he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and whether he had ever been 120 days delinquent on any debt, or was then currently over 180 days delinquent on any debt. As the above-stated facts reveal, his answers were not true. In October 2013, during his personal subject interview, it was only after the investigator

⁴ Tr. at 33-35; GE 2; AE B.

⁵ Tr. at 35-36; GE 2; AE C.

⁶ Tr. at 40-41; AE D.

⁷ Tr. at 42-45; GE 2; AE E-H.

⁸ Tr. at 45-46; GE 2; AE I.

specifically confronted Applicant with the bad debt information that he acknowledged the debts and provided additional information about them. Applicant claimed that he tried to list the debts on his security application form, but that somehow he did not correctly input the information on the computer-generated form. During his testimony, he maintained a similar version of events. He specifically stated that he included his debt information in the “Additional Comments” section at the end of the form. No comments appear in that section of Applicant’s form. He did not produce any documentary evidence showing that he inputted any information about his delinquent debts anywhere on his security clearance application. He denied that he deliberately hid this information from the government. I do not find Applicant’s version credible, in light of the documented evidence to the contrary.⁹

Applicant’s personal financial statement indicated he has \$758 net remainder after his expenses and debt payments. He received credit counseling in the past. He received a letter of recommendation from his former officer-in-charge who attested to his trustworthiness and recommended retention of his security clearance. He also presented his Navy evaluation report for 2003, which indicated that his overall rating was between “Meets Standards” and “Above Standards.” He also received the Navy Marine Corps Achievement Medal (Gold Star) for his performance in September 2007.¹⁰

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

⁹ Tr. at 46-49, 62-63; GE 1, 3.

¹⁰ Tr. at 57-58; AE J, L, M, O.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's debts are recent and some remain unresolved. He has made sufficient strides to get his financial house in order, in particular, his mortgage is current and he is making regular payments on that obligation. However, given Applicant's narrow margin of disposable income available to him, the evidence does not support concluding that similar circumstances may not recur. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that his wife lost her job in 2012 and that he was furloughed for more than a week in October 2013, which contributed to his financial problems. Applicant must demonstrate responsible behavior in light of the circumstances. He produced the funds necessary to get his mortgage back in good standing and contacted his creditors and began making payments on his delinquent debts. I find AG ¶ 20(b) applies. Applicant presented evidence of financial counseling, and there is evidence that Applicant's financial problems are being resolved or under control. There is evidence that he has made a good-faith effort to pay the remaining debts. I find AG ¶¶ 20(c) and 20(d) apply.

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 in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire....

Applicant filled out his security clearance application during the time when he was delinquent on his mortgage and the other SOR debts. As stated above, I do not find credible Applicant's version that he put the debt information on the form, but that it did not show up on the final product. He had four days to review the form before he certified it as accurate, but he did not identify the missing debt information at the time. I also factor in that Applicant did not reveal this information to the investigator until he was specifically asked about it. After evaluating all the evidence, I find Applicant deliberately provided false information concerning his delinquent debts. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(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.

Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past military service, his wife's unemployment, and his furlough. His recent actions show a track record of financial stability and an overall good-faith effort to resolve his debts. However, he did not provide credible evidence to resolve the falsification allegation in his favor.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations, but failed to mitigate the Guideline E, personal conduct concerns.

Formal Findings

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

Paragraph 1, Guideline F: Subparagraphs 1.a – 1.i:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph: 2.a:	AGAINST APPLICANT 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.

Robert E. Coacher
Administrative Judge