



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-00530
)	
Applicant for Security Clearance)	

Appearances

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

08/22/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Guideline F concerns are mitigated, but Guideline E concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 26, 2013. On March 11, 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 received the SOR on March 21, 2014; answered it on April 9, 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 15, 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 submitted a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until July 28, 2014, to enable Applicant to submit additional documentary evidence. He timely submitted AX B through E, which were admitted without objection. Department Counsel's comments regarding AX B through 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 SOR ¶¶ 1.a through 1.h. He denied SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 53-year-old environmental laboratory technician employed by a defense contractor since February 1992. (GX 4 at 2.) He served in the Army National Guard from March 1983 to March 1986 and received an honorable discharge. He has held a security clearance since September 1993.

Applicant married in April 1989. He and his wife began to have marital problems in December 2011, and they contemplated divorcing. They continued to live in the marital home but did not have much contact because of their work schedules. (Tr. 39-40.) They did not incur any fees for legal services or marital counseling. (Tr. 40.) They reconciled in December 2013. (Tr. 39.) They have three sons, ages 22, 21, and 19, who live with them. (Tr. 28.)

When Applicant submitted his SCA in September 2013, he answered "Yes" to a question whether, during the past seven years, he had a judgment entered against him. He disclosed that two judgments were entered against him in May 2005 for delinquent credit card accounts, totaling about \$6,000. He stated that the delinquent credit cards were due to his wife's misuse of credit cards and her lack of employment. (GX 1 at 28.)

On the same SCA, Applicant answered "No" to a question asking if, during the past seven years, he had any account or credit card suspended or charged off, had any bills or debts turned over to a collection agency, or had been or currently was more than 120 days delinquent on any debt. (GX 1 at 29.) His credit bureau report (CBR) dated September 17, 2013, reflected an unsatisfied judgment entered against him in November 2011 (SOR ¶ 1.a), six delinquent debts referred for collection (SOR ¶¶ 1.b-1.e, 1.g, and 1.h), and a home mortgage loan that was 60 days delinquent (SOR ¶ 1.f). (GX 3 at 3-4, 6-8.) His negative answer to this question on his SCA is the basis for SOR ¶ 2.a.

During a personal subject interview (PSI) in October 2013, Applicant told the investigator that he was aware of the delinquent debts reflected on his CBRs, but he did not disclose them on his SCA “due to lack of memory” and the failure of his creditors to contact him about delinquent payments. (GX 4 at 5.) In his answer to the SOR, Applicant stated that he did not review his CBR before submitting his SCA, that he knew his mortgage loan payments were two months behind, and that he believed that the other bills would be paid when they sold their home.

At the hearing, Applicant admitted that he was receiving bills, collection notices, and telephone calls about his delinquent debts before he submitted his SCA. (Tr. 44.) He has submitted SCAs on two previous occasions during his career. (Tr. 50.) He testified that he had “no idea” why he answered “no” to the financial questions at issue. (Tr. 46.) He admitted that the delinquent credit card accounts in SOR ¶¶ 1.c, 1.d, 1.e, and 1.h were solely in his name. (Tr. 44.) He also testified that he did not print a copy of his SCA before submitting it because he was multitasking, completing his SCA while also doing his job on the computer. (Tr. 52-54.)

By the time of the hearing, all the delinquent debts were resolved or being paid. The judgment in SOR ¶ 1.a duplicates the debt in SOR ¶ 1.h, which was settled in April 2014. (AX B.) The charged-off debt in SOR ¶ 1.b was paid in March 2014. (GX 2 at 1; AX A at 7.) Applicant and the creditor for the debt in SOR ¶ 1.c entered into a repayment agreement in April 2014, providing for monthly \$150 payments that are directly debited from his bank account. (AX A at 8; Tr. 34.) The charged-off debt in SOR ¶ 1.d is included in the collection account in SOR ¶ 1.g, which has been resolved. (AX E.) The charged-off debt in SOR ¶ 1.e was settled in March 2014. (GX 2 at 2; AX A at 11.) In March 2014, Applicant began making payments on a trial loan modification plan for the delinquent home mortgage loan in SOR ¶ 1.f, and he had made payments through June 2014 under the plan as of the date of the hearing. (GX 2 at 3; AX A at 9-10, 12, 14, 15; AX C.)

Applicant’s financial problems began around 2008. His wife had been self-employed as a day-care provider from 1995 to 2003, earning about \$600 per week. She decided in 2003 to become a massage therapist, stopped working as a day-care provider, and attended massage therapist school until 2008. From 2008 to 2012, she worked intermittently as a massage therapist and earned about \$200 per month. Since March 2013, she has worked about 25-30 hours per week as a restaurant hostess and earned about \$300 per week. (Tr. 28-29.) Applicant’s income declined in 2010 when his employer discontinued overtime work due to funding limits. The loss of overtime reduced Applicant’s pay by about \$2,400 per month. (GX 4 at 3; Tr. 25.) In October or November 2013, Applicant skipped three monthly payments on his home mortgage loan to pay for his son’s first semester in college, which was about \$2,500, giving rise to the allegation in SOR ¶ 1.g. (Tr. 37, 40-41.) He presented no evidence of cost-cutting measures to deal with his income reduction. He also presented no evidence that he sought or received financial counseling.

Applicant's wife was involved in an automobile accident in January 2014, which totaled her car. Applicant used the \$5,000 they received from their insurance company to resolve their delinquent debts. (Tr. 26.)

Applicant's current monthly net income, including spousal income, is \$5,720. His monthly expenses, including negotiated debt payments and home mortgage loan payments under the trial loan modification plan, are about \$5,027, leaving a net monthly remainder of about \$693. (AX D.) He testified that his three sons want to go to college, but he can only afford to send one. His three sons are employed but the record does not reflect their earnings, except to the extent that they pay their own phone bills. (Tr. 28, 49.) Applicant described his financial situation as living "paycheck to paycheck." (Tr. 26.) When he filed his federal income tax return for 2013, he owed about \$900, but could afford to pay only \$400. He is waiting to receive a bill from the Internal Revenue Service for the remaining taxes. (Tr. 49-50.)

Applicant is involved in his community, chairing programs for the local recreation commission and coaching athletic teams. A coworker on recreational projects describes him as "a genuinely kind, honest, and altruistic person." She has the "utmost respect" for his integrity. (AX A at 17.) Applicant's current supervisor believes that he is "one of those individuals who continually rises above others." His supervisor believes that he has high integrity and is conscientious and responsible. (AX A at 18.)

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 SOR alleges an unsatisfied judgment (SOR ¶ 1.a), six delinquent credit card accounts (SOR ¶¶ 1.b-1.e, 1.g, and 1.h), and a past-due home mortgage loan (SOR ¶ 1.f). 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 evidence establishes that the judgment in SOR ¶ 1.a duplicates the debt in SOR ¶ 1.h and the debt in SOR ¶ 1.d is duplicated in SOR ¶ 1.g. When the same conduct is alleged twice in the SOR under the same guideline, one of 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.d and 1.h in Applicant's favor.

Applicant's admissions, corroborated by his credit bureau reports and his testimony at the hearing, establish the 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 relevant:

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(b) is established. His wife's decision to seek a new career and his income reduction due to loss of overtime pay were circumstances beyond his control. His marital problems were beyond his control, but it does not appear that they caused any additional financial burdens. He acted responsibly by contacting his mortgage lender when he fell behind on his payments. He acted responsibly when he received the windfall income from the car accident and used it to resolve his delinquent debts.

AG ¶ 20(c) is not established. There is no evidence that Applicant has sought or received financial counseling.

AG ¶ 20(d) is established. Applicant and his wife had a plan to resolve all their debts by selling the marital home, but that plan was abandoned when they reconciled. However, when they received unexpected cash from the insurance company, they acted in good faith by using it to resolve their delinquent debts instead of for other discretionary purchases.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by intentionally failing to disclose derogatory financial information (SOR ¶ 2.a). 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 AG ¶ 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . ."). 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. 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).

AG ¶ 16(a) is established. Applicant is an experienced employee who has held a security clearance for many years. He has been required to submit SCAs twice before. He admitted at the hearing that he knew he was in financial trouble and had been receiving collection notices and telephone calls before he submitted his SCA. He has given inconsistent and implausible explanations for his negative answer to financial questions. He first told the investigator during his PSI that he did not disclose his delinquent debts "due to lack of memory." In his response to the SOR, he stated that he did not review his CBR before submitting his SCA and believed that his delinquent debts would be paid when the marital home was sold. At the hearing, he admitted that he was aware of his delinquent debts and that he had "no idea" why he did not disclose them. He attributed his false negative answer to an innocent mistake while multitasking.

He knew that his financial problems would raise security concerns, but he claimed that he did not check his SCA for mistakes before submitting it.

Applicant's disclosure of the May 2000 judgment does not corroborate his claim of an innocent mistake. To the contrary, it reflects that he was willing to disclose an old judgment and blame it on his wife, but he was not willing to disclose multiple delinquent debts on accounts that were recent and solely in his name. The evidence strongly suggests that he hoped the sale of the marital home would resolve his financial problems before they came to the attention of security officials.

The following mitigating conditions are potentially relevant:

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. Although Applicant's PSI was only about three weeks after he submitted his SCA, he did not disclose his delinquent debts until the investigator confronted him with the evidence.

AG ¶ 17(c) is not established. Applicant's false SCA was not minor, because it undermined the security clearance process. It is not mitigated by passage of time, because it involves his current application to continue his clearance. It is arguably infrequent, but it is compounded by his implausible, inconsistent, and unpersuasive explanations during his PSI and at the hearing. His falsification did not occur under unique circumstances.

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 has served his country for many years and in various capacities. He is involved in his community. He has held a clearance for almost 21 years. He is highly regarded by his supervisor. He was genuinely concerned about his financial problems, and he acted responsibly when he used an unexpected insurance payment to resolve his delinquent debts.

Unfortunately, Applicant's lack of candor during the security clearance process raises doubts about his reliability and trustworthiness that are not mitigated. An act of falsification has security significance independent of the underlying conduct. See ISCR Case No. 01-19278 at 7-8 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification, particularly where there are multiple falsifications. ISCR Case No. 08-11944 at 3 (App. Bd. Aug 15, 2011).

After weighing the disqualifying and mitigating conditions under Guideline F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations, but he has not mitigated the concerns raised by his personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his 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): FOR APPLICANT

Subparagraphs 1.a-1.h: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge