



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



In the matter of:)
)
) ISCR Case No. 14-00874
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to show that he has a track record of financial responsibility, and that his omissions in his 2013 security clearance application were not deliberate. He failed to mitigate the Guideline F and Guideline E security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 30, 2013. On April 24, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).¹ Applicant answered the SOR on May 26, 2014, and elected to have his case decided on the written record.

¹ 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated June 26, 2015, was provided to him by transmittal letter dated August 14, 2015. Applicant received the FORM on September 1, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.c, 1.e through 1.j, 1.l through 1.r, and 2.a and 2.b. He denied SOR ¶¶ 1.d and 1.k (because there was no creditor contact information), 1.s (disputed), and 1.t (duplicate of 1.b). His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 43-year-old warehouseman employed by a federal contractor. He graduated from high school in June 1991, enlisted in his state's Air National Guard in August 1992, and has been serving to present. He married his wife in March 1998. This is his first security clearance application. (2013 SCA)

Applicant's employment record shows that he served on active duty between January 2005 and June 2006. He worked for a company as a forklift operator from June 2006 to September 2009. He served on active duty from September 2009 to December 2010. He returned to work as a forklift operator from December 2010 to January 2012. Applicant has been working for his current employer, a federal contractor, since February 2012. During this period, he has been deployed to a South Asia nation in support of U.S. personnel deployed overseas. (2013 SCA)

Section 26 (Financial Record) of the 2013 SCA asked Applicant to disclose whether he had any financial problems, including delinquent or in collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "no" to all these questions and deliberately failed to disclose the delinquent accounts alleged in the SOR.

The subsequent security clearance background investigation revealed the 20 delinquent accounts alleged in the SOR, totaling about \$18,826. Most of the SOR allegations are established by Applicant's admissions and the FORM credit reports. Apparently, between December 2010 and January 2012, Applicant was underemployed and overextended himself financially. He claimed that he was not aware that he had to disclose all of his delinquent accounts, and averred his omissions were unintentional.

Applicant made payments towards the accounts alleged in SOR ¶¶ 1.a, 1.c, 1.e, 1.i, 1.j, 1.m, and 1.p. The April 2015 credit report shows that Applicant paid SOR ¶ 1.l. (FORM, Item 6) Additionally, some accounts had no balance due, or showed a reduced balance when compared to the balance reflected on the 2013 credit report. (FORM,

Item 5) I find that the account alleged in SOR ¶ 1.b is alleged twice (SOR ¶ 1.t), and both allegations will be consolidated under SOR ¶ 1.b.

Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget. Although he claimed in his answer to the SOR that he established numerous payment agreements, he presented no documentary evidence of any payment agreements made, efforts to contact creditors, or efforts to otherwise resolve his financial problems.

In his answer to the SOR, Applicant admitted that he falsified his 2013 SCA as alleged in SOR ¶¶ 2.a and 2.b. Applicant failed to submit sufficient evidence to explain or mitigate the security concerns raised by his omissions.

Policies

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

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.

Applicant’s history of delinquent debts raises the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) “inability or unwillingness to satisfy debts,” and AG ¶ 19(c) “a history of not meeting financial obligations.”

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the financial considerations mitigating conditions fully apply. Applicant's delinquent debts were recent, frequent, and not incurred under circumstances making them unlikely to recur.

Applicant's presented insufficient evidence of periods of unemployment, underemployment, or other facts that could establish circumstances beyond his control that may have contributed or aggravated his financial problems. Nor did Applicant submit evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). Further, Applicant presented no evidence to show he obtained financial counseling and has gained a better grasp of his financial situation.

Applicant received credit for resolving eight of the SOR allegations. Notwithstanding, it appears that these payments were made after receipt of the SOR. As such, the evidence is insufficient to show that he initiated good-faith effort to repay overdue creditors or otherwise resolve his debts.

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. Applicant failed to establish that he has a track record of financial responsibility.

Guideline E, Personal Conduct

AG ¶ 15 articulates 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.

Applicant omitted relevant and material information from his 2013 SCA when he failed to disclose his financial problems. Considering the number of debts, the dates the

accounts became delinquent, and the period during which the debts have been delinquent, Applicant knew or should have known of his delinquent accounts. I note that Applicant has been in the service since 1992, and holds the rank of staff sergeant. In light of his service and work experience, he knew or should have known that he was required to be truthful, honest, and forthcoming when completing his SCA. Applicant failed to submit sufficient evidence to mitigate or explain his omissions. In light of the available evidence, I find his omissions were deliberate and with the intent to conceal the information or to mislead the Government.

Applicant's falsification of his 2013 SCA triggers the applicability the following disqualifying condition under AG ¶ 16:

(a) 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 ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

The above mitigating conditions are not sufficiently raised by the facts and circumstances of this case and are not applicable. Personal conduct concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant receives credit for his years of service in the Air National Guard, and his work for federal contractors in support of deployed U.S. personnel. Notwithstanding, he failed to submit sufficient evidence to show that he has a track record of financial responsibility, and that his omissions were not made with the intent to falsify his SCA or mislead the Government. He failed to mitigate the Guidelines F and E security 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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.e, 1.i, 1.j, 1.l, 1.m, 1.p, and 1.t:	For Applicant
Subparagraphs 1.b, 1.d, 1.f-1.h, 1.k, 1.n, 1.o, and 1.q-1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge