



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



In the matter of:)	
)	
)	ISCR Case No. 14-00918
)	
)	
Applicant for Security Clearance)	

Appearances

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

Decision

LYNCH, Noreen A., Administrative Judge:

On April 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct), and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on July 18, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated May 4, 2015¹. Applicant received the FORM on May 12, 2015. Applicant submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the majority of the SOR allegations under Guideline F and provided explanations. He denied SOR allegations 1.s, 1.t, 1.v through 1.x, and 1.z. Applicant denied the allegation under Guideline E.

Applicant is 47 years old. He received his undergraduate degree in 2008 and his Master's degree in 2011. Applicant is married and has two children. He served in the United States Marine Corps (USMC) from 1986 until 1991, receiving a bad conduct discharge. He has been employed with his current employer since 2012, working overseas. (Item 2) He has held a security clearance since 2003.

Financial

The SOR alleges 26 delinquent debts totaling approximately \$135,690, of which 17 are federal student loans totaling approximately \$106,843. (Item 1) In his answer to the SOR, Applicant admitted that payments have been initiated for accounts alleged in 1.a through 1.r for the student loan accounts. He provided information that he is paying \$100 monthly, which started in May 2014 until the present. (Response to FORM)

Applicant presented documentation that he has paid the following debts: SOR 1.s for \$648, 1.t for \$472. 1.v for \$1,096, 1.w for \$1,177, 1.x for \$1,297 and 1.z for \$946. He noted that he is "in negotiations" for the debts listed in 1.d for \$8,655; 1.u for \$6,891 and 1.y for \$7,665. (Documents in File)

As to SOR allegation 1.d for \$8,655, he answered that he was in negotiations with them. In response to the FORM, he stated that he "reached out" to them, but the account has gone to collection. He is still communicating with the primary lender to resolve the account. For SOR allegation 1.y, Applicant answered that negotiations were in progress. However, in response to the FORM, he stated that the account had gone to "charge off" status. He again stated that he is trying to communicate with the primary lender to resolve the issues.

Applicant attributes his delinquent debt to a one-income family. In addition, he stated at one time that he was not actively engaged in the day-to-day management of his family finances. He blames frequent and repeated overseas travel for work duties, which prevented him from monitoring his accounts. His overseas work began in 2009 and continued through December 2014. At one point, he had two residences to maintain, one stateside and one abroad. He worked in Afghanistan, Greenland, and Bahrain. He commuted when he lived in the United States from one state to another for work. He left the financial details to his wife. (Response to FORM).

Applicant submitted a detailed budget in response to the FORM. He listed payments for the student loans, his living expenses, and other credit payments. The net monthly remainder was approximately \$329. Applicant takes responsibility for the financial issues. He realizes that the decision to solely entrust the management of the household income to his wife without his input was a poor choice. He obtained a

Quicken Financial Management Software to facilitate more effective budgeting and to utilize a feature of the program which provides financial guidance.

Applicant stated that the decision to incur student loan debt, which is the bulk of the debt was not poor decision making. He believed that his company would reimburse him for the courses, but he learned that they would not. He also did not understand the intricacies of the federal loan process. He claims that he did not receive information pertaining to the student loans for mail sent to him had been delayed due to his change of address. He thought the student loans were in deferment.

Personal Conduct

When Applicant completed his February 2013 security clearance application, he responded “No” to Section 26 - Financial Record questions concerning any financial delinquencies. He denied deliberate falsification of the debts. He stated that he knew he was behind in some payments, but was making continuous payments, even if they were less than full amount. He stated that he learned about the student loans after the investigative process started. He did acknowledge in his November 2013 interview that he fell behind because he could not afford to make all the payments and that he was trying to consolidate the loans. (Item 3) Since he acknowledged the two accounts that were in collection, he knew he had something to disclose on his security clearance application. He intentionally falsified his security clearance application. He reported that he was unaware of the other accounts. His credit reports show that many accounts are noted as “pays as agreed.” (Item 5) In that same report, certain student loans are listed as in deferred status. Other student loans are listed as date of last payment March 2015, but with an earlier delinquency date.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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; and

(d) credible adverse information in an adjudicative issue area that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

Applicant answered “No” on his 2013 security clearance application in response to Section 26-Financial Record. In his 2013 interview, he was confronted with the student loans in collection and responded that he fell behind in payments for various reasons. He also stated that his wife was handling the business affairs. He also stated in his 2013 interview that he was aware of the two accounts alleged in SOR 1.u and 1.v. Since he was aware of the two accounts noted above and did not disclose any financial issues, I find he intentionally falsified his security clearance. The inconsistency does not allow me to find in his favor for the personal conduct. Given the amounts of the two collection accounts, it is untenable that Applicant had no indication that he had some financial issues. Any doubt must be resolved in favor of the national security. I have doubts about his judgment. There are no mitigating conditions that apply in this case.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt in the amount of \$135,690. Seventeen debts are student loans totaling \$106,843. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulty make it difficult to conclude that it occurred "so long ago." Additionally, some of the delinquent accounts are considered recent because they remain unpaid. Applicant still has two unresolved debts. He has his student loans in consolidation status and has made payments since 2014. He paid the majority of the other credit debts. He made an attempt to contact the two collection accounts, but he has no plan in place these delinquent debts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant worked abroad and had two separate residences at times. He left the household and financial management to his wife. He noted a period of unemployment. He had a one income family. He believed his student loans would be reimbursed by his employer, but that was not the case. He paid several bills and believed his student loans were in deferment. I find that he acted responsibly.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies to his student loans and those debts he has paid. As noted, Applicant has provided evidence that he paid various accounts and that he has been paying on his student loans since 2014. He has two accounts that are not resolved, which he intends to resolve. He has obtained software to help with his budget and finances. FC MC 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) applies.

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 an 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 guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 47 year old employee of a defense contractor. He is married. He served in the military. He has worked as a contractor overseas for several years.

Applicant provided evidence mitigating the Government's case concerning the financial considerations security concerns. As to the personal conduct security concerns, there is not consistent information in the record. He acknowledged two accounts that were in collection during his 2013 interview. He did not disclose that information in response to Section 26. He intentionally falsified his security clearance application. I cannot find in his favor simply from the written record for the personal conduct issues. Any doubts must be resolved in the Government's favor.

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 :	FOR APPLICANT
Subparagraphs 1.a-z:	For Applicant
Paragraph 2, Guideline E :	AGAINST APPLICANT
Subparagraph 2.a:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge