



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



In the matter of:)
)
) ISCR Case No. 14-01178
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. In an undated document and

then again on July 16, 2014, Applicant answered the SOR and indicated that he was not opposed to having a hearing. This case was assigned to me on August 18, 2014. On October 14, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing scheduling the hearing for October 21, 2014.¹ The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant's objections to GE 1 (Applicant's Electronic Questionnaire for Investigations Processing (e-QIP)) and 3 (court documents reflecting a judgment) were overruled. After questioning Applicant about GE 2, Department Counsel withdrew GE 2 (summary of an Office of Personnel Management interview). GE 4 was admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through F, which were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on October 29, 2014.

Findings of Fact

Applicant is a 53-year-old electronics technician who works for a defense contractor. He has worked for that employer since September 2005. He graduated from high school in 1979 and attended college for about one year. He served in the Army from 1987 to 1994. His first marriage was from 1987 to 2005. He married his current wife in 2005. He has five children, ages 15, 24, 29, 32, and 35, and two stepchildren, ages 25 and 28. He has held a security clearance for about nine years without incident.²

The SOR alleged that Applicant had four delinquent debts totaling \$13,853 (SOR ¶¶ 1.a – 1.d) and that he falsified his e-QIP by failing to disclose three delinquent debts (SOR ¶ 2.a). In his Answer to the SOR, Applicant admitted the allegations with comments. However, his comments are interpreted and treated as denials of the allegations.³

Applicant has been employed continuously since 2005. At the time of the hearing, he was earning about \$30,000 per year. In January 2007, his wife lost her job because her employer moved. Before she lost her job, she was earning about \$27,000 a year. In 2009, she obtained another job earning about \$30,000 a year.⁴

¹ Prior to the start of the hearing, Applicant was questioned about whether he received at least 15 days advance notice of the time and place of the hearing. He indicated that he had talked to Department Counsel about the time and place of the hearing and had received the required notice. On the record, he reiterated that he had received at least 15 days advance notice of the time and place of the hearing. See Tr. 11-12.

² Tr. 6-7, 38-39; GE 1.

³ Applicant's Answer to the SOR.

⁴ Tr. 39-42, 49.

Applicant encountered difficulty in filing his 2012 federal income tax return. When he initially filed that federal income tax return in 2013, it was rejected. He later learned that someone had stolen his identity and filed that return. He submitted an identity theft affidavit (IRS Form 14039). The IRS conducted an investigation and later provided him with his refund of about \$2,000. He indicated that he filed his 2013 federal income tax return, which took a while to process, and also received a refund for that year.⁵

Applicant testified that he was responsible for “some of the bills,” but not all of them. He indicated that the alleged debts were questionable because he was the victim of identity theft. He stated that one of his accounts had unknown charges arising from another state. He further stated unknown charges also appeared on his bank account and some of his credit cards. He indicated that he put a freeze on his accounts, disputed the unknown charges, and opened new accounts. He thought that his ex-wife and her mother were responsible for the unknown charges. With the exception of the IRS Form 14039, he provided no documentation supporting his identity theft claims, including no documents showing he disputed any debts. His credit report did not reflect the alleged debts were disputed.⁶

Record evidence established the following:

SOR ¶	Amount	Comments	Evidence
1.a	\$5,265	This account was opened in January 2005. A judgment was filed against Applicant in April 2011. Applicant admitted that he had an account with the original creditor and received notice of the legal proceeding that resulted in the judgment. A garnishment order was issued for that judgment, but Applicant stated his pay has not been garnished for this debt.	Tr. 51-52; GE 3, 4.
1.b	\$3,910	This charged-off account was opened in December 2006. It had a date of last activity of April 2011. Applicant admitted that he had an account with this creditor.	Tr. 52; GE 4.
1.c	\$2,590	This collection account was opened in April 2010. It had a date of last activity of September 2009. Applicant admitted that he had an account with this creditor.	Tr. 52; GE 4.
1.d	\$2,088	This charged-off account was opened in January 2007. It had a date of last activity of September 2009. Applicant admitted that he had an account with this creditor.	Tr. 52 GE 4.

⁵ Tr. 43-45.

⁶ Tr. 37, 43, 47-51; Applicant’s Answer to the SOR.

Applicant testified that he did not fully pay the accounts in SOR ¶¶ 1.b-1.d before they were closed. He provided no proof of payments toward the alleged delinquent debts. He submitted no proof that he has contacted the creditors in an attempt to resolve those debts.⁷

Applicant submitted an e-QIP on September 27, 2013. In Section 26 of the e-QIP, he responded “No” to questions that asked whether in the past seven years he had a judgment entered against him; defaulted on any type of loan; had bills or debts turned over to a collection agency; or had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. In fact, he responded “No” to all of the financial questions in Section 26 of the e-QIP.⁸

Applicant testified that he became frustrated when he was filling out the e-QIP. He stated that he kept having to go back to redo responses as he was filling out that electronic document. He thought that he was answering the questions correctly, but was then asked “for more information and more information.” He testified that he listed the delinquent debts in a prior security clearance application and tried to indicate in the e-QIP that nothing had changed. He stated,

When I was doing the delinquent debts I was stating that nothing had changed from the previous security clearance I was doing and I don't know how it ended up showing that I didn't have no delinquencies, because I put that down there as I still had the delinquencies from the last time.⁹

He further indicated that he filled out the previous security clearance application in about 2005, which would have been before some of the alleged debts became delinquent. He also did not list in the e-QIP that he had been subject to a prior security clearance investigation. He testified that he thought he answered “Yes” to the e-QIP questions he is alleged to have falsified. He did disclose in the e-QIP that he had been subject to disciplinary action in the military.¹⁰

Applicant is an ordained deacon. In 2014, he received a certificate of appreciation for his participation in a deacon's retreat. He also received a certificate of recognition from his employer for five years of dedicated service. A customer wrote a letter of appreciation to Applicant's employer extolling the professional services that Applicant and his coworkers provided on a project.¹¹

⁷ Tr. 51-54.

⁸ GE 1.

⁹ Tr. 45.

¹⁰ Tr. 37-38, 45-47, 54-55; GE 1.

¹¹ AE A-F.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. 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).

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

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for financial considerations is set out in AG ¶ 18 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy over an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

Applicant's wife lost her job in 2005 and was unemployed for about two years. He established that he was the victim of identity theft when someone fraudulently obtained his 2012 income tax refund. He also claimed that unauthorized charges were made to his bank account and credit cards. He admitted that he owed some of the delinquent debts, but did not specifically identify the debts or amounts that he did not owe. While his wife's unemployment and the identity theft involving his tax refund were conditions beyond his control, he failed to show that he has acted responsibly under the circumstances. No evidence was presented to show that he made any payments on the delinquent debts, that he contacted the creditors to make payment arrangements, or that he took any action to resolve the debts. No documentation was presented to establish that he disputed the debts. His financial problems remain ongoing, are significant, and cast doubt on his current reliability, trustworthiness, and good judgment. He failed to present evidence to show that his financial problems are under control or are unlikely to recur. None of the mitigating conditions fully apply. His delinquent debts remain a security concern.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 one condition that could raise a security concern and may be disqualifying in this case:

(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.

Applicant stated that he disclosed his delinquent debts in a security clearance application in about 2005. The prior application was not offered into evidence. Of note, some of the alleged debts became delinquent well after 2005. He also stated that he became frustrated in filling out the e-QIP, thought that he had responded "Yes" to the pertinent financial questions, and tried to indicate that there was no change in the status of the debts from the prior security clearance application. I did not find Applicant's testimony credible. Sufficient evidence was presented to establish that Applicant was aware of delinquent debts when he submitted the e-QIP and deliberately failed to disclose them. AG ¶ 16(a) applies.

Four personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant intentionally omitted pertinent information about his delinquent debts on his e-QIP. This falsification is recent and significant. In falsifying his e-QIP, he seriously undermined the security clearance adjudication process. I find that none of the mitigating conditions apply to this falsification.

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 relevant 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 served in the military for about seven years. He is an ordained deacon and a valued employee. Nonetheless, he failed to act responsibly in handling his financial problems and intentionally provided false information on his e-QIP. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant failed to mitigate the financial considerations and personal conduct security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a -1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge