



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



In the matter of:)	
)	
)	ISCR Case No. 14-01230
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. 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. DOD CAF 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 June 6, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 16, 2014. The FORM was mailed to Applicant

who received it on November 3, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to submit any additional evidence. The case was assigned to me on February 3, 2015.

Findings of Fact

In Applicant's answer to the SOR, regarding the Guideline F allegations, he admitted SOR ¶¶ 1.g, 1.h, and 1.i. He denied the remaining Guideline F allegations. With regard to the Guideline E allegations, Applicant admitted all the allegations, but denied intentionally falsifying information on his security clearance application. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.¹

Applicant is 22 years old. He is not married, but has two children who he raises with his girlfriend. He has worked for his current employer, a defense contractor, since November 2013. He is a high school graduate. He was unemployed from December 2012 to February 2013 and from August 2013 to October 2013. He has not served in the military and this is his first time seeking a security clearance.²

The SOR lists a judgment in the amount of \$460 (SOR ¶ 1.a) and 14 delinquent debts in the form of credit cards, medical debts, utility debts, telecommunication debts, and other accounts in arrears totaling \$18,286 (SOR ¶¶ 1.b through 1.o). These debts are supported by credit reports from November 2013 and October 2014.³

The personal conduct allegations include deliberately providing false information while completing his security clearance application in June 2013 by failing to list a judgment and his other past-due financial obligations (SOR ¶ 2.a and 2.b) and failing to list his past criminal charges (SOR ¶ 2.c).

In his answer to the SOR, Applicant's denials to the listed debts included his explanation that someone must have used his Social Security number to open these accounts without his knowledge or permission. He did not provide any documentation to support this theory. During the course of Applicant's security clearance review, he was interviewed by an investigator who questioned him about all the delinquent debts listed in the SOR. Applicant admitted some of the debts that he later denied in his answer. He also stated to the investigator that he would get a copy of his credit report to determine which debts were his and dispute those debts that were not his. There is no evidence that he took this action. All the debts remain outstanding. Applicant did not present any

¹ Items 1, 4.

² Items 6-7.

³ Items 1, 10-11.

information about his current financial status. He also did not provide evidence of any financial counseling.⁴

On November 13, 2013, Applicant completed his security clearance questionnaire. He answered “no” to a question concerning whether he had a judgment entered against him in the last seven years. He also answered “no” to the question concerning whether he had any debts turned over to a collection agency within the last seven years, whether he had been over 120 days delinquent on any debt within the last seven years, and whether he was currently 120 days delinquent on any debt. The answer to all those questions should have been “yes.” He was also asked in the application if, in the last seven years, he had been arrested, charged, convicted, or sentenced regarding any criminal proceeding to which he answered “no.” He failed to list that he was charged with wrongful entrustment in January 2012, attempted domestic violence in January 2012, and failure to confine a dog and failure to appear in June 2012. Applicant claimed that he did not list the judgment or other delinquent debts because he was not aware of them at the time he completed his application. Likewise, he also claimed that his failure to affirmatively acknowledge the criminal charges was because he did not have the information available to him at the time he completed the application and he did not think he had to list the information because all the charges were ultimately dismissed. He further stated that any incorrect information on his security clearance application was an unintentional error on his part.⁵

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

⁴ Items 4, 7, 10-11.

⁵ Items 4, 7.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 potentially 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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. His inaction toward these debts casts doubt on his reliability, trustworthiness, and good judgment. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence he was unemployed on two different occasions, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He stated he would get a copy of his credit report and dispute any questionable debts, but failed to present evidence that he did so. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling. There is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the debts. I find AG ¶¶ 20(c) and 20(d) do not apply. His claim that some of the debts were generated by someone else using his Social Security number and without his authorization is not supported by documentary evidence. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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, 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 failed to list delinquent debt and prior criminal charges as he was required to do on his security clearance application. He claims his failure to list this information was not deliberate. He claims he did not have the information available at the time he completed the application and that he did not think he had to list the criminal charges since they were ultimately dismissed. Because this is an administrative determination, I cannot make a credibility finding; however, I can consider the conflicting information Applicant gave regarding his debts and the recency of the events. These factors persuade me that he deliberately failed to list his debt information and his criminal charges on his security clearance application in 2013. 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 found the following relevant:

(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.

I considered all of the facts and circumstances surrounding Applicant's falsifications. Falsifying information on a security clearance application is not a minor offense and doing so casts doubt on his trustworthiness, reliability, 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. Applicant has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. He also deliberately provided false information on his security clearance application. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

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.o:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a – 2.c:	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