



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



In the matter of:)
)
) ISCR Case No. 14-01236
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2015

Decision

WHITE, David M., Administrative Judge:

Applicant discharged more than \$60,000 in debt in a 2005 bankruptcy, then incurred more than \$180,000 in additional unresolved delinquent debt. He falsified his security clearance application concerning his financial record. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on December 18, 2013.¹ On June 4, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns

¹Item 4.

under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).² The action was taken under Executive Order 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on June 24, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on November 13, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 15, 2014. He submitted no additional material in response to the FORM, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on February 2, 2015.

Findings of Fact

Applicant is 39 years old, and has worked for a defense contractor since March 2012. He is married with no children. He served on active duty in the Navy from November 1996 to April 2012, when he was honorably discharged in paygrade E-6 and enlisted in the active Navy Reserve. He held a security clearance while on active duty.⁵

In his response to the SOR, Applicant admitted some allegations; claimed that the allegations in SOR ¶¶ 1.f and 1.g concerned the same car loan held by different creditors; claimed that the debts alleged in SOR ¶¶ 1.d, 1.i, and 1.j were paid in March 2014; and claimed to have made partial payment toward the debt alleged in SOR ¶ 1.h.⁶ Applicant's admissions are incorporated into the following findings of fact.

Applicant admitted filing for, and obtaining, discharge of his debts through Chapter 7 bankruptcy relief in 2005. More than \$60,000 in liabilities were included. In September 2008, while Applicant was deployed at sea, his wife acted with a general power of attorney and filed for joint bankruptcy relief under Chapter 13 covering about

²Item 1.

³Item 3.

⁴The Government submitted seven Items in support of the SOR allegations.

⁵Item 4.

⁶Item 3.

\$270,000 in liabilities. In April 2010 Applicant transferred from sea duty to recruiting duty ashore, with a resulting loss of sea pay and increased living expenses. Since he was unable to maintain the required payments, his Chapter 13 bankruptcy plan was dismissed in July 2010. He remained indebted to at least nine unsecured creditors, formerly covered by the plan, for about \$12,000. In addition, he admitted owing about \$168,500 to the three creditors alleged in SOR ¶¶ 1.c, 1.e, and 1.f. Applicant's January 2014 credit report also reflected three delinquent debts totaling \$2,325 that Applicant claimed he paid in March 2014 (SOR ¶¶ 1.d, 1.i, and 1.j), and a \$540 collection account (SOR ¶ 1.h) that Applicant claimed was on a payment schedule with a lower amount due of \$432. Although the FORM put him on notice that his failure to document or otherwise corroborate these claims lessened their credibility and mitigating effect, Applicant produced no evidence of such payments.⁷

The record does not address whether Applicant obtained financial counseling other than the minimum required for his bankruptcy filings, which his subsequent financial irresponsibility proved to have been ineffective. He offered no evidence showing a workable budget from which his ability to resolve these delinquencies and avoid additional debt problems could be predicted with any confidence.

Applicant admitted falsifying material facts concerning his financial record on his security clearance application, as alleged in SOR ¶¶ 2.a and 2.b. In response to the question asking whether he had filed a petition under any chapter of the bankruptcy code in the last seven years he answered, "No." Contrary to the SOR allegation of a "No" response, he answered "Yes" to the question asking about delinquencies involving routine accounts. However, he disclosed only a \$20,000 delinquency on his first mortgage that was in foreclosure, but on which he owed over \$150,000. He failed to report the other delinquent debts discussed above. He claimed that he was advised by an unnamed "Navy security representative" to leave the financial information blank because his Navy clearance would carry over to civilian employment, but also admitted that he should have known better. This attempt to justify the falsifications is not credible, and substantial evidence indicates that they were made with the intent to deceive and conceal material facts concerning his financial irresponsibility.⁸

The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

⁷Items 3 through 7.

⁸Items 3 and 4.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant admitted about \$181,000 in unresolved delinquent debts that he incurred since discharging more than \$60,000 of debt in his 2005 Chapter 7 bankruptcy. He provided no corroboration for his claims to have recently repaid \$2,433 in other documented delinquencies. His ongoing pattern and history of inability or unwillingness to pay lawful debts raises security concerns under DCs 19(a) and (c), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 has incurred substantial delinquent debts over the past decade, a majority of which continue to date. He claimed that several smaller alleged debts have been or are being resolved, but offered no evidence from which to determine the validity of these statements or establish a track record of debt resolution. He also failed to demonstrate that conditions beyond his control contributed to his financial problems or that he acted responsibly under such circumstances. There is nothing in the record to corroborate Applicant's claim that the two delinquent automobile loans alleged in SOR ¶¶ 1.f and 1.g concern the same original debt. If they do not, then his outstanding delinquencies would be increased by about \$14,500 above the figures discussed above. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions for his financial irresponsibility.

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. 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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes one condition that raises security concerns and may be disqualifying with relation to the allegations 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's false and incomplete answers on his security clearance application, in which he denied and omitted material information regarding his financial record, were deliberate. This demonstrated questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. Five have potential applicability under the facts in this case:

(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; and

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

Applicant did not attempt to correct the falsifications on his security clearance application until confronted with the facts, so mitigation under MC 17(a) was not shown. His unsubstantiated claim that some Navy security representative told him to falsify his answers was neither credible nor shown to have been provided by an authorized advisor. Applicant provided insufficient evidence from which to conclude that these falsifications of his financial situation do not adversely reflect on his current reliability,

trustworthiness, and judgment. Nor did he demonstrate steps to reduce vulnerability to manipulation or duress. Thus, Applicant failed to mitigate security concerns by establishing any of these conditions.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His delinquent debts arose over the past nine years, following discharge of previous debts in bankruptcy, and remain largely unresolved despite his continuous full employment during the period involved. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. He deliberately falsified material information concerning his financial problems on his security clearance application. The potential for pressure, coercion, and duress remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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.

DAVID M. WHITE
Administrative Judge