



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



In the matter of:)	
)	
)	ISCR Case No. 14-01302
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/03/2015

Decision

WHITE, David M., Administrative Judge:

Applicant’s security clearance was revoked by the Army in 2010 for financial considerations. He falsified his 2013 security clearance application concerning his clearance revocation and ongoing delinquent debts, and fabricated an innocent rationale for the revocation during security interviews. He previously falsified his 2006 security clearance application by denying substantial delinquent debt. 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 November 6, 2013.¹ On June 4, 2014, the Department of Defense Consolidated Adjudications Facility (DoD

¹Item 5.

CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations).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 written responses to the SOR on July 1, and July 15, 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 October 6, 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 and his employer failed to return the receipt for the FORM or respond to it until prompted to do so by communications from the Defense Office of Hearings and Appeals (DOHA) in April 2015. Applicant's response to the FORM, dated April 28, 2015, is admitted as exhibit (AE) A. I received the case assignment on May 7, 2015.

Findings of Fact

Applicant is 38 years old, and has worked for a defense contractor since October 2013. He is married, for the second time, with a 12-year-old daughter and two stepchildren, ages 10 and 25. He served active and reserve enlistments in the Army from November 1998 to November 2013, when he was honorably discharged.⁵

In his response to the SOR, Applicant admitted all of the allegations concerning his delinquent debts in SOR ¶ 2, but denied all of the allegations concerning his personal conduct in SOR ¶ 1.⁶ Applicant's admissions, including those he made in response to DOHA interrogatories,⁷ are incorporated into the following findings of fact.

Applicant was initially granted a security clearance in 1999. On February 2, 2006, he submitted a security clearance application, in which he denied having any delinquent debts. The Army Central Clearance Facility notified him of their intent to revoke his

²Item 1.

³Item 4.

⁴The Government submitted 12 Items in support of the SOR allegations.

⁵Item 5.

⁶Item 4.

⁷Item 7.

security clearance on November 12, 2008, citing security concerns under Guideline F based on delinquent debts to 20 creditors, totaling \$20,093. He responded in detail on March 13, 2009, concerning the status of the alleged debts. On April 21, 2010, the Army notified him in writing that his security clearance was revoked because he failed to mitigate the security concerns arising from his financial considerations.⁸

On November 6, 2013, Applicant submitted another security clearance application in connection with his current employment, in which he falsified material information about the circumstances surrounding the earlier revocation of his clearance and about the nature and extent of his delinquent debts at the time. With respect to the revocation, he said, "It was discovered in JPAS that at the time, my Social Security Number and another soldier's was entered the same. So their info was seen when pulling up my social security number. This issue has since been corrected, but our clearance was pulled because of the incident." Concerning delinquent debts, he said that he had owed about \$6,400 on a Federal tax lien from 2006 after he misfiled his income tax return, but that he repaid the debt in full in March 2009.⁹ He also said that he was over 120 days delinquent on a \$112 consumer debt after mistakenly stopping automatic payments too early, but that he had made arrangements to pay it in full on December 1, 2013. He then denied having any other, unlisted delinquent debts.¹⁰

During an interview with an investigator from the Office of Personnel Management (OPM) on January 8, 2014, Applicant stated that his clearance had been revoked in August 2008 due to an administrative error, not due to any performance or disciplinary actions by him. He said that his information had been correctly entered on his application, but that another individual erroneously listed Applicant's social security number on his application, which caused confusion in the JPAS system because their personal information and backgrounds were attributed to one another. Applicant said that the error took over a year to correct, by which time he had been assigned to different duties that did not require a clearance, but that he had never had any other clearance revocations. On January 21, 2014, the OPM investigator contacted Applicant again to specifically ask him about the revocation of his security clearance by the Army in April 2010. Applicant reiterated that he was only aware of the revocation in 2008 as described above.¹¹

During his January 8, 2014 OPM interview, Applicant also discussed each of the delinquent debts alleged in the SOR with the investigator, providing fairly detailed descriptions of the reason for and status of most of them. He and the investigator

⁸Items 6, 8, and 9.

⁹The documents that Applicant submitted, with his response to the Army's 2008 SOR, show that this debt was involuntarily collected by the IRS from the refund that would otherwise have been due on his 2008 tax return.

¹⁰tem 5 at 36-40.

¹¹Item 7.

apparently did not discuss the reason for his failure to list those debts on his security clearance application.¹²

In Applicant's July 1, 2014 answer to the SOR, he denied that he intentionally falsified the circumstances surrounding the Army's revocation of his clearance. He said:

I knew that they had raised concerns about my debt, and had explained to me that my clearance could be revoked because of this debt, but at the same time, I was working with security officials trying to fix an administrative error that I believed to be the cause of my clearance being revoked. This error had myself and another soldier's information transposed in such a way that I saw her clearance information, as well as her military pay information when using my social security number.¹³ When I inquired if this was the likely reason my security clearance was pulled, I was told probably so. I gathered all the proper documentation to prove my identity, and fix this issue and fully cooperated in every way asked. I was unaware that my clearance was being revoked due to financial issues.

He further stated:

I have been working for the past year to have many items removed from my credit report, and in that time I have had over half of all delinquent items paid off and/or removed. I do admit that I have several items still to be removed and paid off, and I am currently working with a law firm that I pay monthly to negotiate with these creditors. I am making payments, to pay off each creditor one by one. I am making plenty of money to sustain myself and pay bills and still stay within my budget. I do admit that I did not furnish all creditor [sic] on my SF-86, but I was unaware of all of them.¹⁴

Applicant admitted the six delinquent debts alleged in the SOR, ranging from \$50 to \$676, and totaling \$1,979. These debts became delinquent between 2009 and 2013. He offered no evidence to corroborate his claim that he has made payments to a law firm to resolve these debts, or to support his claims that he has repaid other delinquencies and currently lives within a budget. The \$112 debt, which was the only outstanding delinquency he admitted on his November 2013 security clearance

¹²Item 7.

¹³In Applicant's January 8, 2014 OPM interview, the accuracy of which he verified and certified under oath on May 8, 2014, Applicant used the male pronoun "his" to describe the other soldier's application. Whether this was an overlooked typographical error is unclear. The first name he gave for the other soldier could be that of a woman or a man. The discrepancy does not add credibility to his claim, however. See Item 7 at 6. Applicant also failed to explain how the entry of his social security number on the other soldier's clearance application could possibly give him access to the other soldier's military pay account information.

¹⁴Item 4.

application with the statement that he would pay it on December 1, 2013, remains unresolved. His claims, in AE A, to have resolved some debts are also unsubstantiated by any documentary evidence of payments. His response to the 2006 LOI and SOR, in which the Army informed him that it proposed to revoke his security clearance for financial irresponsibility, contained documentation corroborating his claims to have resolved some of the debts of concern at that time, so the lack of evidence supporting his current claims is not attributable to a misunderstanding of his obligation to mitigate security concerns. Moreover, he was advised when provided his copy of the FORM that this decision would be based on that documentation, together with any additional evidence that it was his obligation to submit if he wanted it to be considered.

The record does not address whether Applicant obtained financial counseling. He offered no evidence showing a workable budget, from which his ability to resolve his admitted delinquencies and avoid additional debt problems could be predicted with any confidence. 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.

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 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 sets forth two conditions that describe security concerns that are 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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's false and incomplete answers on his 2006 and 2013 security clearance applications, in which he denied and omitted material information regarding his financial record and the reasons for his 2010 clearance revocation by the Army, were clearly deliberate. He never offered a supportable explanation for his attempt to conceal more than \$20,000 in delinquent debts on his 2006 security clearance application. His only debt disclosures on his 2013 application involved a Federal income tax delinquency that had been involuntarily resolved, and a \$112 consumer debt that he falsely claimed he would resolve within the month. He cogently discussed his other delinquent debts with the OPM investigator less than two months after claiming that he did not reveal them because he was unaware of their existence. He then said that he had been working, since four months before the application was submitted, to resolve additional delinquencies that he also failed to list on that document. His explanations concerning his purported misunderstanding of the basis for the Army's revocation of his clearance are self-contradictory and incredible. This history of falsifications 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 never attempted to correct the falsifications on his two security clearance applications and persisted in offering incredible explanations for them, so mitigation under MC 17(a) was not shown. Applicant provided insufficient evidence from which to conclude that these falsifications of his financial situation, and of the reasons underlying his previous clearance revocation, 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.

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 \$2,000 in unresolved delinquent debts that he incurred over the past six years, following the Army's revocation of his security clearance for having more than \$20,000 in delinquent debt in 2008. He provided no corroboration for his claims to have recently repaid other delinquencies, or of his present ability to live within his means. His ongoing pattern and history of inability or unwillingness to pay

lawful debts raises security concerns under DCs 19(a) and (c), and shift 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, some of which continue to date despite his recent employment status and claims of solvency. He offered no evidence from which to 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. Applicant's pattern of falsifying his financial history significantly weakens the credibility of his claims of capability and intention to be financially responsible in the future.. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant admitted all of the alleged delinquencies. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions for his financial irresponsibility.

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 the voluntary choices and conduct that underlie the security concerns expressed in the SOR. He still has delinquent debts, which arose over the past six years and remain 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 two security clearance applications. He also falsified the financial basis for the Army's 2010 revocation of his security clearance on the 2013 application under current consideration. The demonstrated lack of integrity, and potential for pressure, coercion, and duress remain 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 personal conduct and financial considerations.

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