



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



In the matter of:

Applicant for Security Clearance

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Case No. 14-01509

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns related to Guideline F, but mitigated concerns raised under Guideline E. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 (AG) effective within the DOD on September 1, 2006.

In a July 11, 2014, response, Applicant admitted both allegations raised in the SOR and requested a decision without a hearing. On August 21, 2014, counsel for DOD prepared a File of Relevant Material (FORM) containing seven attachments to support the Government's position in this matter. Applicant did not submit a response or any

additional information within the specified time period following his receipt of the FORM. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 5, 2014. I have thoroughly reviewed the FORM and other case file materials. Based on the materials submitted, I find that Applicant failed to meet his burden in mitigating financial considerations security concerns. Clearance is denied.

Findings of Fact

Applicant is a 49-year-old transportation specialist who has worked for the same defense contractor since November 2013. He completed high school and has taken some post-secondary courses. Applicant served with distinction in the United States Army before being honorably discharged. Divorced, he married his present wife in 1998. His is the father of two adult children and two minor children, one of whom lives with him.

In 2006 or 2007, Applicant co-signed a student loan for a friend, on which the friend agreed to make appropriate payments. Applicant did not monitor her payments. He did not worry about it because he assumed it was being timely paid. In 2010, Applicant bought a home with no difficulties, then purchased a vehicle without any credit issues. At some subsequent, unspecified time, he learned the former friend was not making timely payments on the student loan. He contacted her and was told she was working with the creditor. He has written that he later contacted the creditor to see what he could do to help, but there is no corroborating evidence to that effect. The loan balance, now in collection status, is worth approximately \$28,931.

When interviewed by investigators between January 2014 and February 2014, Applicant stated that he did not know when the debt had become delinquent, did not dispute it, did not consider it to be his, and had done nothing about the debt. FORM, Item 5 at 3. This interview occurred at some unspecified point after he had contacted one of the three leading credit reporting bureaus which, by January 2014, was reporting that he had claimed that he had not been advised there was an outstanding balance on the account. FORM, Item 6 at 11.

In the interim, on November 13, 2013, Applicant submitted his security clearance application (SCA). He did not identify the loan in response to **Section 26, Financial Record**: "In the past seven (7) years you had bills or debts turned over to a collection agency" (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor) or "You are currently 120 days delinquent on any debt?" (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor). Rather, he answered "no" to these questions, failing to disclose the student loan.

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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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, 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 the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has a delinquent debt worth approximately \$28,931. Such a fact is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance-related security concerns in this case:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Here, Applicant freely became a co-signer on a friend's student loan. Once he became a co-signer, he left the management of the loan entirely to her for a number of years. His assumption that all was well with this account and with his credit was based on his lack of difficulty financing a home and a new vehicle, not through diligent reviews of his credit report or inquiries to his friend. Applicant stated that he did not know when the debt had become delinquent. He did not dispute the debt, does not consider it to be his, and has done nothing about the debt. Given these circumstances and facts, none of the financial considerations mitigating conditions apply.

Guideline E, Personal Conduct

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

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.

Applicant's denied having delinquent debt on his security clearance application. If his answer was intentionally false, one of the following disqualifying conditions would apply:

AG ¶ 16 (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

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

As noted, for AG ¶¶ 16(a) and 16(b) to apply, Applicant's omission must have been deliberate. The Government presented facts indicating that his answer was incorrect. Applicant countered by explaining that he had honestly forgotten about the loan and had not monitored his friend's progress on repayment. When an allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 1, 2004)(explaining ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

As noted, Applicant's explanations are credibly plausible, a factor fortified by a record that indicates no other suggestions of falsity. Given the totality of the facts and circumstances, I find the Government has not established that the Applicant intentionally withheld information during his investigation. AG ¶¶16(a) and 16(b) are not established and Personal Conduct concerns are mitigated.

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). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant is a 49-year-old transportation specialist who has worked for the same defense contractor since November 2013. He has earned a high school diploma and completed some post-secondary classwork. Applicant served with distinction in the United States Army before being honorably discharged. His first marriage ended in divorce in 1996. He remarried in 1998. He has two adult children and two minor children. About a decade ago, he became a co-signer on a friend's student loan. He trusted her to manage the loan properly, then abdicated all responsibility on the debt as its guarantor. Neglected, that loan is now in collection status for nearly \$30,000. Applicant claims to have made some inquiry about the loan to his friend and the creditor, but there is no documentary evidence reflecting his efforts, if any. In becoming a co-signer on another's loan, one takes on a guarantor status with the lender. In abdicating that responsibility, one raises genuine security concerns about reliability. Here, such concerns have not been mitigated.

With regard to his execution of his SCA and his denial of a delinquent or past-due debt, there is insufficient evidence to conclude Applicant intentionally meant to falsify facts. Without such evidence, a personal conduct disqualifying condition cannot be raised. Based on the limited evidence and information presented, however, I cannot find that financial considerations security concerns have been mitigated. Therefore, clearance is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Paragraph 1, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For 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. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge