



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



In the matter of:)
)
) ISCR Case No. 14-01567
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 4, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. DOD 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 27, 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 9, 2014 (the Government evidence is referred to in the FORM as Government Exhibits (GE), but in this decision the evidence will be referred to as Items). The FORM was mailed to Applicant who received it on October 30, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence. The case was assigned to me on December 15, 2014.

Findings of Fact

In Applicant's answer to the SOR he denied the Guideline E allegation (§ 1.a). With regard to the Guideline F allegations, Applicant admitted SOR §§ 2.a, 2.c – 2.f, and 2.i. He denied §§ 2.b, 2.g, 2.h, and 2.j. 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.

Applicant is 42 years old. He is married and has two children. He has worked for his current employer, a federal contractor, since November 2013. He is a high school graduate. He was unemployed from September 2013 to October 2013. He served on active duty in the Navy from 1991 to 1993. He was discharged with an honorable discharge. He has held a security clearance in the past.¹

In 2009, Applicant used his company-furnished credit card to pay personal expenses. He was warned that this was an improper use of the card, even if he paid the debt accrued. His card was then revoked by the company. In 2013, because his job required extensive travel, his company required Applicant to apply for another company-issued credit card. He received another company-furnished credit card and used it to pay for company-related travel in the total amount of approximately \$8,000. He failed to make payment on the credit card debt, using his reimbursed funds to pay his personal debts. His card was cancelled by the card issuing company because of nonpayment. His employer was notified by the credit card company of the delinquent card balance and Applicant was terminated. He acknowledged that he "made some poor spending judgments."²

The SOR lists 10 delinquent debts: one auto-loan debt in the amount of \$5,980; one city government debt in the amount of \$1,332; one telecommunication debt in the amount of about \$478; and seven medical-related debts in the amounts of \$333, \$187, \$243, \$165, \$132, \$95, and \$87 (SOR §§ 2.a - 2.j).³ The status of Applicant's SOR debts is as follows:

¹ Items 5-6.

² Items 3, 6.

³ Item 1.

SOR ¶ 2.a:

Applicant financed a vehicle in 2005 and the loan became delinquent in 2006. The vehicle was repossessed by the creditor. He received a letter from a creditor in 2013, but did not respond to it. In June 2014, he indicated he would set-up payment arrangements in the next six months. He failed to provide proof of payment or of a payment plan. This debt is unresolved.⁴

SOR ¶¶ 2.b – 2.f and 2.i:

Applicant provided written documentation showing that these debts were paid and that there is no further outstanding balance on these accounts.⁵

SOR ¶ 2.g:

Applicant stated that he paid this account, but he provided no documentation supporting this assertion.⁶

SOR ¶¶ 2.h, 2.i:

Applicant provided written documentation showing that the creditor holding these debts had its license suspended and Applicant made attempts to contact the creditor to pay the debts, but was unsuccessful.⁷

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,

⁴ Items 3, 6-7.

⁵ Item 3.

⁶ Item 3.

⁷ Item 3.

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.

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 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:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the workplace;
- (3) a pattern of dishonesty or rule violations; and,
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant abused his company-provided credit card on two occasions. In 2009, he was specifically warned after the first occurrence that such use was improper, however, he abused the card again in 2013 by using the reimbursed funds earmarked to pay his company-issued credit card for personal debts. His actions are indicative of untrustworthy and unreliable behavior. The evidence supports his past acts of rules violations and misuse of company resources. AG ¶ 16(d) 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 credit card misuse. Repeated abuse of the company's policy on credit card use is not a minor offense and doing so casts doubt on his trustworthiness, reliability, and good judgment. Since his most recent instance of abuse was in 2013, insufficient time has passed to determine if Applicant has altered his behavior. AG ¶ 17(c) does not apply.

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:

- (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.

Applicant has resolved eight of the ten debts and has made reasonable efforts to resolve the remaining two debts. There is sufficient evidence to indicate that Applicant's debts are being resolved and that he has made good-faith efforts to resolve those that remain. I find AG ¶¶ 20(c) and 20(d) 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 stabilized his finances, however, concerns remain because of his repeated misuse of company resources. Therefore, he failed to provide sufficient evidence to mitigate the personal conduct 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 mitigated the security concerns arising under Guideline F, but he did not mitigate the concerns under 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 E: Subparagraph 1.a:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline F: Subparagraphs 2.a – 2.j:	FOR APPLICANT 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge