



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



In the matter of:)	
)	
)	ISCR Case No. 14-01607
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

12/31/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On June 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 30, 2014. A notice of hearing was issued on November 5, 2014, scheduling the hearing for December 4, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, presented the testimony of five witnesses, and submitted Applicant Exhibits (AX) A- F, which were admitted without objection. The transcript was received on December 15, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the majority of the SOR allegations under Guideline F.¹ He denied the allegation under Guideline E, and provided explanations.

Applicant is 45 years old. He obtained his undergraduate degree in 1992, and his juris doctorate in 1999. Applicant married for the third time in 2011. His current wife has one daughter who lives with Applicant and his wife. He has two children from the first marriage that ended in divorce in 2000. Applicant completed his first security clearance application in July 2013. He has been employed as corporate counsel with his current employer since April 2013. (GX 1)

The SOR alleges nine delinquent debts, including medical debts, consumer debts, and student loans totaling approximately \$22,000.² Applicant has recently paid several accounts. He states that he intended to obtain a copy of his credit report before completing his security clearance application, but he did not.

Applicant has had a variety of full-time legal positions before assuming his current role as corporate counsel for his company. During those years, he had about two months of unemployment. He explained that he paid child support for his two children from his first marriage and claims that he did not have disposable income to pay the student loans. (Tr. 65) In December 2013, Applicant agreed that an amount of \$521.09 would be deducted from each pay check. Applicant believes that the amount of the student loans including accrued interest and principal for the past 21 years is about \$140,000. (Tr. 67)

As to SOR allegation 1.a this debt of \$42 was paid on August 14, 2014. Applicant stated he previously was not aware of this account. The accounts in SOR allegations 1.b, 1.c, and 1.d (totaling approximately \$995) were paid in July and September 2014. (AX A-D) Applicant acknowledged that he paid these accounts using a credit card. Applicant also submitted documentation that he paid the SOR 1.k account for \$183.42 in September 2014.

Applicant advised that SOR allegations 1.e, 1.f, and 1.i are under investigation. He contacted the credit bureau on October 15, 2014. He has not received any further information. They are still unresolved, but Applicant noted that they are not on his credit report. (Tr. 32)

Applicant denied the allegation in SOR 1.g for a cable bill, but he decided to pay the bill. As to SOR allegation 1.h that account is in dispute. Applicant states that "he

¹Applicant provided an amended answer on October 3, 2014.

²Only two student loans were reflected on the credit reports, but at the hearing Applicant noted that he has other student loans which have been consolidated and total about \$140,000.

neither admits nor denies” the allegation in 1.j. He sent a letter to one of the credit reporting agencies. For the collection phone account in 1.i, Applicant decided to pay it because of his security clearance issue, but he did not believe he owed it. (Tr. 38)

As to the student loans in SOR 1.m and 1.n, Applicant started a payment plan in 2013. The loans were first obtained in 1993. Applicant knew that he had student loans. Applicant explained that the Department of Education started collection proceedings before 2011. At that point, the Government intended to garnish Applicant’s wages at about a level of 15 percent. Applicant requested a hearing to challenge the garnishment amount. Applicant did not believe the amounts were valid and Applicant recalled that he made some payments of \$100 a month in 2011. (Tr. 79)

Applicant addressed his nonpayment of any student loans from about 2003 until 2010, because of other financial obligations. (Tr. 79) Applicant’s one explanation for not having the student loans paid or in a payment plan was that he had other financial obligations. The child support is the only obligation that he mentioned. Applicant acknowledged that with respect to the student loans, “he got busy and put it on the back burner.” (Tr. 73) He also admitted that he was not diligent with monitoring his credit. At one point Applicant testified that he disputed one higher education loan that he obtained between undergraduate and law school. Applicant did not initiate any payments on the student loans until he received notice that his pay would be garnished.

Applicant currently earns \$115,000 per year. There is nothing in the record to reflect any financial counseling. He acknowledged that he has four credit cards that are “almost maxed out.” He pays about \$25 a month on them. (Tr. 84) He also stated that he borrows money every month from his parents, because he had a negative monthly remainder. His wife has just taken a part-time job. (Tr. 85) Applicant assumed financial responsibility for his wife’s daughter. (Tr. 85)

Character References

Applicant’s colleague, a federal program manager, who has known Applicant for two years, testified that Applicant is reliable and always responsive. He provides great advice and resolves legal issues for the company. Applicant is prudent and never fails to present all the potential legal issues that may arise if a team sales member pursued a certain course of action. (Tr. 18) He also knows Applicant on a social level and has spent time with him. The colleague is not aware of the particular security concern raised by Applicant’s finances.

Another colleague, who has known Applicant since 2007, testified that they are good friends. She considers him reliable and trustworthy. (Tr. 93) A human resources manager, who has known Applicant since 2009, attests to his reliability.

Applicant’s wife testified that she has known Applicant since 2010 and that they were married in 2011. She stated that Applicant handles the finances and pays the bills. She noted that he never discusses work with her. (Tr. 103) She did not know the specific reason for the security clearance hearing.

Another employee of Applicant's company testified that he relies on Applicant for legal advice. He also noted that an Office of Personnel Management (OPM) investigator interviewed him. Applicant is friendly with the coworker and his family.

Personal Conduct

Applicant completed a security clearance application on July 15, 2013. In response to Section 26: Financial Record: Delinquency Involving Routine Accounts. In the past seven (7) years, (a) You had bills or debts turned over to a collection agency? (b) You have been or are currently over 120 days delinquent on any debt? Applicant answered "No."

Applicant explained that "all *valid* (emphasis added) current loans and financial obligations are being paid. There are past financial obligations that are no longer delinquent because they are either disputed, closed, charge-off or unreported (but none of these obligations are current delinquencies."

Applicant reasoned that although he knew about the delinquent student loans, he disagreed with the amount. Thus, he believed the debt was not "valid." He further explained that the key word in the question was valid. In hindsight, he realizes that he should have answered "Yes."

Applicant relied on Rule 1.6 of the Rules of Professional Conduct to support a claim that since he is "an officer of the court" he was relying on the letter of the law (Tr. 39) and thinking like a "lawyer" and not a "person" when answering questions in Section 26. Several times he referred to the fact that he took an oath to uphold the constitution and that should prove he would never violate a client's trust.

I do not find his explanations reasonable or credible concerning his responses to Section 26. Applicant knew he had student loans because he had already been disputing them. He was approached by the Department of Education who wanted to garnish his pay and he then requested a hearing to dispute the validity of the accounts. He believes the issue is trustworthiness, reliability and the ability to protect classified information, but that not answering the questions regarding his finances are not relevant to a consideration of those values. Repeatedly, he refers to the oath he took when he became a member of a state bar. He states there is no evidence that there has ever been an issue concerning his trustworthiness. Applicant also relies on the character witnesses at the hearing. However, not one of them knew the specific security concern about his finances. Applicant also stated several times that he is not a math major so maybe he is guilty of "being bad at math and not watching finances." Under additional comments in his application, he refers to Section 26 and states that none of his obligations are current delinquencies because they are disputed or charged-off. Applicant is an educated man who appears to be parsing words. His legal background would certainly make him aware that a charged-off account does not mean that it is not delinquent. I am not persuaded that he was being candid or truthful when answering the questions in Section 26.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁶ "The clearly consistent standard indicates that security clearance

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

In this case AG ¶¶ 16(a) applies. Applicant chose an interpretation of the question that permitted him to respond “no” to any questions regarding his financial situation. He is an educated man who is legally trained. His rationale that he was thinking like a lawyer and not a person is disingenuous. At the hearing, he stated that he took an oath as an officer of the court and that should be sufficient proof that he would always be trustworthy. I have doubts about his reliability and judgment.

Applicant’s explanations do not persuade me that he is reliable, trustworthy, or has met his burden to mitigate the personal conduct concerns. After considering the mitigating factors, Applicant has not mitigated the personal conduct security concerns under Guideline E.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted most of the delinquent debts in his amended answer to the SOR. The credit reports confirm the debts. His school loans total about \$140,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's unpaid student loans continued until 2013. He was not proactive with the student loans. He responded when he learned that a garnishment might take place. He only recently paid the other debts alleged in the SOR. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. The student loans are 25 years old. Applicant graduated from law school and worked full-time in attorney positions for many years. He only had two months of unemployment in that time. He paid child support but that does not mean that he acted responsibly under the circumstances with regard to the other debts and student loans. I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above took steps after the SOR to pay some debts. He is still disputing others. However, he is paying the student loans now because of threat of garnishment. FC MC 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) applies in part.

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 an 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 guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 45 years old. He is an educated man. He is a member of several state bar associations, and he serves as corporate counsel for a company. This is his first application for a security clearance. He has worked in the legal field since graduation. He is married and has paid child support for two children from his first marriage. He has been with his current employer since 2013. His managers and colleagues praise his skills.

Applicant has recently paid some of the SOR debts. He is still disputing others. He is now repaying student loans. However, he was under threat of garnishment before he chose to challenge the debt and begin the payment. The loans are from 1993. He admitted that he put them on the back burner.

Applicant did not persuade me that he refuted or mitigated the Government's case concerning the personal conduct and financial considerations security concerns. Any doubts must be resolved in the Government's favor. For all these reasons, Applicant has not mitigated the security concerns under personal conduct and financial considerations.

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
Subparagraphs 1.a-1.d:	For Applicant
Subparagraphs 1.e-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.n:	Against Applicant

Paragraph 2, Guideline E :
Subparagraph 2.a:

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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge