



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



In the matter of:)
)
) ISCR Case No. 14-01828
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On July 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on November 28, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on December 15, 2014. As of March 9, 2015, he had not responded. The case was assigned to me on March 11, 2015. The Government exhibits included in the FORM (Items 3-12) are admitted.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company since 1988. He served in the U.S. Air Force from 1978 to 1984 and the Air Force Reserve from 1984 to 1988. He was honorably discharged from each. He seeks to retain his security clearance, which he has held since at least 1989. He has a bachelor's degree. He is married, but separated pending a divorce. He has two adult children.¹

The SOR alleges four delinquent debts totaling about \$49,000. Applicant admitted owing three debts, but he indicated that his estranged wife was supposed to pay two of the debts. He stated that he was uncertain about the third debt, and he is paying the fourth debt. Each debt is listed on at least one credit report.²

Applicant stated that in March 2010, his family was notified that they had five days to vacate their home because it was being short sold. He indicated that he and his wife separated at about the same time, and that they had an oral agreement to split their bills. He stated that his wife was supposed to pay the debts alleged in SOR ¶¶ 1.a (\$28,800) and 1.c (\$7,413). The credit reports list the \$28,800 debt as an individual account with a date of last activity of August 2009. The \$7,413 debt is reported as a joint account with a date of last activity of July 2010.³

Applicant stated that he was uncertain about the \$1,642 debt (SOR ¶ 1.b) to a collection company on behalf of a bank. He stated that he was "working with the bank to clear this out." The credit reports list the debt as an individual account with a date of last activity of June 2010.⁴

Applicant had a mortgage loan and a home equity loan through the same bank. The credit reports list the mortgage loan as opened in April 2001 with a date of last activity of October 2009. The loan is listed as in foreclosure with a past-due amount of \$11,306, but a zero balance. This is the debt that is alleged in SOR ¶ 1.d. Applicant has been paying the home equity loan. The home equity loan is listed as current, with balances of \$13,360 on Applicant's February 2014 credit report; \$11,781 on his June 2014 credit report; and \$10,978 on his August 2014 credit report. The home equity loan

¹ Items 4, 7-12.

² Items 3, 6, 7.

³ Items 3, 6, 7.

⁴ Items 3, 6, 7.

is not alleged in the SOR. Applicant confused the home equity loan with the first mortgage loan when he stated that he was paying the debt.⁵

Applicant stated in his response to the SOR that he and his wife were “in the process of working with a credit agency” to try and get their credit back. He did not respond to the FORM, so no additional information was provided.

Applicant submitted numerous security clearance applications over the last 34 years. He submitted a Questionnaire for National Security Positions (SF 86) in January 2014. He answered “No” to all the financial questions under Section 26, including the following:

In the past seven (7) years, you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

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 cosignor or guarantor).

In the past seven (7) years, you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

You are currently over 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 cosignor or guarantor).⁶

Applicant denied intentionally falsifying the SF 86. He stated that he did not have a copy of his credit report when he prepared the SF 86:

I admit I didn't do a good job of collecting all the information needed for my application. I plan on retiring in 2017 and figure this will be my last update. I rushed through the application process.⁷

⁵ Items 3, 6, 7.

⁶ Item 4.

⁷ Item 3.

It is possible that Applicant's wife did not pay debts after they separated. However, one account became delinquent in 2009, before they separated. The mortgage loan was in foreclosure at one point. It is unclear if the loan was foreclosed or resolved through a short sale. In any event, Applicant clearly knew that the mortgage loan was delinquent. Having considered all the evidence, I find that Applicant intentionally provided false information about his finances on his 2014 SF 86.

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 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

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

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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has delinquent debts that he is unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.d alleges that Applicant has a deficiency balance of \$11,306 on his first mortgage loan. The evidence does not support that allegation. The credit reports list the loan as in foreclosure with a past-due amount of \$11,306, but a zero balance. A past-due amount does not equate to a deficiency. SOR ¶ 1.d is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is separated, pending a divorce, which qualifies as a condition that was beyond his control. However, his financial problems appear to predate his separation. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's home went into foreclosure. It is unclear if the first mortgage loan was foreclosed or resolved through a short sale. Applicant has continued to pay the home equity loan, which shows a degree of good faith. However, he has three large unresolved debts. He stated that his wife was supposed to pay two of the debts, but the largest debt became delinquent before they separated. He provided no additional information about how he is addressing his financial problems.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay all his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(d) is only applicable to the home equity loan, which was not alleged. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

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

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. The following disqualifying condition is potentially applicable:

(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 intentionally provided false information about his finances on his SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

There is no evidence that Applicant corrected his false SF 86 before being confronted with the facts. His lack of candor is recent, and it casts doubt on his reliability, trustworthiness, and good judgment. There are no applicable mitigating 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's honorable military service and his long and stable work record. However, his financial affairs are not in order, and he falsified his SF 86.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and financial considerations security concerns.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge