



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



In the matter of:)	
)	
)	ISCR Case No. 14-02138
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant had just begun receiving firearms instruction when he mishandled his M-16 during basic training. His termination from his job with a cell phone company was not misconduct-related. Under these circumstances, I conclude that there are no personal conduct issues that generate a security concern. Conversely, Applicant's failure to pay his delinquent debts generates a financial considerations security concern that he failed to mitigate. Clearance is denied.

Statement of the Case

On November 12, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant detailing security concerns 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 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.

On February 26, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing. The case was assigned to me on June 8, 2015. DOHA issued a notice of hearing on July 21, 2015 scheduling the hearing for August 10, 2015. The hearing was held as scheduled. At the hearing, I received six Government exhibits (GE 1 through GE 3), and two Applicant exhibits (AE A and AE B). Also, I considered Applicant's testimony. At the close of the hearing, I left the record open through August 24, 2015 to allow Applicant the opportunity to submit additional exhibits. (Tr. 56) He did not submit any exhibits, whereupon, the record closed. DOHA received the transcript (Tr.) on August 20, 2015.

Findings of Fact

Applicant is a 27-year-old single man. He has a high school diploma and has earned some college credits. Since August 2012, he has worked for a defense contractor as a service desk analyst. (GE 1 at 10)

In August 2010, Applicant joined the U.S. Army National Guard. (GE 1 at 16) During basic training, he was awarded non-judicial punishment for mishandling his M-16 rifle during shooting instruction. (Tr. 16) Specifically, he failed to keep it pointed down when he was not using it. He was fined \$316 and ordered to perform 14 days of extra duty. (Tr. 17)

This incident occurred on the first day Applicant received firearms training. (Tr. 15) Subsequently, he completed basic training satisfactorily without any additional incidents. After completing basic training, however, Applicant decided that "the Army was not for [him]." (Tr. 16) Consequently, he quit before beginning his advanced individual training, and received an uncharacterized discharged. (GE 1 at 16)

In February 2012, Applicant was terminated from his job as the manager of a cell phone store for violating company policy governing the customer exchange of cell phones. (GE 1 at 12) Applicant filed a claim for unemployment security benefits, and his ex-employer denied the claim, asserting that his conduct was fraudulent. (AE B at 2) Applicant contended that he followed standard procedure when facilitating the cell phone exchange, consistent with how the previous manager had trained him. (AE B at 1) After conducting a hearing, the state labor department ruled that there was insufficient evidence to conclude that Applicant's actions constituted misconduct in connection with work. (AE B at 4)

The SOR alleges four delinquent debts totalling \$3,010. Subparagraphs 2.a, 2.b, and 2.d, are student loans. Subparagraph 1.c is a delinquent phone account. Applicant attributes the debts to a six-month period of unemployment between February and August of 2012. (Tr. 17-18) The SOR debts became delinquent between 2010 and 2011. (GE 8-10)

Applicant also attributes the debts to medical bills triggered by a car accident in which he was involved. (Tr. 17-18) He did not specify the date that the car accident occurred.

Applicant contends that he paid the debts alleged in subparagraphs 1.a through 1.c and was making payments on the debt alleged in subparagraph 1.d. (Tr. 32) In support thereof, he provided a credit report dated June 4, 2015. Subparagraphs 1.a through 1.c were not listed. The debt alleged in subparagraph 1.d was listed with an outstanding balance of \$408, the amount alleged in the SOR. He provided no additional evidence of debt payment.

Applicant earns approximately \$4,000 monthly after taxes. This includes income from a part-time job. (Tr. 26) He has \$4,000 in savings and between \$800 and \$1,200 in discretionary income. (Tr. 28)

Policies

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 together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline E, Personal Conduct

Under this guideline, “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 ¶ 15)

Applicant was disciplined for negligently mishandling his weapon during his first day of firearms training while in the Army National Guard. He subsequently completed

the weapons training course satisfactorily, and his basic training. He received an uncharacterized discharge only after deciding he no longer wanted to be in the military; a decision unrelated to the non-judicial punishment he received for mishandling his firearm during basic training. Under these circumstances, subparagraph 1.a does not generate a security concern.

Applicant appealed his termination from his job with a cell phone store. The state insurance board conducted a hearing and ruled in his favor, concluding that there was insufficient evidence to conclude that his actions leading to his termination constituted misconduct. I conclude that subparagraph 1.b does not generate a security concern.

There are no personal conduct security concerns.

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Between 2010 and 2011, Applicant incurred approximately \$3,100 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 incurred his debts before he lost his job with the cell phone company. Moreover, he testified that medical expenses related to a car accident contributed to his inability to pay these debts, but he did not specify when the car accident occurred. AG ¶ 20(b) does not apply.

In support of Applicant’s contention that he paid the debts listed in subparagraphs 1.a through 1.c, he submitted a credit report. Although subparagraphs 1.a through 1.c were not listed on the credit report, it did not indicate whether Applicant had satisfied them. The absence of a debt from a credit report, alone, does not establish that the debt

was paid. Absent supporting documentary evidence, assertions that a debt was paid based on its omission from a credit report has limited probative value. Similarly, Applicant's contention that he is making payments toward the satisfaction of the debt listed in subparagraph 1.d, absent corroborating evidence, has limited probative value. Under these circumstances, neither AG ¶ 20(c), nor AG ¶ 20(d) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

In order to mitigate the financial considerations security concern, Applicant has the burden of proof to establish payment of his delinquent debts. The minimal amount of the delinquencies does not obviate his responsibility to prove that he has paid them. Applicant did not submit sufficient corroborating evidence at the hearing, and did not submit any additional corroborating evidence when I afforded him that opportunity to do so, by leaving the record open for an additional two weeks. Under these circumstances, I conclude that Applicant has failed to mitigate the security concern.

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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	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.

MARC E. CURRY
Administrative Judge