



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



In the matter of:)
)
) ISCR Case No. 14-02346
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2016

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 February 27, 2015, 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 responded to the SOR on April 6, 2015, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2015, scheduling the hearing for December 9, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in

evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open until February 9, 2016, for Applicant to submit additional information. He did not submit anything. DOHA received the hearing transcript (Tr.) on December 16, 2015.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor since 1988. He seeks to retain a security clearance, which he has held for decades. He attended college for a period, but he did not earn a degree. He is married, but he has been separated for 19 years. He has four adult children.¹

The SOR alleges eight delinquent debts, but credit reports indicate that Applicant was only an authorized user of the account identified in SOR ¶ 1.d. He admitted the \$26 medical debt alleged in SOR ¶ 1.e, but he stated it had been billed to him in error. He denied the six remaining delinquent debts totaling about \$31,700. He stated that those debts belong to his son who has the same first, middle, and last name as Applicant. All of the debts are listed on a combined credit report from April 2013, an Equifax credit report from April 2014, or both credit reports.²

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2013. He reported that he once owed the IRS for back taxes from tax years 2006 through 2010.³ He wrote that he had been making monthly payments for a number of years, and his taxes would be completely paid within a month. He did not list any of the delinquent debts alleged in the SOR under any of the pertinent financial questions.⁴

Applicant was interviewed for his background investigation in April 2013. He discussed his back taxes. He was confronted with delinquent debts from the April 2013 credit report. He stated that he was unaware of the debts and they must belong to his son. He told the investigator that he would contact his son and have him contact the creditors and provide them the necessary information to put the accounts in his son's name. Applicant stated that he would pull a credit report, contact the creditors, and ask them to remove the accounts from his credit report.⁵

¹ Tr. at 33-34; GE 1, 2.

² Applicant's response to SOR; GE 3, 4.

³ The SOR does not allege that Applicant did not pay his taxes, and that will not be used for disqualification purposes. It may be considered in gauging Applicant's credibility. It is relevant in that it shows that Applicant had financial problems independent of the disputed debts alleged in the SOR.

⁴ GE 1.

⁵ GE 2.

Applicant testified that the six accounts belong to his son, but he had done nothing to dispute the debts. He was informed that the DOD relies on credit reports,⁶ and the debts are on his credit report. He was informed that the debts not only affected the financial aspect of the case, but they also formed the basis for the allegation that he falsified the SF 86. Applicant was provided 60 days after the hearing to submit evidence to substantiate his dispute of the legitimacy of the debts. He did not submit anything post-hearing.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 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

⁶ "Credit reports are generally sufficient to establish the Government's *prima facie* case of Guideline F security concerns." See ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012).

⁷ Tr. at 19-38.

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

Guidelines E (Personal Conduct) and F (Financial Considerations)

The security concerns for personal conduct and financial considerations are set out in AG ¶¶ 15 and 18, as follows:

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.

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.

AG ¶¶ 16 and 19 describe conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

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;

19(a) inability or unwillingness to satisfy debts; and

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

Applicant was only an authorized user of the account identified in SOR ¶ 1.d. The \$26 medical debt alleged in SOR ¶ 1.f has no security significance. Those allegations are concluded for Applicant.

Applicant denied owing the remaining six debts, claiming they belong to his son who has the same first, middle, and last name as Applicant. This case is relatively simple. If the debts belong to his son, Applicant does not have financial problems and he did not falsify the SF 86. If the debts belong to Applicant, then he has unresolved financial problems, he falsified the SF 86, he lied during his background investigation, and he lied during his hearing.

Applicant told the background investigator in April 2013 that he would contact his son, and he would have his son contact the creditors and provide them the necessary information to put the accounts in his son's name. Applicant also stated that he would pull a credit report, contact the creditors, and ask them to remove the accounts off his credit report. Applicant did none of the above. He was given two months after the hearing to submit evidence to substantiate his dispute. He did not submit anything. I also note that Applicant's financial history was not otherwise spotless. He did not pay his taxes on time for tax years 2006 through 2010.

I find by substantial evidence⁸ that Applicant is responsible for the six debts alleged in the SOR. I further find that he intentionally falsified his SF 86 when he failed to report the debts. AG ¶¶ 16(a), 19(a), and 19(c) are applicable.

I have considered all the mitigating conditions, particularly AG ¶ 20(e),⁹ but none of them are applicable.

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

⁸ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 10-09035 at 5 (App. Bd. Jun. 13, 2014) (citing Directive ¶¶ E3.1.14; E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

⁹ 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.

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 my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Paragraph 2, 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge