



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



In the matter of:)	
)	
[Redacted] ¹)	ISCR Case No. 14-02434
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant refuted the allegations under Guideline E but did not mitigate the concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 20, 2014. On October 27, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD acted under Executive Order 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.

¹ At the hearing, Applicant pointed out that his middle name was misspelled in the SOR and notice of hearing. On my own motion, I corrected the SOR. (Tr. 21-22.) This decision reflects the correct spelling of Applicant's name.

Applicant answered the SOR on December 22, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 26, 2015, and the case was assigned to me on March 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on the same day, scheduling the hearing for March 24, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until April 15, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX C through K, which were admitted without objection. DOHA received the transcript (Tr.) on April 2, 2015.

Procedural Issues

On April 24, 2015, Applicant's security manager notified the DOD Consolidated Adjudications Facility that Applicant no longer required a clearance. The correspondence was forwarded to DOHA and received on May 27, 2015. The Directive ¶ 4.4 provides, "Actions pursuant to this Directive shall cease upon termination of the applicant's need for access to classified information except in those cases in which . . . [a] hearing has commenced." Since a hearing was conducted in this case, I have issued this decision instead of terminating processing of this case.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.x and 1.z. He denied the allegation in SOR ¶ 1.y. He neither admitted nor denied the allegations in SOR ¶¶ 2.a and 2.b. I have treated his lack of response to SOR ¶¶ 2.a and 2.b as denials. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 25-year-old shipwright employed by a defense contractor at a naval shipyard since November 2011. He graduated from high school in June 2008 and received an associate's degree in computer drafting in April 2011. He has never married. He has no children. He has never held a security clearance.

When Applicant submitted his SCA, he disclosed that he had not filed his federal and state income tax returns for 2010 and 2011, owed \$4,500 in federal income taxes, and had a payment plan for his federal tax debt. He stated that he thought he could file his federal tax returns every three years. He also disclosed delinquent rent payments totaling \$3,000, a delinquent credit card debt of \$1,065 that he attributed to identity fraud, and a jewelry store debt of \$450. He answered "No" to questions asking if in the past seven years he had any property repossessed or foreclosed; had any bills turned over to collection agencies; or had an accounts or credit cards suspended, charged off, or cancelled for nonpayment. He also answered "No" to a question whether he was currently more than 120 days delinquent on any debt. (GX 1 at 31-37.)

Applicant testified that he did not check his credit bureau report (CBR) before submitting his SCA. He listed only the debts that he could remember or look up. He denied intentionally falsifying his SCA. (Tr. 38.)

Applicant's failure to timely file his federal and state income tax returns for 2010, 2011, and 2012 is alleged in SOR ¶ 1.y, and his federal income tax debt is alleged in SOR ¶ 1.z. The SOR alleges 24 other debts totaling about \$35,092 that are reflected on his credit bureau reports (CBRs) dated February 28, 2013; March 20, 2014; and February 6, 2015. (GX 2, 3, and 4.) Twelve are medical debts ranging from \$25 to \$4,489. Three are student loans totaling \$16,587.

At the time of the hearing, Applicant was on paid medical leave because of an injury to his rotator cuff. His injury was due to previous participation in sports and not work-related or due to a specific traumatic event. (Tr. 54.) He is receiving about \$1,100 per month. When he is able to work a full 40-hour week, his monthly take-home pay is about \$2,700. (Tr. 48.)

Applicant attributed his financial problems to bad money management. He testified that he and his brother have each been providing \$500 to \$600 in financial assistance to his mother, who is very ill and unable to work. After paying his share of his mother's living expenses, he usually had about \$1,200 per month remaining for his living expenses. ((Tr. 21, 47-50.)

Applicant was scheduled for surgery on March 31, 2015 (AX A.) He had 11 physical therapy appointments scheduled during April and May. (AX B.) The medical debts alleged in the SOR are related to previous treatment of his injured rotator cuff. (AX C.)

Applicant testified that he filed his 2012 federal and state income tax returns on time but had not filed his returns for 2013 and 2014. (Tr. 44, 51.) After the hearing, he submitted a document reflecting that he filed a federal tax return on April 15, 2015. His document does not reflect whether it was for tax year 2014 or previous years. (AX G.) He submitted evidence of five \$25 payments and one \$363 payment on medical bills, but he has not presented evidence linking these payments to the debts alleged in the SOR. (AX I.) He also presented evidence of a \$300 payment to reinstate his medical insurance. (AX J.)

Applicant testified that the jewelry store debt was paid, but he submitted no documentary evidence of payment. He provided evidence that he was making monthly \$50 payments on the housing debt in SOR ¶ 1.r. (AX F.) He testified that he originally owed federal income taxes of about \$5,000, but that he had reduced his tax debt to about \$2,300 through a payment plan providing for monthly \$55 payments. (Tr. 46.) However, he provided no documentary evidence of a payment plan or payments made. He testified that he had settled a \$2,000 housing debt not alleged in the SOR. (Tr. 26.) Except for the debt in SOR ¶ 1.r, he presented no documentary evidence of actions to resolve any of the debts alleged in the SOR.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions, corroborated by his CBRs, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions under this guideline are potentially applicable:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): 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.

None of the above mitigating conditions are established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. He has not received financial counseling. He has not disputed any of the debts. Except for the debt in SOR ¶ 1.r, he has not presented evidence of any payments or payment agreements. He has no plan for attaining financial stability. The medical debts alleged in the SOR were likely caused by conditions beyond his control, but he has not acted reasonably. He submitted evidence of some payments on medical debts, but he has not shown that the payments applied to the debts alleged in the SOR.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by failing to fully disclose the extent of his financial problems. The concern under this guideline is set out in AG ¶ 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.

The relevant disqualifying condition in this case is AG ¶ 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."

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security

clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

When Applicant submitted his SCA, he disclosed several delinquent debts and his failure to timely file his income tax returns. He did not examine his CBR before submitting his SCA. He testified that he disclosed the debts he could remember or look up. His explanation, considered in light of his general lack of financial awareness, is credible and plausible. I conclude that AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based raised by his delinquent debts and failure to timely file his federal and state tax returns. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-1.z:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct):

FOR APPLICANT

Subparagraphs 2.a-2.b:

For Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge