



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



In the matter of:)
)
) ISCR Case No. 14-02625
)
Applicant for Security Clearance)

Appearances

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

04/14/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that he has a track record of financial responsibility. Moreover, he falsified his 2011 security clearance application (SCA). He failed to mitigate the Guideline F (financial considerations) and Guideline E (personal conduct) security concerns. Clearance is denied.

History of the Case

Applicant submitted an SCA on September 15, 2011. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On November 6, 2014, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations), and Guideline E (personal conduct).¹ Applicant submitted answers to the SOR on December 1, 2014, and January 10, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

¹ 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

The case was assigned to another administrative judge in March 2015. Upon being contacted, Applicant requested a change of venue. After he was contacted by the second judge to schedule the hearing in June 2015, Applicant requested a change of venue back to the original location. The case was assigned to me on July 1, 2015. Applicant specifically requested a hearing to be held on August 12, 2015, and the hearing was scheduled accordingly.

Applicant requested a postponement six days before his hearing, claiming that his employer assigned him to another city on an emergency assignment. I denied Applicant's request for a postponement. Applicant was warned that his failure to appear at his scheduled hearing would be construed as a failure to cooperate in the security clearance process, and his request for a clearance could be terminated. Applicant failed to appear at his scheduled hearing on August 12, 2015.

In January 2016, I asked Department Counsel to contact Applicant to reschedule his hearing. The DOHA issued a notice of hearing on February 1, 2016, scheduling the hearing for February 16, 2016. Applicant's hearing was held as scheduled. During the hearing, Department Counsel offered six exhibits (GE 1-6), that were admitted into evidence without objection. Applicant testified and presented one post-hearing exhibit (AE 1) that was admitted without objection. The DOHA received a copy of the transcript of the hearing on February 23, 2016.

Findings of Fact

Applicant denied all the SOR factual allegations with explanations. After a thorough review of the record evidence, and having considered Applicant's demeanor while testifying, I make the following findings of fact:

Applicant is a 50-year-old engineering technician employed with a federal contractor. He graduated from high school in 1983, and attended a community college for a period, but did not earn a degree. He has never been married. He has a 17-year-old son.

Applicant's employment record shows that he was employed between February 2004 and June 2011. He was terminated for insubordination in June 2011. He was hired by his current employer, a federal contractor, in August 2011. This is his first security clearance application.

Section 22 (Police Record) of Applicant's 2011 SCA asked him to disclose whether in the last seven years he had been: issued a summons, ticket, or citation to appear in court in a criminal proceeding; arrested; ever charged with a felony, firearms or explosives offense, or with any offense related to alcohol or drugs. Applicant answered "no" to all the above questions.

Applicant was interviewed by a government investigator in October 2011. During the interview, Applicant disclosed that in March 2007, he was arrested and charged with

driving under the influence (not prosecuted). Applicant explained that he failed to disclose the alcohol-related offense because he misunderstood the SCA question. The investigator confronted Applicant concerning the following arrests and charges: in January 2006, Applicant was arrested and charged with tampering with the state's electric company lines. He was issued a citation, paid a \$45 fine, and received probation before judgment. In February 2005, Applicant was arrested and charged with failure to obey a peace officer. In July 1991, Applicant was arrested and charged with possession of a controlled dangerous substance, possession of marijuana, and intoxication. He was found guilty and served two weekends in jail.

The SOR did not allege that Applicant falsified his 2011 SCA when he failed to disclose his criminal record. I considered this information solely for the purpose of assessing Applicant's credibility and his claims of mistake, inadvertent behavior, or lack of intent to mislead the Government.

Section 26 (Financial Record) of Applicant's September 2011 SCA asked him to disclose whether in the past seven years he had: failed to file or pay his federal and state taxes; any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; any judgment entered against him; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "no" and failed to disclose the judgment and the delinquent debts alleged in the SOR. Applicant testified that he was not paying attention when he completed the SCA – "I just ran through it, which was my bad, I should have been more thorough."

The subsequent security clearance background investigation revealed the 13 delinquent accounts alleged in the SOR, totaling over \$44,000. Applicant's SOR debts are established by the credit reports in evidence and his testimony. The status of his SOR debts is as follows:

SOR ¶ 1.a (\$8,486) – This is a judgment filed against Applicant in 2008. During his October 2011 interview, he denied this was his debt. At his hearing, Applicant claimed he attempted to contact the collection agency and found out it no longer exists. He denied owing anything to the underlying creditor. He also averred that he went to the courthouse where the judgment was issued and was told they did not have records showing this judgment existed. (Tr. 33) The judgment is reflected as outstanding in all three credit reports. (GE 4-6)

SOR ¶ 1.b (\$2,005) – Applicant testified that this was his medical debt. He claimed he established a \$10 monthly payment plan and currently owed about \$1,500. He promised to submit documentary evidence to corroborate his payment agreement and any payments made. He failed to submit any documentary evidence to support his claims. The October 2014 credit report (GE 4) shows the account was in collection.

SOR ¶ 1.c (\$340) – Applicant testified this was his unpaid medical services debt.

SOR ¶ 1.d (\$92) Applicant explained that this was a medical debt related to his 2008 injury. He claimed he paid the debt, but presented no documentary evidence to corroborate his claim.

SOR ¶ 1.e (\$91) Applicant claimed he paid this 2009 cable services debt, but presented no documentary evidence to corroborate his claim.

SOR ¶ 1.f (\$317) Applicant purchased a phone for his son and paid with a check that did not clear. Applicant disputed the debt because he believed the check went through. After contacting the bank, he was informed the check did not clear, and Applicant claimed he paid the debt. He promised to present documentary evidence to corroborate his claims, but failed to do so.

SOR ¶ 1.g (\$214) Applicant denied this debt when he was interviewed in 2011. He claimed he contacted the collection agency in 2014 and was told they had no record of him owing \$214.

SOR ¶ 1.h (\$279) Applicant claimed he paid this debt after receipt of the SOR in 2014. He presented no documentary evidence to corroborate his claim.

SOR ¶ 1.i (\$5,970) and SOR ¶ 1.j (\$236) During his October 2011 interview, Applicant stated these were debts for medical services provided to him in 2008. At his hearing, Applicant claimed he contacted the collection agency and was told that the account was closed. Applicant admitted he made no payments on these debts. These debts appeared as collection accounts on the 2011 credit report. (GE 6) The debts are no longer reflected in the 2014 credit bureau reports. (GE 4, 5)

SOR ¶ 1.k (\$63) Applicant denied this debt and claimed he never ordered pizza from the creditor.

SOR ¶ 1.l (\$140) Applicant claimed he paid this debt in June 2014 and that he would present evidence of payment after the hearing. He presented no documentary evidence to corroborate his claim.

SOR ¶ 1.m (\$26,149) Applicant explained that this was a delinquent medical debt related to his 2008 injury. He never made any payments on this debt. He claimed he contacted the creditor in 2014, and the collecting agency was unable to locate any financial obligation owed by Applicant. He presented no documentary evidence to corroborate his claims.

Applicant explained that all of his medical debts resulted from a 2007-2008 accident in which he crushed both heels. He was in a cast for six months, unemployed, and with no insurance. His income was insufficient to pay both his living expenses and accumulated debts, and he fell behind on paying his debts. His father nursed Applicant back to health and helped him pay some of his debts. His dad passed away in 2010.

Applicant knew about his delinquent medical debts since 2008, but he made no effort to contact the creditors or to resolve the debts because he did not have the financial resources to pay the debts. He was living sparingly and had a child support obligation, high monthly rent, and a truck payment. (Tr. 37)

During his October 2011 interview, Applicant promised to research and to resolve his debts. However, he did not do so. He claimed that after receipt of the SOR in November 2014, he made several attempts to contact some of the creditors. Applicant also claimed that he established a debt-consolidation plan in 2004, and paid some debts then. He further claimed he set up payment plans for some of his medical bills, and paid about \$5,000 in medical debts. He explained that he did not know the exact total of the debts paid because he was diagnosed with cancer in another state. He also stated that he used last year's income tax refund to pay some of his debts. Applicant admitted to taking a vacation to Cancun, Mexico, during the preceding two years, but averred it was paid by his niece.

Applicant testified that he was not trying to play the system and defraud his creditors. He was eventually going to get around to paying his debts, but it was hard to do so. As part of his job, he travels a lot, about 90 percent of the time. Applicant testified that some of his debts "fell off" and were no longer reflected on the credit reports. During the latter part of his hearing, Applicant admitted that he made no payments to any of those debts.

Applicant has not participated in any financial counseling, and he does not follow a budget, although he believes that he really needs to do so. He is considering contacting a debt-consolidation company to help him pay his delinquent debts. Applicant failed to present documentary evidence to show that he contacted any of his creditors, established any payment agreements, made any payments, or paid any debts. Applicant submitted a post-hearing email indicating the he retained the services of the Lexington Law Firm to help him resolve his credit problems. He anticipates participating on another hearing when his financial problems are resolved in about one year. (AE 1)

Policies

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to

classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

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.

Applicant's history of financial problems is documented in his credit reports, 2011 statement, and hearing testimony. The evidence establishes the 13 delinquent accounts alleged in the SOR, totaling over \$44,000. The medical debts total approximately \$34,678, and the remaining debts total \$9,704.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

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

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems were recent, frequent, and he presented insufficient evidence to show a track record of financial responsibility.

Applicant's finances were adversely affected by circumstances beyond his control – his 2007-2008 injury and his six-month period of underemployment. However, he presented no documentary evidence to show his efforts to remain in contact with creditors, or of efforts to pay or resolve his delinquent debts.

Applicant stated that he did not contact his creditors or made any payments because he did not have the financial means to address his delinquent accounts. He has not established a budget or sought financial counseling. Applicant stated that he intends to consolidate his debts, but presented no evidence he started to do so. Applicant's post-hearing email indicated that he retained the services of the Lexington Law Firm to help him resolve his credit problems. He failed to submit documentary evidence to support his claim.

Applicant's financial problems date back to 2007-2008. He submitted his SCA in 2011, and disclosed no financial problems or delinquent debts. He was interviewed in October 2011, and issued the SOR in November 2014, on both instances he was made aware of the Government's security concerns about his financial problems. At his hearing, Applicant claimed that he had paid some debts, established some payment agreements, and consolidated his delinquent debts in 2004. He claimed he had documentary evidence to corroborate such payments. He was allowed additional time after the hearing to produce his corroborating evidence; however, he failed to do so.

Applicant averred that he has sufficient income to keep his debts in current status and to continue making progress paying his delinquent debts. He also claimed to understand that he is required to maintain financial responsibility to remain eligible for a security clearance. Based on Applicant's failure to address his debts, his recent promise to pay his delinquent debts is not credible.

In sum, Applicant did not submit sufficient evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). He presented insufficient evidence to show that he initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern for 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. 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.

Applicant omitted relevant and material information from his 2011 SCA when he failed to disclose his delinquent accounts. Considering the evidence as a whole, and Applicant's demeanor while testifying, I find that his omissions were deliberate and made with the intent to conceal the information and to mislead the Government.

Applicant's falsification of his 2011 SCA triggers the applicability of the following disqualifying condition under 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.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

The above mitigating conditions are not sufficiently raised by the evidence and are not applicable. Personal conduct security concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 50-year-old engineering technician employed with a federal contractor. He has worked for federal contractors since 2011, and held an interim security clearance during a short period. Applicant's financial problems were caused or aggravated by circumstances beyond his control. Notwithstanding, his evidence is insufficient to show a track record of financial responsibility.

Applicant did not make any payments to any of the SOR creditors or resolve any of his SOR debts. There is insufficient evidence of progress addressing Applicant's financial problems. He failed to establish that he has a track record of financial responsibility. Moreover, he deliberately falsified his 2011 SCA.

It is well settled that once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations and personal conduct concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted.

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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge