



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



In the matter of:)
)
) ISCR Case No. 14-03692
)
Applicant for Security Clearance)

Appearances

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

03/28/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 10, 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 June 5, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 13, 2015. Scheduling of the case was delayed because Applicant was working overseas. The case was reassigned to me on November 4, 2015. The Defense Office of

Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2015, scheduling the hearing for December 8, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail with attached documents, which were marked AE D through I, and admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2015.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2012. He served in the U.S. military from 1998 until he was honorably discharged in 2012. He deployed to Iraq while in the military. He is a high school graduate. He married in 2000, separated in 2003, and divorced in 2009. He has two children, ages 13 and 10, from a previous relationship, and the woman he has been cohabitating with since 2012 has a 13-year-old child.¹

Applicant was arrested in 2002 and charged with inflicting corporal injury on a spouse or cohabitant. The charge was dismissed. He was arrested in 2005 for driving under the influence (DUI) of alcohol. He was released without being charged. He was arrested in 2008 and charged with battery, domestic violence, with injury. He pleaded guilty to a reduced charge. He paid a fine and attended weekly domestic violence classes for a year. Applicant has not had any alcohol in more than two years.²

The SOR alleges 15 delinquent debts totaling about \$33,800. In his response to the SOR, Applicant admitted owing all the debts with the exception of the \$714 debt alleged in SOR ¶ 1.e and the \$174 debt alleged in SOR ¶ 1.m. All of the debts are listed on at least one credit report.³

Applicant submitted a Questionnaire for National Security Positions (SF 86) in November 2010. He did report any of his criminal activity and he did not list any delinquent debts under the financial questions.⁴

Applicant submitted another SF 86 in March 2013. He reported his 2008 domestic violence arrest and conviction of a lesser offense. He did not list any delinquent debts under the financial questions.⁵

¹ Tr. at 21, 26-34, 50, 60; GE 1, 2, 6.

² Tr. at 34-36, 40-45; Applicant's response to SOR; GE 6, 7.

³ Applicant's response to SOR; GE 3-5.

⁴ GE 1.

⁵ GE 2.

Applicant denied intentionally falsifying either SF 86. He was interviewed for his background investigation in April 2013. He discussed his domestic violence arrest and conviction of a lesser offense. When prompted, he discussed his DUI. He affirmed his responses to the financial questions on the SF 86. He stated that he had bad credit in 2002 to 2003, including a repossessed leased car, but he had not been contacted by any creditors in several years. He had not looked at a credit report in years, so he was unsure if he still had any delinquent accounts. He was confronted with multiple delinquent accounts from an April 2013 credit report. He essentially denied owing all the accounts. He stated that he did not list any of the accounts on his SF 86 because he was unaware of them.⁶

Applicant provided contradictory information about several of the debts alleged in the SOR. In his SOR response, he admitted owing the \$7,508 charged-off debt to a credit union alleged in SOR ¶ 1.a. However, he testified that he purchased a car in 2008 financed through the credit union, but the loan was paid when he refinanced the loan through a bank in 2010. The credit union debt is listed on all the credit reports in evidence as opened in January 2008 with a date of last activity of 2010 and 2011. The terms of the loan were \$250 per month for 60 months. The reports also indicate “dispute resolved-consumer disagrees.” The credit reports list a car loan through the bank that Applicant said refinanced the credit union loan. The credit reports list that loan as opened in January 2008 with \$398 monthly payments for 73 months. Applicant submitted nothing post-hearing to substantiate his claims that the credit union had been paid.⁷

SOR ¶ 1.g alleges a past-due debt for a timeshare property with a balance of \$12,599. Applicant testified that he gave the mother of his children a general power of attorney when he was deployed, and she purchased the timeshare without his permission or authorization. The debt is listed on the April 2013 credit report as a joint account that was opened in May 2008 with a date of last activity of May 2010. The debt is listed on the December 2015 credit report with the annotation “Account information disputed by consumer.”⁸

Applicant testified that he had just recently paid the \$140 delinquent debt to a public library (SOR ¶ 1.n). The debt became delinquent in 2012. Applicant’s post-hearing submission established that the debt was paid after the hearing on December 21, 2015.⁹

Applicant submitted a combined credit report from December 2015. The report listed the following accounts from the SOR as paid or settled: SOR ¶¶ 1.d (\$2,007) and

⁶ Tr. at 36-40, 43-44, 58-60; GE 6.

⁷ Tr. at 53-58; Applicant’s response to SOR; GE 3-6; AE A.

⁸ Tr. at 51-53; Applicant’s response to SOR; GE 3-6; AE A.

⁹ Tr. at 51; GE 3-6; AE A, H.

1.f (\$326). The \$714 debt alleged in SOR ¶ 1.e and the \$174 debt alleged in SOR ¶ 1.m are not listed on the three most recent credit reports.¹⁰

Applicant paid a \$1,552 debt to a collection company on December 30, 2015. This debt does not appear to coincide with any of the debts alleged in the SOR. He paid an unspecified amount to a collection company on January 21, 2016, to satisfy another debt. The original creditor is unidentified, and the accounts numbers do not appear to coincide with any of the debts alleged in the SOR. He owed the IRS about \$1,400 when he filed his 2014 federal income tax return. He initiated a payment plan. He stated that he still owed about \$500.¹¹

Applicant retained a credit-repair company. A number of accounts were disputed, including accounts that Applicant admitted were his responsibility. Some accounts were deleted from his credit report. Applicant admitted that he was poor at managing his money when he was younger, and he “took credit for granted.” He stated that his finances are not perfect, but he stated that he plans to pay his debts. He is “trying and knocking them out slowly.” He also stated that he is “handling [his debts] one at a time.”¹²

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.”

¹⁰ Tr. at 22-25; GE 3-5; AE A.

¹¹ Tr. at 47-49; GE 3-5; AE A, E, G. The SOR did not allege that Applicant owed the IRS. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in assessing Applicant’s overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

¹² Tr. at 19-21, 46-50; GE 3-6; AE A-D, F, I.

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 had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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;
- (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.

Applicant admitted that he was poor at managing his money when he was younger, and he "took credit for granted." He recently took action toward addressing some of his debts, but significant concerns remain. He provided contradictory information about several of the debts alleged in the SOR. He claimed that a credit union had been paid, but he submitted nothing post-hearing to substantiate that claim. He testified that he had just recently paid the \$140 delinquent debt to a public library, but his post-hearing submission established that the debt was paid after the hearing. He owes the IRS for unpaid taxes from 2014.

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 his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions are not applicable except toward the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, 1.m, and 1.n, which were paid or disputed.

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 conditions are 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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant did not report all his criminal activity and his delinquent debts on his SF 86s. However, there is insufficient evidence for a determination that he intentionally provided false information on the SF 86s. He handled the processing of the SF 86s with the same attention he paid his finances, which was not much. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.d through 2.h are concluded for Applicant.

Applicant's criminal conduct reflected questionable judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

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

(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.

It has been more than seven years since Applicant's last criminal conduct. He stopped drinking more than two years ago. I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) 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 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.

I considered Applicant's honorable military service, and particularly his deployment. However, he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate the 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-1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.h:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge