



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 14-04853

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

09/22/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F and Guideline E security concerns. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 12, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken 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) effective within the DOD on September 1, 2006. There is no record showing when he received the SOR.

In a response to the SOR, dated January 12, 2015 (SOR Response), Applicant admitted the allegation raised under Guideline F and denied the sole allegation raised under Guideline E. He also requested a determination based on the written record in lieu of a hearing. On June 9, 2015, the Government issued a File of Relevant Material (FORM) containing seven attachments ("Items"). Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on September 17,

2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations and personal conduct security concerns.

Findings of Fact

Applicant is a 60-year-old technician. He has worked for the same defense contractor since 2009. He earned a General Education Development (GED) certificate. He has no children. He did not serve in the military. He has received credit counseling and does not presently use credit cards. Applicant filed a Chapter 13 bankruptcy in 1998, which was dismissed in January 2001. His May 2011 Chapter 7 bankruptcy petition was discharged in September 2011.

On February 26, 2014, Applicant filed a voluntary petition for Chapter 13 bankruptcy protection. He did so because he let his spending, particularly on credit cards, get out of control. He was motivated to file for bankruptcy protection when one creditor threatened “to take him to court and sue him if he did not pay his debt.” (FORM, Item 4, at 4) Liabilities in the amount of about \$28,401 were involved. A Chapter 13 bankruptcy plan and credit counseling service certificate were also filed that day.

In the interim, on March 10, 2014, Applicant completed an electronic security clearance application (SCA). On that form, he answered “no” to the question: “Section 26 – Financial Record: In the past seven (7) years, have you filed a petition under any chapter of the bankruptcy code.” (FORM, Item 3, Section 26) Elsewhere on the SCA, he reported no delinquent debts or financial issues.

In response to the SOR, Applicant denied that he had falsified material facts when he answered “no” to a March 2014 SCA question asking whether he had filed for bankruptcy in the preceding seven years. Elsewhere in that response, Applicant stated that he filed for bankruptcy after he submitted his March 2014 SCA. No documentary evidence was offered to refute the evidence in the record indicating the bankruptcy at issue was filed in February 2014, before he completed his SCA. Rather, he wrote, “look at the OPM (Office of Personnel Management) investigator’s report, her card is attached.” (FORM, Item 2) The only investigator’s report in the file is at FORM, Item 4, from April 2014. Those notes do not support Applicant’s assertion. The notes do, however, indicate that Applicant told an investigator that he did not list his bankruptcy on the SCA because he did not have all the information he needed to do so. (FORM, Item 4 at 5) Moreover, no explanation is given regarding the omission of his 2011 bankruptcy. Little more was offered by Applicant to mitigate security concerns.

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 10865 provides that 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). To allay Applicant's concerns, it is stressed that his loyalty is not an issue in this matter.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has acquired a substantial amount of delinquent debt, which now may be assumed has been subsumed in his pending bankruptcy proceeding. His 2014 bankruptcy filing is particularly notable due to his 2011 Chapter 7 bankruptcy discharge and a previous bankruptcy filing from 1998. These facts are sufficient to suggest or invoke two financial considerations disqualifying conditions:

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

AG ¶ 19(c) a history of not meeting financial obligations;

Five conditions could mitigate these finance-related security concerns:

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.

Applicant provided no evidence he has disputed any of the debts now included in his pending bankruptcy. The debts are, apparently, current and multiple. There is no evidence that any are the result of circumstances beyond his control, only as the result of unbridled spending. Applicant, did, however, receive credit counseling and he has filed for bankruptcy protection. This potentially gives rise to AG ¶ 20(c) - AG ¶ 20(d).

A discharge of debts in bankruptcy does not preclude consideration of an applicant's history of financial problems (ISCR Case No. 06-14616 (App. Bd. Oct. 18, 2007). Here, Applicant's bankruptcy is still pending, so this tentative standard does not apply. In this case, Applicant had a bankruptcy petition dismissed in 2006 and, in September 2011, he had his delinquent debts discharged in bankruptcy. No explanation

is given as to how he acquired so much delinquent debt (\$28,401) since his 2011 bankruptcy gave him a clean slate financially. At best, AG ¶¶ 20(c)-(d) apply in part.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that 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.

Here, in March 2014, Applicant denied having filed for bankruptcy in the preceding seven years. The evidence shows, however, that he filed for bankruptcy in 2011 and in 2014. Therefore, the following disqualifying conditions are potentially applicable under AG ¶ 16:

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; and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress

The documentary evidence establishes that Applicant filed for bankruptcy protection in 2011 and, most recently, in February 2014. This was a month before he completed the March 2014 SCA on which he denied having recently filed for bankruptcy. Later, Applicant claimed that the bankruptcy petition was filed after he completed that SCA, but offered no documentary evidence contradicting the record evidence and establishing this assertion. The only explanation he offered was to reference an OPM investigator's report and her business card, neither of which supports his position. To the contrary, the investigator's report indicates that Applicant purposefully did not list his recent bankruptcy petition filing on his March 2014 SCA because he lacked information about that filing at the time. Certainly, only a month after the filing, Applicant must have known enough about the petition (i.e. approximate date and state of filing) to at least give notice of a bankruptcy filing on his SCA. In light of the incongruous explanations offered, I conclude AG ¶¶ 16(a) and 16(e) apply

AG ¶ 17 provides conditions that could mitigate security concerns:

AG ¶ 17(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;

AG ¶ 17(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

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Under these facts, AG ¶ 17(c) is not established. The relationship between the Government and one who is granted a security clearance is based on honesty and candor. Applicant's failure to disclose his recent bankruptcy filing shows a lack of candor, reliability, and trustworthiness. His continued inability to offer a credible or consistent explanation as to why he did not disclose his recent bankruptcy filing indicates questionable judgment.

Moreover, AG ¶ 17(d) and AG ¶ 17(e) are not established. The inconsistencies in Applicant's explanations regarding the events at issue obviate application of these mitigating conditions. Consequently, no mitigating conditions apply.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 60-year-old technician who has worked for the same defense contractor since 2009. He has earned a GED. Applicant has a history of spending beyond his means and over-relying on credit cards. He filed a Chapter 13 bankruptcy petition in 1998. It was dismissed in January 2001. Debts filed under a May 2011 Chapter 7 bankruptcy petition were discharged in September 2011. On February 26, 2014, he filed for Chapter 13 bankruptcy protection. The related bankruptcy plan is still pending. He has received credit counseling and does not presently use credit cards.

Applicant completed a SCA in March 2014. Despite having filed his most recent bankruptcy petition only weeks earlier, he denied having filed for bankruptcy protection in the preceding seven years. At one point, he attributed his misrepresentation as being the result of error, asserting that the February 2014 bankruptcy petition was filed after he completed his March 2014 SCA. The documentary evidence, however, contradicts this assertion. Elsewhere, he wrote that he did not list the bankruptcy in his SCA because he did not have enough information about it at the time he completed the SCA. This could explain an abbreviated comment concerning the filing of a bankruptcy petition, but it does not excuse a complete denial of recent bankruptcies.

Three bankruptcy petitions in 17 years is worrisome. The acquisition of approximately \$28,401 in new delinquent debt after a 2011 bankruptcy discharge is perplexing. No evidence was produced indication what steps Applicant has taken to curtail this cycle of bankruptcies. Consequently, I find that financial considerations security concerns are unmitigated.

Whether Applicant's March 2014 denial of having filed a bankruptcy petition in the preceding seven years was an intentional falsity or an act of negligence, his omission is highly misleading. His explanations are inconsistent and lack of corroborating evidence. His failure to disclose a bankruptcy petition that was filed just weeks before he completed his SCA betrays the level of honesty and directness expected from a security clearance applicant. It also reflects poor judgment, unreliability, and untrustworthiness. Given these factors, and the analysis above, I find personal conduct security concerns remain unmitigated.

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
Subparagraph 1.a	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge