



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 14-06352
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

10/08/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 14, 2014. On January 30, 2015, 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.

Applicant answered the SOR on March 20, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 8, 2015, and the case was assigned to me on July 13, 2015. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for August 25, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until September 9, 2015, to enable him to submit additional documentary evidence. He timely submitted AX B, C, and D. DOHA received the transcript (Tr.) on September 1, 2015.

Findings of Fact

In his answer to the SOR, Applicant provided explanations for each allegation, but he did not specifically admit or deny any of the allegations. I have treated his responses as denials.

Applicant is a 35-year-old security guard employed by a defense contractor since January 2014. His supervisor testified that he is truthful, candid, reliable, and willing to work unusual hours, sometimes on short notice. (Tr. 86-91.)

Applicant served on active duty in the U.S. Navy from August 2005 to September 2009. He was then a full-time student and unemployed from September 2009 until he began his current job. (GX 1 at 14; Tr. 36.) He held a security clearance while on active duty, but he does not have a current security clearance. He has been suspended from his job, pending a decision on his application for a security clearance. (Tr. 33.)

While Applicant was on active duty, he was arrested by civil authorities for driving under the influence (DUI) in April 2008 and again in July 2009. Both offenses were misdemeanors. For the first DUI, he spent a night in jail, was fined, and was required to attend Alcoholics Anonymous meetings for three months and complete an alcohol-awareness class. He was placed on probation for three years. For the second DUI, he was placed on unsupervised probation for five years and required to complete an 18-month alcohol-awareness program. (Tr. 60-62.) He received non-judicial punishment from his military commanding officer in June 2008 for the April DUI. He was reduced in rate from petty officer first class (E-6) to petty officer second class (E-5), forfeited half of his basic pay for two months, and was restricted to his ship for 45 days. (Tr. 55-58.) After his second DUI, he was discharged from the Navy. He received an honorable discharge but was barred from reenlisting. (Tr. 66-68.) He was arrested by civil authorities in January 2011 for contempt of court by failing to complete an alcohol-awareness program. He completed it in March 2013. (AX C.)

During a personal subject interview (PSI) in July 2014, Applicant told an investigator that he now consumes alcohol two or three times a month, usually on weekends and with dinner. He usually will drink two or three beers with dinner over a period of two to three hours. At the hearing, he testified that he consumes alcohol at social occasions three or four times a month. He and his wife share a bottle of wine at dinner or a six-pack of beer during the day. During the PSI and at the hearing, he declared that he never drives a vehicle after drinking. He has never been diagnosed as alcohol dependent or as an alcohol abuser. (GX 2 at 8; Tr. 75-76.)

Applicant married in December 2006 and separated in August 2007. He was divorced in June 2014. (Tr. 32.) No children were born during his marriage. He intends to marry his current cohabitant, with whom he has a son. His fiancée is pregnant with their second child, and she has an eight-year-old child from a previous relationship. (Tr. 31-32.)

Applicant attended college in 1999 and 2000, before enlisting in the Navy, and he incurred student-loan debts during that period. He attended college from January 2011 to May 2013 but did not receive a degree. He is currently attending college courses and hopes to obtain an associate's degree within a year or two. His current college expenses are paid under the Post-9/11 GI Bill, and he has not incurred any additional student-loan debt. (Tr. 34-37.)

Applicant's credit bureau report (CBR) dated May 1, 2014, reflected the 11 debts alleged in SOR ¶¶ 1.a-1.k. (GX 3.) He was questioned about the debts during a personal subject interview (PSI) on July 17, 2014. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: indebtedness to U.S. Government, charged off in June 2010 (\$7,454). Applicant testified that the Government claims he was overpaid, but that he has been unable to determine the basis for its claim. (Tr. 29.) He has not challenged the Government's claim or asked any financial officials to explain the basis for the claim. He is considering hiring a lawyer to dispute this debt, but had not done so as of the date of the hearing. (Tr. 80.)

SOR ¶ 1.b-1c: unpaid fines for DUI offenses, charged off in March and September 2010 (\$1,238 and \$2,027). At the hearing, Applicant testified that he was making monthly \$75 payments on these two fines, but he requested that the payments be deferred when he was suspended from his job. He has not yet received a response to his request for deferment. (Tr. 28, 42.) He did not submit any documentary evidence of payments.

SOR ¶ 1.d: parking ticket, referred for collection in August 2011 (\$116). In his answer to the SOR and at the hearing, Applicant stated that this ticket was paid. He submitted a confirmation number and documentary evidence that he paid the \$116 parking ticket in July 2014. (AX A; AX C.)

SOR ¶¶ 1.e and 1.f: medical bill, referred for collection in January 2011 (\$25); and utility bill, referred for collection in January 2013 (\$81). Applicant testified that these bills were paid. He provided confirmation numbers and documentary evidence that both debts were paid in July 2014. (AX A; AX C; AX D.)

SOR ¶ 1.g: medical bill, referred for collection in August 2010 (\$265). Applicant testified that this bill was paid. (Tr. 28.) However, he provided no documentation of payment.

SOR ¶¶ 1.h and 1.i: student loans, referred for collection in August 2013 (\$4,740 and \$3,111). Applicant has made no payments on these loans. He testified that he intends to dispute the debts because (1) he could not obtain a loan for the second half of his education and (2) he is entitled to a deferment because he is still a full-time student. He testified that he received an offer to settle both loans for a lump-sum \$3,000 payment or three payments of \$1,200, but he provided no documentary evidence of the offer, and he admitted that he has not accepted any settlement offers. (Tr. 44-47.) These debts are unresolved.

SOR ¶¶ 1.j and 1.k: insurance premiums, referred for collection in February and April 2014 (\$291 and \$100). Applicant testified that he paid these debts. (Tr. 29.) However, he provided no documentation of payments.

When Applicant submitted his SCA in March 2014, he answered “No” to all questions about financial delinquencies and did not disclose the debts alleged in SOR ¶¶ 1.a-1.k. At the hearing, he admitted that he was aware of the delinquent student loans, at least one of the delinquent medical bills, the delinquent utility bill, and the debt to the insurance company. He has applied for a security clearance in the past and knew that a delinquent debt is a “red flag.” He testified that he did not recall why he did not disclose his delinquent debts in his SCA. (Tr. 52-54.)

Policies

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 SOR alleges 11 delinquent debts totaling about \$19,376 (SOR ¶¶ 1.a-1.k). 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 CBR, 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.

AG ¶ 20(a) is not established. Applicant’s delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. The debts alleged in SOR ¶¶ 1.a-1.d and 1.h-1.k were not due to circumstances beyond Applicant’s control. The medical bills alleged in SOR ¶¶ 1.e, 1.f, and 1.g were the result of circumstances largely beyond Applicant’s control. He acted responsibly by resolving the debts in SOR ¶¶ 1.e and 1.f. However, he did not provide documentation of reasonable steps to resolve the medical bill alleged in SOR ¶ 1.g.

AG ¶ 20(c) is not established. Applicant has not received financial counseling and his financial problems are not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f. However, he has done virtually nothing to investigate the circumstances of the indebtedness in SOR ¶ 1.a, has not made any payments or responded to any settlement offers for the student loans in SOR ¶ 1.h and 1.i, and has not provided documentation of the payments he claimed to have made for the debts alleged in SOR ¶ 1.b, 1.c, 1.g, 1.j, and 1.k.

AG ¶ 20(e) is not established. Applicant questioned the basis for the debt in SOR ¶ 1.a when he responded to the SOR and at the hearing, but he has not challenged the debt, asked the appropriate Government officials about the basis for their determination that he was overpaid, or disputed the debt with the credit reporting agencies.

Guideline E, Personal Conduct

The SOR alleges that Applicant was arrested for DUI in April 2008 and July 2009 (SOR ¶¶ 2.a and 2.b) and arrested for contempt of court by failing to complete an alcohol-awareness program (SOR 2.c). It also alleges that he falsified his SCA by failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a-1.k. (SOR ¶ 1.d).

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 for Applicant's failure to disclose his delinquent debts in his SCA is AG ¶ 16(a): ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire") 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).

AG ¶ 16(a) is established. Applicant admitted that he knew he had delinquent debts when he submitted his SCA, and he knew that delinquent debts are a "red flag" during a security-clearance adjudication, but he has not provided a plausible, credible explanation for his omission.

Applicant's DUI arrests and arrest for contempt of court are sufficient to establish the following disqualifying conditions:

AG ¶ 16(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

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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.

AG ¶ 17(a) is not fully established. Applicant was not aware of the debts alleged in SOR ¶¶ 1.a, 1.e, 1.f, 1.g, 1.j, and 1.k until he was confronted with his CBR during the July 2014 PSI. However, he was aware of the delinquent student loans in SOR ¶¶ 1.b and 1.c and the unpaid traffic ticket in SOR ¶ 1.d, but he did not attempt to correct his SCA until he was confronted with the evidence during the PSI.

AG ¶ 17(c) is not established for Applicant's falsification of his SCA. His lack of candor was not "minor" because it undermined the integrity of the security adjudication process. It is established for his two DUI's, which were "minor." They were misdemeanors, and the first DUI was treated as a minor offense by his military commander. Applicant's DUIs are more than six years old, have not recurred, and are mitigated by the passage of time. This mitigating condition is not established for his arrest in January 2011 for contempt of court. His dilatory attitude toward the court order and his lack of concern about his financial obligations indicate a pattern of disregard for his financial and civic obligations.

AG ¶ 17(d) is established for Applicant's two DUIs. He acknowledged his first DUI in his SCA, and he admitted the second DUI in his response to the SOR. He

completed the alcohol-education program, although his dilatory attitude toward the program led to his arrest in January 2011. He has moderated his drinking, avoids drinking and driving, and has not had any further alcohol-related arrests.

AG ¶ 17e is established for the DUIs. Applicant fully disclosed his DUIs, thereby eliminating his vulnerability to manipulation, exploitation, or duress.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served on active duty in the Navy for four years and received an honorable discharge, but his service was tarnished by his two DUIs. He has had no further DUIs. He held a security clearance in the Navy. He was not candid on his SCA. He has not provided documentation of the debts he claims to have resolved, even after receiving extra time to submit evidence.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies and lack of candor in his SCA. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him 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.c: Against Applicant

Subparagraphs 1.d-1.f: For Applicant

Subparagraphs 1.g-1.k: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.b: For Applicant

Subparagraphs 2.c-2.d: Against 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