



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



In the matter of:

)
)
) ISCR Case No. 14-06762
)
)
)

Applicant for Security Clearance

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

June 8, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be indebted to 12 creditors in the total approximate amount of \$223,836. One debt was a duplicate. The remaining 11 alleged debts are unresolved and total \$159,266. Additionally, Applicant intentionally failed to disclose his financial delinquencies, repossession, and judgment on his security clearance application. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on May 10, 2013. (Item 2.) On May 13, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted two written responses to the SOR (Answer), dated June 15, 2015; and June 30, 2015 (Item 1), and requested that his case be decided by an administrative judge on the written record without a hearing. Department Counsel submitted the Government's written case on November 6, 2015, containing five Items.¹ A complete copy of the File of Relevant Material (FORM) was received by Applicant on November 17, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on November 17, 2015. He failed to submit anything further within the allotted time frame that ended December 17, 2015. I received the case assignment on April 1, 2016.

Findings of Fact

Applicant is 45 years old, and has worked for his employer, a defense contractor, since February 2012. Prior to this job, he worked for various other government contractors. He served on active duty in the Navy from 1990 to 1994. He was in the Navy Reserves from 1997 to 2003. He is divorced and has two daughters. (Item 2.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleged that Applicant is delinquent on 12 debts in the total approximate amount of \$223,836. Applicant admitted the debts identified in SOR ¶¶ 1.c through 1.h, 1.,k, and 1.l. He denied debts identified in SOR ¶¶ 1.a, 1.b, 1.i, 1.j, Applicant's delinquent accounts appeared on his credit reports dated May 15, 2013; and August 21, 2014. (Item 3; Item 4.)

Applicant is delinquent on a \$130,236 mortgage in the amount of \$46,682, as alleged in SOR ¶ 1.a. This debt has been delinquent since 2011. Applicant's Answer contends that this is the same as the debt identified in ¶ 1.f. He explained that the company changed names and submitted an internet link which substantiated his claim. This debt was for an investment rental property Applicant purchased in approximately 2006. He experienced difficulties paying the mortgage when his tenants abandoned the house and he was unable to release it or sell it. He claimed in his Answer that the mortgage was foreclosed upon and that his "real estate agent told [him] that the

¹ Item 5 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in July 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

mortgage is no longer [his] responsibility.” He claimed to be unable to produce documentation to show that this debt is resolved because he lost track of it during his marital separation. This debt is unresolved. (Item 1; Item 3; Answer.)

Applicant is indebted on a charged-off account in the approximate amount of \$23,314, as alleged in SOR ¶ 1.b. This debt has been delinquent since 2010. Applicant admitted having a delinquent debt with this creditor, but indicated, “I do not believe this account is mine because I never had a balance of \$23,314.” Applicant failed to provide documentation of what he believes is the correct balance, or show that he disputed this debt with the creditor. This debt is unresolved. (Item 3; Answer.)

Applicant is indebted on a charged-off account in the approximate amount of \$1,999, as alleged in SOR ¶ 1.c. This debt has been delinquent since 2013. Applicant admitted this debt and indicated, “I have no problem contacting them to satisfy this account.” However, he failed to provide proof that he took any actions to repay this debt. It is unresolved. (Item 3; Answer.)

Applicant is indebted on a collection account in the approximate amount of \$893, as alleged in SOR ¶ 1.d. This debt has been delinquent since 2013. Applicant admitted this debt was his credit card and indicated, “I have no problem contacting this creditor to satisfy this account.” However, he failed to provide proof that he took any actions to repay this debt. It is unresolved. (Item 3; Answer.)

Applicant is indebted on a charged-off account in the approximate amount of \$717, as alleged in SOR ¶ 1.e. This debt has been delinquent since 2008. Applicant admitted this debt and indicated he would contact the creditor to satisfy the account. However, he failed to present documentation showing that he followed through with this promise. This debt remains unresolved. (Item 4.)

Applicant is indebted on a collection account in the approximate amount of \$148,124, as alleged in SOR ¶ 1.f. This debt is the same debt as ¶ 1.a and is discussed above. (Item 3; Item 4; Answer.)

Applicant is indebted on a collection account in the approximate amount of \$1,654, as alleged in SOR ¶ 1.g. This debt has been delinquent since 2011. Applicant admitted this debt and indicated he would contact the creditor to satisfy the account. However, he failed to present documentation showing that he followed through with this promise. This debt remains unresolved. (Item 4.)

Applicant is indebted on a collection account in the approximate amount of \$225, as alleged in SOR ¶ 1.h. This debt has been delinquent since 2008. Applicant admitted this debt and indicated he would contact the creditor to satisfy the account. However, he failed to present documentation showing that he followed through with this promise. This debt remains unresolved. (Item 3; Answer.)

Applicant is indebted on a medical collections account in the approximate amount of \$68, as alleged in SOR ¶ 1.i. Applicant indicated that he did not recognize this account. However, he failed to provide documentation to show he disputed this debt. This debt is unresolved. (Item 3; Answer.)

Applicant is indebted on a medical collections account in the approximate amount of \$60, as alleged in SOR ¶ 1.j. Applicant indicated that he did not recognize this account. However, he failed to provide documentation to show he disputed this debt. This debt is unresolved. (Item 3; Answer.)

Applicant is indebted on a medical collections account in the approximate amount of \$50, as alleged in SOR ¶ 1.k. Applicant admitted this debt and indicated that he lost track of his bills after his divorce. He provided nothing further to show to has addressed this debt. It remains delinquent. (Item 3; Answer.)

Applicant is indebted on a medical collections account in the approximate amount of \$50, as alleged in SOR ¶ 1.l. Applicant admitted this debt and indicated that he lost track of his bills after his divorce. He provided nothing further to show to has addressed this debt. It remains delinquent. (Item 3; Answer.)

Applicant's May 15, 2013 credit report reflects a judgment against him filed in June 2011.² The judgement was satisfied, through garnishment, February 2013. (Item 3.)

Personal Conduct security concerns arose out of Applicant's failure to disclose the judgment entered against him in June 2011 in the amount of \$2,934. Section 26 of the e-QIP asked, "Delinquency Involving Enforcement. In the past seven (7) years, have . . . you had a judgment entered against you?" He answered this question "No." despite the fact that a judgment was entered against him in June 2011.

Section 26 of the e-QIP also asked, "In the past seven (7) years, have . . . you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?; . . .you defaulted on any type of loan?; . . . you had any bills or debts turned over to a collection agency?; . . .you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; . . . you had your wages, benefits, or assets garnished or attached for any reason?" Applicant answered these questions, "No." He failed to disclose his delinquent debts as identified in SOR ¶¶ 1.a through 1.l, as well as a 2012 garnishment to satisfy the June 2011 judgment and a 2009 vehicle repossession.

² This judgment was not alleged under Guideline F and will not be considered as disqualifying under the Financial Considerations section, but was alleged as part of the Personal Conduct concerns and will be considered under Guideline E.

Applicant denied that he intentionally falsified his security clearance application in his Answer to SOR ¶¶ 2.a and 2.b. He explained:

When I began filling out the e-QIP questionnaire I was going through a divorce. By the time I completed this questionnaire my divorce was final. During this time I was going through a lot of emotional trauma dealing with the divorce and also concerned about the well being of my children. The two questions in "Section 26" of the e-QIP questionnaire that I answered "no" was not an attempt to deceive anyone of my past mishaps. . .I apologize for answering these two questions incorrectly but I honestly forgot about these financial situations. This information I entered is based upon what I was able to recall and what I know to be true at the time that I completed the e-QIP questionnaire. Please understand that I was going through a great deal at this time regarding my divorce. (Answer.)

Applicant submitted no evidence that he has received any financial counseling. He did not submit a budget, or any other information concerning his income and expenses.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has a history of delinquent debt. He has had unresolved delinquencies since 2008. His ongoing pattern of delinquent debt, and history of inability or

unwillingness to pay his lawful debts, raises security concerns under DCs 19(a) and (c), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 failed to produce sufficient evidence that he has addressed any of his delinquencies. He offered little evidence from which to establish a track record of debt resolution. While the record shows evidence of a divorce in 2013, a condition beyond his control, he failed to show how the divorce affected him financially or that he acted responsibly under the circumstances. He did not produce evidence that he received financial counseling. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

Guideline E, Personal Conduct

The security concern for the Personal Conduct 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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.

Applicant failed to list his SOR-listed debts, judgment, garnishment, and vehicle repossession on his e-QIP, instead denying their existence with his “No” response to the questions in Section 26. His explanation that he was “going through a lot of emotional trauma dealing with the divorce” does not explain his omissions. He clearly knew of the judgment, delinquent mortgage, and vehicle repossession. His explanation does not explain his lack of disclosure. On balance, the evidence indicates that he willfully chose not to disclose his delinquent debts on the e-QIP. This behavior demonstrates questionable judgment and untrustworthiness.

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

(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.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification and concealment. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying material information raises serious concerns and Applicant has done nothing to show that similar dishonesty is unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof for his personal conduct.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past eight years and all appear to remain unresolved. He further failed to disclose his debts and judgment on his e-QIP. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation and personal conduct remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a through 1.e	Against Applicant
Subparagraph 1.f	For Applicant
Subparagraphs 1.b through 1.e	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge