



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-03533
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

November 18, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on October 17, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 15, 2010, detailing security concerns under Guideline E, Personal Conduct, and Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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 (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 21, 2010. He submitted a notarized, written response to the SOR allegations dated May 13, 2010. On July 7, 2010, the Government mailed Applicant an amendment to the SOR, which he received on July 27, 2010. He answered the amended SOR on August 13, 2010, and requested a decision on the record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on August 31, 2010. Applicant received the FORM on September 8, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on November 3, 2010. The Government submitted 16 exhibits, which have been marked as Item 1-16 and admitted into the record. Applicant's responses to the SOR and amended SOR have been marked and admitted as Item 3 and Item 5, the SOR has been marked as Item 1, and the amended SOR has been marked as Item 4.

Findings of Fact

In his Answer to the SOR and the amended SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 56 years old, works as a security guard for a Department of Defense contractor. He began this job in May 2008. Prior to obtaining his current employment, Applicant was unemployed from March 2008 until May 2008. He worked as an assistant manager trainee from December 2007 until March 2008 for a fast food company. From March 2007 until December 2007, he was unemployed. From March 1986 until March 2007 he worked for a large retail company, as the store assistant manager.¹

Applicant graduated from high school in 1972. He is single and has no dependents. Applicant collects sports memorabilia.²

When he was unemployed in 2007, Applicant used his credit cards to purchase many items, including items for his memorabilia collection. His unemployment compensation failed to provide him with sufficient income to pay all his credit card debts. He defaulted on many of his debts in 2007 and 2008.³

¹Item 6.

²*Id.*; Item 9; Item 12.

³Item 7-9, 11.

Applicant met with a bankruptcy attorney in 2008, but did not file a petition for bankruptcy at that time because he needed to pay the attorney his fee and the court filing fee. Applicant did file a Chapter 7 bankruptcy petition on August 14, 2009, after accumulating sufficient funds to pay the attorney fee and court costs. Except for his car loan, which he reaffirmed, all his debts, including the debts in the SOR, were discharged by the bankruptcy court on November 27, 2009. As part of the bankruptcy process, Applicant participated in credit counseling. Applicant has not incurred any additional unpaid debt since his debts were discharged in 2009.⁴

When he completed his e-QIP, Applicant answered “no” to the following questions:

Section 27: Your Financial Record

A. In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?

Section 28: Your Financial Delinquencies

a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

b. Are you currently over 90 days delinquent on any debt(s)?

When he met with the security clearance investigator (investigator), he advised the investigator that he did not admit to his debts because he did not know he was to list them. In his response to the SOR, Applicant admits that he falsified his answers to these questions.⁵

When Applicant met with the investigator on December 12, 2008, he advised that he had filed a Chapter 7 bankruptcy in July 2008 on his own. Other than this statement, the record contains no evidence that Applicant filed a bankruptcy petition in 2008. His 2009 bankruptcy petition reflects that he had not filed a bankruptcy in 2008. He has not explained the reason he made this statement to the investigator. He admitted that he provided false information to the investigator in his response to the amended SOR.⁶

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁴Items 5, 12-16.

⁵Items 3, 5, 6, 9.

⁶Items 5, 9, 10.

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. 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, 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

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).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

For AG ¶¶ 16(a) and 16(b) to apply, Applicant's omission, concealment or falsification in his answer and his personal subject interview must be deliberate. The Government established that Applicant omitted material facts from his SF-86 when he answered "no" to Questions 28a, about debts over 180 days delinquent, and 28b about debts currently 90 days over due, and that he provided misleading information to the security clearance investigator about filing a Chapter 7 bankruptcy petition in July 2008. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response to the SOR and the amended SOR, he admits that he intentionally hid this information from the Government. When a falsification allegation is controverted, the Government has the burden of proving it. In light of Applicant's admissions, the Government has proven its case as to SOR allegations 1.a and 1.b and allegation 1.d of the amended SOR.⁷

Applicant's admission that he falsified his answer to question 27a is more problematic. Applicant never filed a Chapter 7 bankruptcy petition in July 2008. Given that he never filed this petition in July 2008, he cannot admit to intentionally falsifying information about facts which did not occur. The Government has not established its case as allegation 1.c in the amended SOR.

⁷See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

I have considered the mitigating conditions under AG ¶ 17, and conclude that none of these conditions apply in this case.

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts, and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he was unemployed in 2007 and in 2008. He was unable to pay the debts he incurred prior to and while he was unemployed. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

- (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.

Applicant lost his job of 21 years in March 2007. Nine months later, he began a management trainee position which lasted only three months. He was unemployed for another two months before he started his current position. Because of his unemployment, Applicant realized that he could not pay these bills. He contacted an attorney about filing for Chapter 7 bankruptcy. Once he paid the required fees for his attorney and the court, his attorney filed a Chapter 7 bankruptcy petition in August 2009. His decision to file bankruptcy was reasonable as this was the only method for him to gain control of his finances. The court discharged his debts, except for his car loan, on November 27, 2009. His debts are resolved. Thus, the mitigating conditions in AG ¶¶ 20(a) and 20(c) are applicable in this case.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant failed to control his spending while he was unemployed, which resulted in significant unpaid debts. He resolved his debt problems by filing for bankruptcy under Chapter 7 of

the Bankruptcy Code. The court discharged all his debts, except his car loan. The debts listed in the SOR are resolved.

Applicant intentionally falsified his answers to two questions on his e-QIP related to his debts and financial record. He readily admitted this conduct. He also admitted that he provided false information about the status of his debts when he told the investigator that he had filed for Chapter 7 bankruptcy in July 2008. His deliberate and intentional lying cannot be condoned. He knew about his financial problems when he completed his e-QIP, but purposely chose not to reveal this information. This conduct and his decision to provide false information to the investigator brings into question his honesty, trustworthiness, and security worthiness. Through his actions, he has demonstrated that he should not be trusted with access to classified information or classified areas.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct under Guideline E. He has mitigated the Government's security concerns under Guideline F.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

MARY E. HENRY
Administrative Judge