



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



In the matter of:)
)
) ISCR Case No. 09-05419
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

January 11, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. DOHA acted 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), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 9, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 30, 2010. The FORM was mailed to Applicant and he received it on October 1, 2010. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on December 10, 2010.

Findings of Fact

In Applicant's answer to the SOR, he admitted ¶¶ 1.a and 1.b, but denied ¶ 1.c. He also admitted the underlying conduct concerning the falsification allegations stated in SOR ¶¶ 2.a – 2.c, but failed to address the falsifications themselves. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He is single, has never been married, and has no children. He has worked for his current employer, a federal contractor, since 1993. He is a security officer. He currently holds a secret security clearance and held one while serving in the Army. He served in the Army for seven years and was discharged with an other than honorable discharge. This was an administrative discharge processed in lieu of court-martial.¹

The debts listed in the SOR are supported by a credit report dated May 21, 2010. The debt alleged in SOR ¶ 1.a is a collection account for a credit card for approximately \$5,198. The debt alleged in SOR ¶ 1.b is a collection account for a deficiency balance on an automobile repossession for approximately \$7,990. Applicant contacted a credit consolidation service to set up a payment plan for these two debts. Although he provided the detailed payment plan which has him making monthly payments of \$239 over a three-year period, he failed to provide proof that he has made any of the payments. These debts remain unresolved.²

The debt alleged in SOR ¶ 1.c is a defaulted mortgage. Applicant became delinquent on his \$1,200 monthly condominium payments. He defaulted in December 2008. The lender pursued foreclosure action and Applicant was ordered to surrender possession of the property pursuant to a court order on May 19, 2010. There is no information in the record about whether Applicant is responsible for any deficiency amount.³

Applicant's current income and expense statement shows net monthly income of about \$1,945, net expenses of \$800, and a remainder of \$1,145. Applicant claims his

¹ Items 4, 6.

² Items 5, 6; Applicant's Response to FORM.

³ *Id.*

financial difficulties are attributable to lack of income. Other than contacting the debt consolidation service, there is no evidence that Applicant received financial counseling.⁴

The personal conduct concern arises because of answers Applicant provided to three questions on his security clearance application. The allegation states that he falsified answers to his security clearance application (e-QIP) on March 23, 2009, by answering “no” to the questions concerning whether he had ever received a discharge from the military that was not honorable, whether he had ever used drugs while holding a security clearance, and whether he had ever been charged with an offense related to alcohol or drugs. Applicant admitted that he gave the answers as indicated, but he believed that the drug use and alcohol-related offense questions only required affirmative answers if the events happened in the last seven years. He did not give an explanation for why he answered negatively to the other than honorable discharge question.⁵

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

⁴ Item 6.

⁵ Items 3, 6.

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. 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 that an 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.

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 F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and especially considered the following:

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

Applicant has delinquent debts that remain unpaid or unresolved. He also lost his home through foreclosure because of nonpayment. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not provide evidence that he paid or resolved his delinquent debts. Therefore, his behavior is recent and remains a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain unresolved. Applicant's explanation that his financial troubles were caused by his lack of income does not constitute conditions beyond his control. He could have sought a different job or an additional job, or cut back on expenses. I find AG ¶ 20(b) does not apply. Applicant apparently entered into an agreement with a debt-consolidation service to pay the debts listed in SOR ¶¶ 1.a and 1.b. However, he provided no proof that he has made any payments under that agreement. Applicant failed to present evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control. There was no documented evidence that he has made a good-faith effort to pay or has attempted to resolve any of the debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant's explanation for his false answers on his security clearance application is unpersuasive. He clearly was aware of his drug use while holding a clearance, his alcohol-related arrest, and his other than honorable discharge. The questions on the application are unambiguous. I conclude from the evidence that Applicant deliberately provided false information concerning these questions. AG ¶ 16(a) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

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

(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.

The record is absent any evidence that Applicant made any efforts to correct his false answers before being interviewed by an investigator. AG ¶ 17(a) does not apply. Falsification of material information on a security clearance application calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not 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 the 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 considered Applicant's lengthy service to his current employer. I also considered his explanation for his financial problems. I also considered Applicant's military service, including his other than honorable discharge. Applicant did not supply documented proof of a payment arrangement for his debts. He has not shown a track record of financial stability. Additionally, he deliberately falsified his security clearance questionnaire. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations and Guideline E, Personal Conduct.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	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.

Robert E. Coacher
Administrative Judge