



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



In the matter of:)
)
) ISCR Case No. 11-00257
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Terry L. Falls, Personal Representative

12/20/2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate security concerns about his financial problems. Moreover, he deliberately falsified his May 2009 security clearance application when he failed to disclose his delinquent debts, a traffic ticket, and a misdemeanor charge. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 11, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On July 1, 2011, DOHA issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the adjudicative guidelines (AG).²

Applicant answered the SOR on August 4, 2011, and requested a hearing before an administrative judge. The case was assigned to me on September 27, 2011. DOHA issued a notice of hearing on October 3, 2011, convening a hearing on October 24, 2011. At the hearing, the Government offered exhibits (GE) 1 through 14. Applicant testified, presented one witness, and submitted exhibits (AE) 1 and 2. DOHA received the hearing transcript (Tr.) on November 2, 2011.

Procedural Issue

On October 20, 2011, the Government moved to amend the SOR by striking certain subparagraphs and renumbering the SOR. (Hearing Exhibit (HE) 1) Applicant did not object. I granted the motion as requested, with one exception. I struck SOR ¶ 2.v, instead of SOR ¶ 2.c (duplicate allegations). (Tr. 17-18)

Findings of Fact

Applicant denied the SOR allegations under ¶¶ 1.a through 1.c, and 2.a (alleges the same facts alleged in ¶ 1.a). He did not admit or deny any of the remaining allegations. I entered a “deny” for all remaining SOR allegations. After a thorough review of all the evidence, and having considered Applicant’s demeanor and testimony, I make the following findings of fact.

Applicant is a 31-year-old systems technician working for a defense contractor. He graduated from high school in 1997, and enlisted in the U.S. Navy in October 1999. He was honorably discharged in August 2005 as a petty officer third class (pay grade E-4). He started taking college courses in 2005, and has accumulated approximately 40 college credit hours, but he has not completed a degree. While in the Navy, Applicant possessed a secret security clearance. Since 2005, he has worked for different government contractors, and he retained his access to classified information up to his hearing day. There is no evidence to show that Applicant has compromised or caused others to compromise classified information.

Following his discharge from the service, Applicant was unemployed for two months. Since September 2005, he has been continuously employed with different government contractors, except for one to two weeks of unemployment in between jobs. Applicant worked for government contractor “N” from September 2005 until September 2008. He was making approximately \$57,000 a year. He resigned his position with N, because of perceived harassment from his supervisor. He believed his supervisor was trying to reduce his section’s employees by making some employees’ life so hard they would have to resign. Applicant worked for government contractor “L” from September

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

2008 until March 2010. His salary was approximately \$50,000 a year. He resigned that position because he did not like working in a military environment. He worked as a security guard from March 2010 until July 2010. He has worked with his current employer since July 2010.

Applicant married his wife in February 2001. They have two children, ages eight and two. His wife is suffering from psychological and physical problems. She was diagnosed with depression and a bipolar personality disorder. Applicant's wife stopped contributing to the household finances around 2007-2008. Because of her medical problems, she has been unemployed and in long-term medical disability. They separated in 2008.

Applicant explained that his financial problems were caused by the reduction of his income that resulted from his job changes, his wife's medical problems (her unemployment and her inability to make financial contributions to the household), being the sole provider for his children and his estranged wife, and the increased financial expenses associated with the marital separation and maintaining two households. His yearly income was reduced by \$7,000 in 2008, when he resigned his position with N and started working for L. His work as a security guard from March until July 2010, paid \$21 hourly. His current hourly pay rate is \$28.63, and he clears approximately \$3,400 a month. Applicant averred his earnings are not sufficient for him to pay his delinquent financial obligations and pay for his and his family's day-to-day living expenses.

Concerning SOR ¶ 1.a (cross-alleged in ¶ 2.a), Applicant testified that, in 2007, while working for company N, his then supervisor encouraged him to open a corporate credit card to pay for his business travel expenses. When he received the corporate credit card, Applicant signed a company brochure stating that the corporate credit card could not be used for personal expenses. At his hearing, he acknowledged he signed the brochure, but claimed he did not read it. He claimed he believed he was applying for a personal credit card. (Tr. 59)

Applicant maintained a low balance on his corporate credit card, and charged no personal expenses on it, until about 45 days before he submitted his resignation from company N. After Applicant applied for employment with company L, he charged approximately \$10,000 in personal expenses to company N's corporate credit card. He averred that a family member was in critical medical condition. He used the corporate credit card to purchase plane tickets for himself and some relatives. He claimed his relatives failed to reimburse him for the plane tickets as promised. At his hearing, he testified he believed he was allowed to make personal purchases using the corporate credit card. However, during his November 2010 interview with a government investigator, Applicant stated he knew he was not allowed to make personal charges on his corporate credit card. He told the investigator that his poor financial situation forced him to charge personal expenses on the corporate credit card. The company's (N) financial records showed that Applicant used the corporate credit card to pay for restaurant bills, home improvement store charges, and several airline tickets. (GE 2)

Applicant testified that he always intended to pay the corporate credit card debt, but he was unable to do so because of his financial situation. He claimed he made a \$500 payment sometime in 2008. He also claimed that he made two payments after January 2011, but he stopped making payments when he filed (*pro se*) for a Chapter 13 bankruptcy protection. His bankruptcy filing was dismissed when he failed to attend a meeting with the trustee. He intends to file again for bankruptcy protection with the help of an attorney. His father-in-law is giving him the money to pay the attorney fees. Applicant presented no documentary evidence of payments made to the corporate credit card account or of his bankruptcy filing.

Applicant's delinquent debts are established by the Government's evidence. Applicant claimed he was not aware of the delinquent debts alleged in SOR ¶¶ 2.b through 2.y until he received the SOR, because he was not communicating with his wife. She was receiving the bills and collection notices, but she did not provide them to him. He claimed that after receipt of the SOR, he started to contact his creditors to resolve his delinquent debts. He admitted responsibility for the debts and promised to resolve them as soon as possible. He stated that his financial situation worsened around May 2008, because of his lower income, car payment, mortgage payment for the marital residence, and the rent for his apartment.

SOR ¶¶ 2.b, 2.c, 2.r, 2.s, 2.t, and 2.u allege unpaid medical debts. Applicant and his father-in-law testified that Applicant's wife was not paying the medical bills, did not submit them for payment with her insurance, and did not notify Applicant that a copayment was due. Apparently, because of her medical condition and their marital separation, she received the bills and disposed of them without notifying Applicant.

At his hearing, Applicant admitted the delinquent credit card debt alleged in SOR ¶ 1.e (\$1,542). He had two credit card accounts with the same creditor. He paid one of the accounts (for less than the amount owed), but the second account is unresolved. (GE 5, at 9) He contacted the creditor and attempted to settle the debt. The creditor offered to settle for less than the amount owed, but Applicant did not have the money to pay off the account. SOR ¶ 1.u is likely a duplicate of the debt alleged in SOR ¶ 1.e.

SOR ¶ 1.f alleges Applicant's delinquent student loan. He claimed he contacted the university in January 2011, but has made no payment arrangements. The debt is unresolved. Applicant claimed having no knowledge of the debts alleged in SOR ¶¶ 2.g, 2.h, 2.i, 2.j, 2.k, 2.l, 2.m, 2.s, 2.t, and 2.w. Some of them, he claimed, were removed from his credit report after he disputed them on an unspecified date. He testified that he disputed SOR ¶¶ 2.h, 2.j, and 2.l, and the credit bureau informed him the debts were his debts. Applicant believed he had paid the debt alleged in SOR ¶ 1.x. However, in his answer to the SOR and at his hearing he stated that he had not paid the debt. Applicant presented no documentary evidence of contacts with creditors or disputed debts.

The debt alleged in SOR ¶ 1.y is unresolved. Applicant purchased a 2003 Cadillac for \$26,000 shortly after he separated from his wife in 2008. Initially, his car payment was \$700 a month. After he missed one car payment, the loan interest

escalated and the monthly payments increased to the point where he could no longer afford the car payments. He voluntarily returned the car to the dealer in November 2010. He claimed he received no collection notices, and he was not aware of any remaining balance on the car loan. In addition to the above debts, as of his hearing date, Applicant was \$2,500 delinquent on his marital residence mortgage payments. He intends to include his residence mortgage in his future bankruptcy filing.

On May 11, 2009, Applicant submitted the pending SCA. In response to Section 22(b) (Financial Record), asking whether he was over 180 days delinquent on any loan or financial obligation, Applicant answered "No," thereby failing to disclose the delinquent debts alleged under SOR ¶¶ 2.b, 2.d, 2.e, 2.j, and 2.l. Applicant explained that he made an innocent mistake. He did not remember some of the debts because of his state of mind and the personal problems he was going through. He believed he had paid some debts, and he claimed he was not aware of many of the medical debts.

Considering the evidence as a whole, Applicant's claims of innocent mistake are not credible. Even giving Applicant the benefit of the doubt about him not being aware of some of the alleged medical debts, Applicant knew that in 2008 he had improperly charged approximately \$10,000 on his corporate credit card and that the corporate credit card account was delinquent (SOR ¶ 2.d). He also knew that he had two accounts with the creditor alleged in SOR ¶ 2.e. He settled one of the debts in April 2009, and the other remained delinquent because he could not afford to pay the settlement offered.

Applicant also claimed he believed he was not delinquent on his debts because he was making payments through the bankruptcy trustee. Applicant presented no documentary evidence to show when he filed for bankruptcy protection, or of any payments made. Even if he did file the petition, he testified that the bankruptcy filing was dismissed for his failure to attend a meeting, and he was not making any payments to either the trustee or his creditors.

SCA Section 20(d) asked Applicant whether in the last seven years he had been arrested for, charged with, or convicted of any offenses (leaving out traffic offenses of less than \$150). Applicant answered "No," and he failed to disclose that in December 2004, he was charged with a misdemeanor (driving under revocation-suspension), and that in April 2008, he was charged with speeding and fined \$170. When asked why he failed to disclose the above information, Applicant explained that he misunderstood the SCA question. He believed that because the 2004 misdemeanor charge was dismissed, he did not have to disclose it. He failed to disclose the 2008 \$170 speeding ticket because he did not recall that fine imposed was over \$150 dollars.

Applicant believes that he is doing all that he can do under his financial circumstances to resolve his delinquent debts. He claimed that his income is not sufficient for him to pay for his delinquent financial obligations and to pay for his and his family's day-to-day living expenses. He intends to file for bankruptcy protection in the near future to resolve his financial predicament.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Under Guideline F, the security concern 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 having to engage in illegal acts to generate funds. AG ¶ 18.

The record evidence establishes Applicant’s 18 delinquent debts (including five judgments), totaling approximately \$26,457, some of which have been delinquent since 2004. In 2008, Applicant charged approximately \$10,000 for personal expenses on his corporate credit card knowing that such use was prohibited by company policy. He improperly used his corporate credit card because he had financial problems. AG ¶ 19(a): “inability or unwillingness to satisfy debts”; AG ¶ 19(c): “a history of not meeting financial obligations”; and AG ¶ 19(d): “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loans statements, and other intentional financial breaches of trust” apply.

AG ¶ 20 lists conditions that could mitigate the financial considerations security concerns.

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Having considered all the mitigating conditions, I find that AG ¶ 20(a) does not fully apply because Applicant's financial problems are ongoing. AG ¶ 20(b) applies in part, but does not fully mitigate the security concerns. Applicant's financial problems are, to some extent, the result of circumstances beyond his control. His wife is ill and on long-term medical disability. He separated from his wife in 2008, and he is responsible for the day-to-day financial expenses of two households and the support of his two children. I did not consider Applicant's resignation from companies N and L as circumstances beyond his control, as he voluntarily resigned from both jobs.

Considering the evidence as a whole, Applicant was irresponsible in the handling of his finances. Applicant knew his wife was having medical problems since around 2007. In 2008, Applicant and his wife separated. Shortly thereafter, he purchased a \$26,000 car that he could not afford. That same year, he improperly charged approximately \$10,000 on his corporate credit card weeks before he voluntarily resigned his position to take a lesser paying job with another company. He presented no documentary evidence of any efforts to repay this debt.

Applicant's evidence fails to show that he made reasonable efforts to pay, settle, or resolve his delinquent debts. I considered the fact that his wife was hiding the medical debts and other correspondence from him. However, Applicant presented little documentary evidence of any effort to resolve the debts he knew about such as his corporate credit card and his personal credit cards. He disputed some debts that were validated by the credit bureau as his debts, and he has made little effort to resolve them. Applicant claimed he recently made contact with some of his creditors trying to settle the debts and establish payment plans. He failed to submit documentary evidence of such efforts.

AG ¶¶ 20(c) through 20(f) are not supported by the facts in this case and do not apply. Applicant has not received financial counseling. He presented no documentary evidence showing he disputed some of his debts, or that he has a valid reason to dispute the debts. There are no clear indications that his financial problems are under control or that he will have the ability to resolve them in the foreseeable future. On

balance, and considering the evidence as a whole, Applicant's financial situation cast doubt on his current reliability and judgment.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

In 2008, Applicant charged approximately \$10,000 on personal expenses on his corporate credit card knowing that such use was prohibited by company policy. He then failed to pay those charges. Applicant also failed to disclose in his May 2009 SCA that he was over 180 days delinquent on the debts alleged in SOR ¶¶ 2,b, 2.d, and 2.e.

Additionally, he failed to disclose that in the last seven years he was charged with driving under revocation-suspension (later dismissed), and that he was fined \$170 for speeding. Applicant claimed that he made an honest mistake when he failed to disclose the above information. Considering the evidence as a whole, Applicant's explanations are not credible. He knew that he had financial problems, and was aware that some of his debts were delinquent and deliberately failed to disclose them. He used his company's corporate credit card for personal expenses knowing such use was prohibited.

Applicant admitted to a government investigator that he knew about such prohibition prior to using the corporate credit card. Notwithstanding, at his hearing, Applicant testified he had no knowledge of such prohibition, and that he was authorized by a supervisor to do so. Considering the evidence as a whole, Applicant's testimony is not credible. He deliberately failed to disclose the above information in his SCA.

Applicant's deliberate falsification of his 2010 SCA triggers the applicability of disqualifying conditions 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, such as (1) engaging in activities which, if known may affect the person's personal, professional, or community standing."

After considering all the AG ¶ 17 mitigating conditions, I find none apply. Applicant's falsifications are recent, serious offenses (felony-level).³ His favorable evidence is not sufficient to mitigate his falsifications of the SCA.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). Applicant receives credit for his naval service and for his many years working for different government contractors. He is going through a difficult situation because of his wife's illness and he is caring for his two children. His financial situation was partially exacerbated by those family problems. Notwithstanding, Applicant failed to show financial responsibility in the acquisition of his debts and in his efforts to resolve his financial situation. Moreover, Applicant deliberately falsified his 2009 SCA. The record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations and personal conduct.

Formal Finding

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
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a - 2.m, 2.r – 2.t, and 2.w – 2.y:	Against Applicant
Subparagraphs 2.n - 2.q, 2.u, and 2.v:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge

³ See 18 U.S.C. 1001.