



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



In the matter of:)	
)	
)	ISCR Case No. 11-07539
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2013

Decision

DAM, Shari, Administrative Judge:

Applicant has a long history of criminal conduct that includes citations, misdemeanors, and felonies. Since 2005 he accumulated a substantial number of delinquent debts that remain unresolved. He failed to fully disclose his criminal background and delinquent debts in his security clearance application. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on December 22, 2010. On February 4, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, (Criminal Conduct), Guideline F (Financial Considerations), and Guideline 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 effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR (AR) on March 7, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on April 4, 2013. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was provided to Applicant on April 4, 2013, 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 April 24, 2013, and timely returned it to the Department of Defense Office of Hearings and Appeals (DOHA). He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on June 10, 2013.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor, where he was hired in September 2010. He attended college from 1994 to 1997. He has been married since August 2001. He has two sons and a stepson. He has been unemployed at various times: September 2008 to September 2010; February 2008 to August 2008; June 2007 to September 2007; February 2005 to September 2006; and January 2002 to August 2002. He received a secret security clearance in September 1997, and this SF 86 is part of the security clearance re-investigation process. (Item 4.)

Criminal Conduct

Paragraph 1 of the SOR alleged 14 incidents of criminal conduct. They are as follows:

- a. Applicant admitted that on January 10, 2003, he was charged with nine counts of Fraud Insufficient Funds Checks/Issuing Worthless Checks. (AR.)
- b. Applicant admitted that on February 13, 2003, he was charged with two counts of Fraud Insufficient funds Checks/Issuing Worthless Checks. (AR.)
- c. Applicant admitted that on July 29, 2004, he was charged with three counts of Fraud Insufficient Funds Checks and Probation Violation. (AR.)
- d. Applicant admitted that in April 2007, he was cited for Switched Tags and ordered to pay a fine and court costs. He failed to pay those costs in full. (AR.)
- e. Applicant admitted that in May 2007, he was cited for Expired Tags and ordered to pay a fine and court costs. He failed to pay those costs in full. (AR.)

f. Applicant admitted that on June 2, 2008, he was arrested and charged with two felony counts of Deposit Account Fraud (Bad Checks), Greater Than or Equal to \$500. He failed to appear in court and a warrant was issued in September 2009, which is currently outstanding. He did not appear because he was incarcerated at the time. (AR; Item 9.)

g. Applicant admitted that on June 11, 2008, he was arrested and charged with Driving While License Suspended or Revoked. (AR.)

h. Applicant admitted that on April 3, 2009, he was arrested on two counts of Failure to Appear (FTA) on the charges related to the April 2007 Switched Tags and May 2007 Expired Tags cases. The two FTA charges were nolle prossed. (AR.)

i. Applicant admitted that on April 3, 2009, he was arrested and charged with 2nd Degree Stolen Property. (AR.)

j. Applicant admitted that on April 4, 2009, he was arrested and charged with 1st Degree Theft of Property, a felony. That charge was nolle prossed. (AR.)

k. Applicant admitted that on April 5, 2009, he was arrested and charged with Willful Failure to Return to Place of Confinement. He pled guilty and was ordered to serve 90 days in jail with credit for time served. He was then placed on probation for two years. (AR; Item 4.)

l. On June 15, 2009, Applicant was charged with Public Order Crimes. (Item 10.)

m. Applicant admitted that on January 6, 2011, he was arrested and charged with two counts of Failure to Appear. He was fined and sentenced to 15 days in jail on both counts. The fine remains unpaid. (AR.)

n. On August 8, 2011, a warrant was issued for Applicant's arrest for a violation probation that he committed in July 2011. The warrant is outstanding. (Item 11.)

Financial Considerations

Paragraph 2 of the SOR alleged 26 delinquent debts and three unpaid fines that accumulated between 2005 and 2011, based on credit bureau reports (CBR) dated January 2011, May 2012, and December 2012. The debts and fines totaled over \$39,000.

Applicant admitted owing all of the SOR-listed debts except four debts. (AR.) He paid the \$3,000 debt alleged in Paragraph 2.p. He said he was paying the \$897 debt alleged in Paragraph 2.j, but did not submit proof. He indicated that the \$262 debt alleged in Paragraph 2.s should be removed because it is owed to his current cellular carrier. He did not submit proof that he does not owe the debt. He did not answer the

allegation in Paragraph 2.aa that alleges he failed to pay three fines or submit proof of payment. (Item 10.)

Applicant attributed his financial problems to various periods of unemployment. He submitted his budget as of April 2012. His net monthly income is \$3,238 and his expenses are \$3,195, leaving him \$53 at the end of the month. The budget does not contain any payments on debts or financial obligations. He has not participated in financial or credit counseling, or established a plan to resolve the debts. (Item 9.)

Personal Conduct

Paragraph 3 of the SOR alleged nine incidents of conduct that raised security concerns under this guideline. They are as follows:

a. This paragraph re-alleges the criminal allegations contained in Paragraph 1 of the SOR.

b. Applicant denied that he was terminated from a defense contractor in December 2004 for violating company rules. He asserted that he was laid off in his AR, during a May 2012 interview with a government investigator, and in written Interrogatories he submitted in October 2012. In Section 13(c) of the SF 86, inquiring into his employment record, he reported that he was laid off from this position due to "Cut backs on project." (Item 4.) He believed he was eligible for rehiring. (Item 9.)

c. Applicant did not admit or deny the allegation that he was terminated by an employer in September 2007 due to abandoning his job. According to his answer to an interrogatory, he did not report any information related to this employment on his SF 86 because he could not remember the temporary placement agency through which he obtained the position because he worked with several agencies. He did not have any check stubs with a phone number to review. (Item 9.)

d. Applicant denied that he was terminated from another position in October 2008 after he failed to report to work. He said he emailed the employer that his son was hospitalized. He spoke to his supervisor, who informed him that he was not "a good fit" for the company. He did not interpret this situation as a termination, which is apparently the reason he did not disclose it on his SF 86. (Item 9.)

e. When Applicant completed Section 13(c) of the SF 86, he disclosed that he was laid off from the position referenced in Paragraph 3.b above, and from another position in 2002 because the employer moved to another country. He did not indicate that he was terminated from the positions referenced in Paragraphs 3.c and 3.d. In his AR to this allegation regarding his failure to report employment terminations, he did not specifically answer the allegation, but wrote that he was "laid off and [was] not able to get my employer (sic) file to see why."

f. When Applicant completed Section 22(b) of the SF 86, which inquired whether he had ever been arrested by any law enforcement officer, he disclosed a March 2009 “Theft of Property 3rd” arrest and indicated that the action taken was “Misdemeanor Probation.” (Item 4.) He did not disclose any of the other arrests listed in the SOR. In his AR, he admitted that he did not disclose other arrests because he did not “remember all charges and dates.”

g. When Applicant completed Section 22(c) of the SF 86, which inquired whether Applicant had ever been charged with a felony offense, he answered “No.” He did not disclose the 2008 felonies related to writing bad checks or the April 2009 felony related to theft. He admitted that he failed to disclose them, but asserted some charges were dismissed by the court. (AR.)

h. When Applicant completed Sections 26(g) of the SF 86, which inquired whether he ever had debts referred to a collection agency, he listed one account that was turned over to a collection agency. He did not disclose numerous other SOR-listed delinquent debts that were referred for collections. He denied that he intentionally failed to disclose them, but indicated that he knew one account was delinquent but did not have a credit report to “be sure” of others. (AR.)

i. When Applicant completed Section 26(m) and (n) of the SF 86, which inquired whether he had debts that were more than 180 or 90 days delinquent, he failed to disclose any debts. He admitted that he knew some debts should have been disclosed. (AR.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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 J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, reads in pertinent part:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses; and

- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has a long history of criminal conduct, which began in January 2003 and continued to August 2011. It includes citations, misdemeanors and felonies. The most recent charge in August 2011 involved a probation violation. The evidence raises

both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 32 provides two conditions that could mitigate the security concerns raised under this guideline:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Neither mitigating condition applies. Applicant has a history of criminal conduct that spans eight years. The last offense occurred in July 2011 when he violated his probation. Given the length of time he has engaged in criminal activity, the repetitiveness of the crimes, and the offense that occurred less than two years ago, AG ¶ 32(a) does not apply. Applicant did not present any evidence of successful rehabilitation. Hence, AG ¶ 32(d) cannot apply.

Guideline F, Financial Considerations

The security concerns relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(d) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Since 2005 Applicant has been unable or unwilling to satisfy the delinquent debts alleged in the SOR that total over \$39,000. He also has a criminal history of writing bad checks. The evidence raises all three security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

(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's delinquent debts are in excess of \$39,000, arose during and since 2005, and continue to date. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability in managing his debts has improved over the years. The evidence does not support the application of AG ¶ 20(a).

Applicant offered some evidence that his financial problems arose as a result of periods of unemployment. Other than times when he was incarcerated, those may have been circumstances beyond his control. However, he did not provide documentation that he responsibly addressed his debts while they were accumulating, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not document participation in credit counseling or other financial assistance. He provided a budget that documents a limited financial capability to resolve his debts. The evidence does not establish clear indications that his delinquent debts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant paid a \$3,000 debt, demonstrating a good-faith effort to resolve that debt (SOR ¶ 2.p). However, over \$36,000 of debt remains outstanding and unaddressed. Mitigation under AG ¶ 20(d) applies only to that one debt.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which reads in pertinent part:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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.

Paragraph 3.a of the SOR alleges that Applicant's criminal conduct raises security concerns under this guideline. While all misconduct involves elements of questionable judgment, Applicant's history of criminal conduct is appropriately raised under Guideline J. Hence, AG ¶ 16(d) is redundant. This allegation is found in Applicant's favor.

Paragraphs 3.b, 3.c, and 3.d of the SOR allege that Applicant's termination from employment in three instances raises a security concern under AG ¶ 16(d), because it is information that is not explicitly covered under any other guideline, but may be sufficient when combined with all available information. Applicant denied the allegations in Paragraphs 3.b and 3.d, and gave explanations. Although he did not address the allegation in Paragraph 3.c in his AR, he noted in an interrogatory that he could not recall the name of the temporary agency referenced, which is the reason he did not list it. The record does not contain sufficient evidence to contradict his denials or to support the allegations. AG ¶ 16(d) does not apply. These three allegations are found in his favor.

Paragraph 3.e is also found in Applicant's favor, as the record does not contain sufficient information to support a finding that he intentionally failed to disclose information about the three terminations, which evidence is required to establish the application of AG ¶ 16(a).

Paragraph 3.f of the SOR alleged that Applicant failed to disclose in his SF 86 the numerous arrests listed on the SOR. He failed to disclose at least seven arrests. AG ¶ 16(a) applies.

Paragraph 3.g of the SOR alleged that Applicant failed to disclose arrests for felony charges in his SF 86. He failed to disclose his felony arrests in 2008 and 2009. AG ¶ 16(a) applies.

Paragraph 3.h of the SOR alleged that Applicant failed to disclose all of his debts that were referred to collection. Although he said he could only remember one, he could have noted in the SF 86 that he knew he had other such debts, but he could not remember them. AG ¶ 16(a) applies.

Paragraph 3.i of the SOR alleged that Applicant failed to disclose debts that were more than 180 and 90 days delinquent. Applicant admitted that he did not disclose any delinquent debts. AG ¶ 16(a) applies.

AG ¶ 17 includes two conditions that could mitigate security concerns arising from Applicant's personal conduct:

(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 evidence does not support the application of either mitigating condition. There is no evidence that Applicant made any effort to correct his omissions. His failure to disclose requested information pertinent to his criminal history and financial problems cannot be construed to be a minor offense. It is an intentional and serious offense, casting doubt on his current trustworthiness and good judgment.

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.

According to 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 a 36-year-old adult, who is responsible for his choices and conduct that underlie the security concerns expressed in the SOR. His eight-year history of criminal conduct, including periods of incarceration, and his seven-year history of financial problems raise questions about his judgment and reliability. His lack of complete candor when completing his SF 86 raises serious trustworthiness concerns.

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 criminal conduct, financial considerations, and personal conduct.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.n:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.o:	Against Applicant

Subparagraph 2.p:	For Applicant
Subparagraphs 2.q through 2.aa:	Against Applicant

Paragraph 3, Guideline E:	AGAINST APPLICANT
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Subparagraphs 3.a through 3.e:	For Applicant
Subparagraphs 3.f through 3.i:	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.

SHARI DAM
Administrative Judge