



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



In the matter of:)
)
) ISCR Case No. 11-08374
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines F, financial considerations, and E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 4, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on February 3, 2013, and February 14, 2013. His statements about whether he wanted a hearing or to have his case decided on the written record were ambiguous. Department Counsel contacted Applicant on July 24, 2013, and he confirmed he did not want a hearing.¹ On March 28, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on June 3, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on July 29, 2013.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He is a high school graduate and has attended college, but has not earned a degree. He enlisted in the Navy in April 2006. He was discharged in December 2007 with a General Discharge under Honorable Conditions due to misconduct. He has worked for his present employer, a federal contractor, since October 2009.

Applicant provided documented evidence that he paid and resolved the debts listed in SOR ¶ 1.b (\$362) and ¶ 1.c (\$327).²

The debt in SOR ¶ 1.a (\$22,519) is for a vehicle loan. Applicant explained in his Answer to the SOR that in 2008 his mother wrecked his car. He attempted to work out car payments with the creditor, but was only able to lower the monthly payment for two months. He did not have a stable living arrangement at the time, but later was able to get a stable job. He stated: "Since then, I have been making payments. I never knew anything was on my credit because I had different phone numbers and was not stable after getting out of the military." He went on to say: "On February 11, 2013, I finally paid off the [creditor's] charge."³ Applicant did not provide a document to support that this debt has been paid. He provided a document from the same creditor dated January 17, 2013, noting he had made a \$450 payment toward a loan that now reflected a balance of \$5,460. It is unclear if this is the same loan as alleged or a different loan.⁴ Applicant's credit report, dated March 20, 2013, reflects the debt in SOR ¶ 1.a as being charged off in March 2009.⁵

¹ Department Counsel's memo.

² Item 3.

³ Item 3.

⁴ Item 3.

⁵ Item 5.

Applicant completed his security clearance application (SCA) on November 9, 2009. In response to Section 13A, requesting information about Applicant's employment activities, he failed to disclose his employment with Company X from April 2009 to May 2009. In response to Section 13C, requesting information about whether Applicant had ever been fired from a job; quit a job after being told he would be fired; left a job by mutual agreement following charges or allegations of misconduct; left a job by mutual agreement following notice of unsatisfactory performance; left a job for other reasons under unfavorable circumstances; or been laid off from a job by an employer, Applicant answered "no," when in fact he was terminated by Company X in May 2009.

Applicant's explanation for failing to disclose his employment and subsequent termination with Company X was that he was "on a 90 day probation and could have been let go at any time."⁶ He stated the reason he was let go was for not following directions. He said his boss told him to "apply for another job in the company because they were about to let you go."⁷ A document from Company X dated May 15, 2009, titled Employee Separation Questionnaire, indicates Applicant was "involuntarily terminated" and he was "Not Rehireable." The reasons for the termination were due to insubordination, failure to follow directions, and performance.⁸

In response to interrogatories asking Applicant if he was employed with Company X from April 2009 to May 2009, he responded: "well I spoke with an investigator and told them that I worked from March until May 2009. I told them that I worked for [Company X], don't remember, which investigator." Applicant was asked in interrogatories to explain why he failed to list his employment with and termination from Company X. He stated:

I told investigator about companies and listings of living that I may recall, and explained that it may not be accurate because I moved around a lot. Investigator said give him a close date and we can check on it later. Whatever was left out he or another investigator will ask later.⁹

In another response he stated: "I told one investigator that I was laid off from [Company X]. Later the company said I can apply later, but for another position."¹⁰ Applicant failed to provide an answer to why he did not disclose he was employed by Company X or that he was terminated. Applicant was interviewed by a government investigators on September 25, 2009; October 5, 2009; October 7, 2009; and October

⁶ Item 3.

⁷ Item 3.

⁸ Item 7.

⁹ Item 6.

¹⁰ Item 6.

12, 2009. There is no information that Applicant disclosed during the interviews that he worked for Company X. I find he deliberately failed to disclose this information.¹¹

In response to Section 26 on Applicant's SCA that asked if he had any debts that had been over 180 days delinquent or if he had any that were currently 90 days delinquent, he responded "no." Applicant's explanation for failing to disclose his delinquent debts was: "After I found out about the information in [SOR ¶¶] 1.a-1.c above I started making arrangements to pay bills. I told the investigators and one of them said [as] long as you are working on the situation, you should be okay."¹² Applicant indicated in his Answer to the SOR that in November 2009, when he became aware of the debts in the SOR, he paid the bills quickly. His supporting documents reflect he did pay SOR ¶¶ 1.b and 1.c relatively quickly. Applicant was aware of the car loan debt, and he deliberately failed to disclose it.¹³

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 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

¹¹ Item 6.

¹² Item 3.

¹³ Item 3.

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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 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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

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

Applicant had three delinquent debts that he was unable or unwilling to pay. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(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 provided documented proof that he resolved the small debts in SOR ¶¶ 1.b and 1.c. He stated he paid the larger debt in SOR ¶ 1.a, but failed to provide proof the debt is paid or resolved. He provided a document from the same creditor, but it still shows a balance on a debt and there is insufficient evidence to determine if this is the same debt as alleged. AG ¶ 20(a) does not apply because the debt is unresolved. Applicant attributed his financial problems to unemployment, an unstable living situation, and his mother wrecking his car. These were conditions beyond his control. For the full application of AG ¶ 20(b) Applicant must show he acted responsibly under the circumstances. Applicant paid two small debts, but failed to provide sufficient evidence that he is addressing the remaining large debt. I find AG ¶ 20(b) only partially applies. No information was provided about whether Applicant has received financial counseling. There is evidence that Applicant is paying a debt to the same creditor as in SOR ¶ 1.a, but there is insufficient evidence to conclude this is the debt alleged. At this time, there are not clear indications the problem is being resolved or under control. I find AG ¶ 20(c) does not apply. Applicant made good-faith payments on two of his delinquent debts. AG ¶ 20(d) applies to those debts. Applicant did not dispute any of the debts. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about 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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and concluded the following has been raised:

(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

(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.

Applicant was discharged from the Navy with a General Discharge under Honorable Conditions due to misconduct. There is insufficient evidence about the reason for his discharge. I find none of the above disqualifying conditions apply to this allegation. Applicant was first interviewed by a government investigator in September 2009 and completed his SCA in November 2009. His employment was terminated by Company X in May 2009. Applicant failed to provide a credible explanation for why he failed to disclose his employment and his termination. I find he deliberately omitted this relevant information from his SCA as was required. Applicant was aware that his mother wrecked his car and he was responsible for paying the car loan. The loan was charged off. Applicant deliberately failed to disclose this debt as was required on his SCA. The above disqualifying conditions apply. I find in favor of Applicant that he was unaware of the two smaller debts on his credit report.

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

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

(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.

None of the above mitigating conditions apply. Applicant was afforded an opportunity to provide an explanation for his failure to disclose his employment and termination from Company X. He did not disclose it to investigators and when specifically asked about it in interrogatories he failed to provide a reasonable explanation. In 2008, after Applicant's mother wrecked his car, he knew he owed the remaining balance on the car loan. The car loan was charged off in 2009. Contrary to his claim, Applicant failed to provide sufficient proof to substantiate that he did not know that he had a debt over 180 days or 90 days and therefore did not have to disclose any information. I find none of the above mitigating conditions 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 29 years old. He experienced some unemployment and unstable living conditions after being discharged from the Navy. He resolved two small debts, but did not provide sufficient proof regarding the large car loan debt. He failed to disclose this debt and his employment with and termination by Company X on his SCA. The evidence supports a determination that Applicant's failure to disclose this information

was deliberate. Applicant has failed to meet his burden of persuasion. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph: 2.a:	For Applicant
Subparagraphs 2.b-2.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge