



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-11087
)	
Applicant for Security Clearance)	

Appearances

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

04/25/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his finances or his false official statements. Applicant’s unpaid debts arose from frivolous spending preceding divorces in 2004 and 2006. Despite repeatedly stating his plans to address his past-due debts, they remain unresolved. Applicant also repeatedly and intentionally made false official statements about a 2011 arrest and about his departure under adverse circumstances from two jobs. Clearance is denied.

Statement of the Case

After reviewing the results of Applicant’s background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the

national interest to grant Applicant's request for access to classified information.¹ On November 2, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines² for financial considerations (Guideline F) and personal conduct (Guideline E).

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. Department Counsel timely requested a hearing³ and the case was assigned to me on February 12, 2012. I convened a hearing on January 5, 2013, and both parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 11, which were admitted without objection. (Tr. 19 - 25) Applicant testified and proffered one exhibit admitted without objection as Applicant's Exhibit (Ax.) A.

I left the record open after the hearing to receive additional information from Applicant. His timely post-hearing submission, consisting of a letter from his father and a copy of the decree of divorce from his first wife in 2004, is admitted without objection as Ax. B. The record closed on March 12, 2013. DOHA received the transcript of hearing (Tr.) on March 20, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$50,842 in past-due debts for 23 accounts specified in SOR 1.a - 1.w. Applicant did not admit or deny those allegations. He indicated that he was trying to verify the accuracy of the debts as some of them may be the responsibility of his first two ex-wives. He further stated that he was in the process of contacting his creditors and verifying the validity of the alleged debts. He further stated he would "resolve any and all unpaid debts within a reasonable amount of time." (Answer)

Under Guideline E, the Government alleged that Applicant intentionally made false official statements through his responses to questions in two Electronic Questionnaires for Investigations Processing (eQIP) he submitted on May 13, 2011 (Gx. 1) and February 1, 2006 (Gx. 8).

In SOR 2.a, the Government alleged that Applicant's response in section 13A (Employment/Unemployment Information) of his May 2011 eQIP was intended to conceal the fact he was fired from a federal contractor job in May 2007. That job was listed at eQIP section 13A(4). In SOR 2.b, the Government alleged that he also

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ Directive E3.1.7.

deliberately misrepresented the reasons he left a job in May 2005, which he listed at section 13A(6) of his May 2011 eQIP (SOR 2.b).

In SOR 2.c, the Government alleged that Applicant deliberately provided false information in response to question 13C.1 (*Employment Record. Has any of the following happened to you in the last 7 years? (1) Fired from a job; (2) Quit a job after being told you would be fired; (3) Left a job by mutual agreement following charges or allegations of misconduct; (4) Left a job by mutual agreement following notice of unsatisfactory performance; (5) Left a job for other reasons under unfavorable circumstances; (6) Laid off from job by employer.*) Of his May 2011 eQIP. He answered “yes” but did not list the jobs addressed in SOR 2.a or 2.b.

In SOR 2.d, the Government alleged that Applicant’s negative response to question 13C.2 (*Have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace?*) Of his May 2011 eQIP was deliberately false, because he received three written reprimands from his current employer between June 2009 and January 2010 (SOR 2.d).

Applicant was also alleged to have deliberately falsified his responses to questions 22.b (*Have you been arrested by any police officer, sheriff, marshal, or any type of law enforcement officer?*) and 24.a (*In the last 7 years, has your use of alcohol . . . resulted in intervention by law enforcement/public safety personnel?*) (SOR 2.e and 2.f, respectively) of his May 2011 eQIP. He answered “no” to each question despite having been arrested and charged in November 2010 with criminal domestic violence for an incident in which alcohol was also involved.

In SOR 2.g, the Government alleged that Applicant deliberately falsified his February 1, 2006 eQIP by answering “no” to question 13C. By his answer, he omitted the fact he was fired from his job in May 2005, as also alleged at SOR 2.b.

Finally, the Government alleged that Applicant deliberately made false statements to a Government investigator during a subject interview on May 27, 2011, by stating that he voluntarily resigned from his job in May 2007 (SOR 2.h) and that he voluntarily resigned from his job in May 2005 (SOR 2.i).

Applicant denied all of the allegations in SOR 2. (Answer) After reviewing the entire record, I make the following findings of fact. Applicant is 39 years old and works as an information systems network engineer for a defense contractor since February 2009. Applicant has held a security clearance since 2006. He first submitted an eQIP in February 2006 (Gx. 8). More recently, he submitted an eQIP in May 2011 (Gx. 1) to renew his eligibility for access to classified information.

Applicant has been married four times. His first marriage began in November 1991 and ended by divorce in May 2004. That marriage produced three children, two of whom, ages 20 and 11, are still living. Applicant’s oldest child died in June 2012. (Gx. 1) Applicant remarried in July 2004 and divorced in January 2006. Applicant’s third

marriage began in May 2008 and ended by divorce in August 2010. Applicant and his current wife have been married since November 2010. (Gx. 1; Gx. 3; Ax. A)

Applicant is a 1991 high school graduate who has been employed in the information technology (IT) field since April 2000. He has held nine IT jobs in the past 13 years, including a system administrator position with a behavioral health agency between November 2004 and May 2005. He was fired from that job because of allegations of sexual harassment. Applicant did not disclose the reason he left this job on either of his eQIPs. When interviewed by investigators in 2006 about the circumstances of his departure from this job, Applicant initially insisted that he had resigned voluntarily, but eventually acknowledged that he had been fired. When he was interviewed in May 2011 as part of his periodic reinvestigation, he again stated he was not fired. In that interview, he claimed he resigned from his job in May 2005 because of health concerns, including insomnia and other conditions that impaired his ability to sleep at night. This, in turn, resulted in attendance and performance problems such as missed work and falling asleep at work. Applicant eventually acknowledged to investigators that he left his job in 2005 under adverse circumstances. The record does not include any documentation of his claimed medical conditions. (Gx. 1; Gx. 3; Gx. 9; Tr. 60 - 68)

From January 2006 until May 2007, Applicant worked as a system administrator and network engineer for a federal contractor. He was terminated for cause from that job for poor attendance and performance, and for possible violation of a company non-compete policy. On his May 2011 eQIP, Applicant did not disclose the real reason he left this job, and he told a Government investigator in May 2011 he did not think that being "terminated for cause" was different from simply resigning to take a new job. Applicant also indicated he did not understand the questions and may have felt rushed or distracted while completing his 2011 eQIP. (Gx. 1; Gx. 3; Ax. A; Tr. 75, 80 - 81)

Applicant and his current wife were married on November 13, 2010. That evening they went out to celebrate. They both had drinks that evening and Applicant blacked out from what he claims was a spiked drink someone gave him. The next morning, police arrested him at his hotel room because of complaints he had struck his wife in the face in the hotel lobby. He was taken to jail and charged with criminal domestic violence. By completing a pre-trial intervention program, 50 hours of community service, and anger management counseling in June 2011, he became eligible to have the record of his arrest expunged. As alleged in SOR 2.e and 2.f, Applicant did not disclose this alcohol-related arrest on his May 2011 eQIP because he did not think there would be any record of it once he completed the court-ordered requirements. (Gx. 1; Gx. 2; Gx. 3; Gx. 11; Tr. 71 - 74)

Applicant has acknowledged that his finances were not well managed before he divorced his first wife in 2004. His pre-existing debts, combined with the costs of his 2004 and 2006 divorces, caused financial problems characterized by the debts alleged in the SOR. Until his oldest child turned 18 in 2010, he was paying about \$1,000 each month in child support for the three children he had with his first wife. Thereafter, he

paid about \$650 each month until his second child turned 18 in 2012. He now pays \$300 each month for his youngest child, who is now 11 years old. While his first divorce was pending, Applicant's attorney advised him to not pay many of the household bills. Applicant also averred that the divorce decree required his first wife to pay many of the debts attributed to him. However, his 2004 divorce decree addressed only two debts, one of which, alleged at SOR 1.p, was allocated to his ex-wife. Additionally, Applicant claimed without corroboration that his second wife is responsible for the delinquent auto loan alleged at SOR 1.q. (Gx. 3; Ax. A)

Credit reports obtained in Applicant's 2006 background investigation and in his current re-investigation document the debts alleged in the SOR. In a 2006 interview during his first background investigation, Applicant was asked about the debts alleged at SOR 1.o through 1.w. He stated that he would begin resolving some of his smaller debts and that he would pay those debts he determined to be his. In a May 2011 subject interview during his re-investigation, he was asked about the debts alleged in SOR 1.a through 1.n. In that interview, in his September 2012 response to financial interrogatories, in response to the SOR, and at his hearing, Applicant reiterated his intent to investigate his debts and pay those for which he could determine he was responsible. Aside from a single, unsigned letter to the creditor alleged in SOR 1.j, he has not presented any information showing that he has contacted his creditors or that he has paid any of the alleged debts. (Answer; Gx. 1; Gx. 2; Gx. 3; Gx. 5; Gx. 6; Gx. 7; Gx. 9; Gx. 10; Gx. A; Tr. 40 - 41, 56 - 57)

In response to September 2012 interrogatories, Applicant provided a personal financial statement (PFS). It showed he has about \$1,400 remaining each month after expenses. (Gx. 2) He did not list any past-due debt repayments in his expenses. He has not sought assistance from professional financial counselors or debt management companies.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

⁴ See Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Financial Considerations

Applicant's response to the SOR effectively denied the allegations about his finances and created controverted issues of fact. Accordingly, the burden remained on the Government to present sufficient reliable information to support those SOR allegations. The Government's information, contained in multiple credit reports and summaries of Applicant's subject interviews in 2006 and 2011, was sufficient to support all of the SOR 1 allegations. That information, in turn, raised a security concern, expressed, in relevant part, at AG ¶ 18 as follows:

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant was already mismanaging his finances when his first marriage ended. Despite several prior statements of intent to address his past-due debts, Applicant has not acted to pay or otherwise resolve any of the debts alleged. He was given extra time after the hearing to document his claim that one or more of his ex-wives is obligated to pay some of the debts left from their marriage. However, the divorce decree did not adequately support this claim.

The Government carried its burden of establishing the controverted issues of fact here, thereby shifting the ultimate burden of persuasion to Applicant to mitigate or refute the adverse information about his finances. I have considered the following pertinent AG ¶ 20 mitigating conditions:

- (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;
- (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's financial problems are recent and not isolated. They continue through the presence of significant unresolved debt that first arose about seven years ago. AG ¶ 20(a) does not apply. In support of AG ¶ 20(b), Applicant cites the costs of his child support since 2004 and other costs associated with his first two divorces. However, he also acknowledged that he had no margin for error when he divorced in 2004 and 2006 because he did not properly manage his finances before those marriages. Additionally,

Applicant did not establish that he has tried to resolve his debts since 2006 or that he has acted responsibly in the face of his financial difficulties. AG ¶ 20(b) does not apply.

Applicant still owes the debts alleged in the SOR. Despite having a positive monthly cash flow in excess of \$1,000, he has not paid even the smaller debts at SOR 1.c, 1.e, 1.f, 1.h, 1.i, 1.s, and 1.v, which are less than \$200 each. AG ¶ 20(d) does not apply.

As to AG ¶ 20(e), Applicant claims some of his debts are the responsibility of one of his first two wives. Despite these matters being addressed in his 2006 and 2011 subject interviews and in pre-SOR interrogatories, and despite being given additional time after the hearing, he did not adequately support this claim. AG ¶ 20(e) does not apply. On balance, Applicant failed to mitigate the security concerns established by adverse information about his finances.

Personal Conduct

Applicant also denied all of the SOR 2 allegations, keeping the burden on the Government to establish those controverted issues of fact. The Government's SOR 2.d allegation regarding multiple written reprimands from his current employer between June 2009 and January 2010 has little support in the record. It is resolved for Applicant. However, the record as a whole shows that Applicant deliberately falsified the circumstances of his termination in 2005 as part of his first application for clearance in 2006, and in a 2006 subject interview. Available information also shows he deliberately falsified similar information about the loss of his 2007 job in his 2011 eQIP and in a 2011 subject interview. Finally, available information shows he deliberately withheld the fact of his 2011 alcohol-related arrest from his 2011 eQIP. These facts raise a security concern addressed at AG ¶ 15 as follows:

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.

More specifically, Applicant's conduct and false statements requires application of the following AG ¶ 16 disqualifying conditions:

(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.

I have considered the following pertinent AG ¶ 17 mitigating conditions:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; 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.

Applicant has not tried to correct any of his misrepresentations. Regarding his answers to questions about his employment record, Applicant alternatively claimed he misunderstood the employment questions or that he did not equate being terminated for cause as being fired. These arguments are not plausible given all of the relevant circumstances. He may have misunderstood the questions in his first application for clearance. But having acknowledged he was fired in 2005 when he was interviewed during his first investigation, there is no reason to claim in his 2011 eQIP that he resigned from his 2005 job. The same analysis applies to his false answers in 2011 about his 2007 firing. During both investigations, Applicant was interviewed multiple times because he was not initially candid about the information sought by investigators.

As to Applicant's omission of his 2010 arrest, Applicant's own description of events shows that it was alcohol-related even if he claims he did nothing wrong. He claimed he omitted the arrest from his 2011 eQIP because he expected it would be expunged and there would not be a record of it. This is not tenable. At the time he completed the eQIP, he was still completing the counseling and community service required by the pre-trial intervention program he entered into after appearing in court. Further, even if the arrest had been expunged in May 2011, it did not excuse Applicant from disclosing that information.

Finally, there is nothing minor about Applicant's attempts to conceal relevant information from the Government. His repeated lack of candor in response to reasonable Government inquiries shows he is not willing to place the Government's interests ahead of his own. His intentional falsifications also constitute criminal conduct

as they violate federal law.⁸ On balance, none of the AG ¶ 17 conditions apply and Applicant has not mitigated the security concerns about his personal conduct.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E and F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 39 years old and presumed to be a mature, responsible adult. He claims he has had a good record with his current employer, and his father extolled Applicant's dedication, patriotism, and integrity. However, the positive information in this record does not outweigh the adverse information about his finances and personal conduct. That information indicates Applicant is not trustworthy or candid about information relevant to his suitability for access to classified information. His lack of action to resolve his finances and his repeated false official statements reflect poor judgment and present an unacceptable security risk to the Government. Doubts remain about his ability and willingness to protect the Government's interests. Because protection of the national interest is the primary concern in these matters, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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.o, 1.q - 1.w:	Against Applicant
Subparagraph 1.p:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c, 2.e - 2.i:	Against Applicant
Subparagraph 2.d:	For Applicant

⁸ 18 U.S.C. § 1001.

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge