



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-11762 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/07/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On January 3, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and F. 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 (AG) effective within the DOD on September 1, 2006.

In an undated answer to the SOR Applicant requested a hearing before an administrative judge. The case was assigned to me on April 2, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 5, 2013. I

convened the hearing as scheduled on April 22, 2013, by video teleconference. Applicant was located at Fort Gordon, Georgia. Department Counsel and I were located at DOHA headquarters in Arlington, Virginia. The Government offered Exhibits (GE) 1 through 7, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through G. The record was held open until April 29, 2013, to allow Applicant to submit additional documents. He submitted AE H. There was no objection, and it was admitted.¹ DOHA received the hearing transcript (Tr.) on May 1, 2013.

Procedural Issues

Department Counsel moved to amend the SOR by withdrawing paragraph 2.b. There was no objection and the motion was granted.²

Findings of Fact

Applicant admitted all SOR allegations in paragraph 1 and denied the allegations in paragraph 2. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old. He served in the Air Force from 1988 to 2008, retiring honorably in the pay grade of E-6.³ Applicant married in 1994 and has three children, ages 17, 14 and 10. He has an associate's degree. Applicant has worked for a federal contractor since he retired in 2008. Applicant first held a security clearance in 1989. It was suspended in 2001 and reinstated in approximately 2006.⁴

Applicant admitted he has had financial problems in the past. In 1998, he sought financial counseling because he had difficulty managing his finances when his wife lived in the United States while he was stationed overseas. The cost of managing two households proved to be burdensome. He has used credit counseling services in the past to help him manage his finances.⁵

Applicant attributes his financial problems to his wife's inability to work due to health problems. At various times during their marriage she was able to work, but only part-time. Recently, she was diagnosed with a more serious illness and is unable to work. This loss of income has impacted their finances.⁶

¹ HE I is Department Counsel's email memorandum.

² Tr. 12.

³ AE C.

⁴ Tr. 27.

⁵ Tr.28-30.

⁶ Tr. 30.

In 2001, an investigation was being conducted regarding Applicant's travel voucher. He received an Article 15 Uniform Code of Military Justice (UCMJ) Nonjudicial Punishment and his security clearance was suspended. He was provided with a letter dated September 4, 2001, that stated:

You are hereby notified that a security determination has been made to suspend your access to classified information/unescorted entry into restricted areas. This action is being taken due to an ongoing investigation that you falsified an official record.⁷

Applicant's security clearance was later revoked on October 17, 2001. He was formally debriefed from sensitive compartment information access on October 10, 2001. He turned in his restricted access badge, and his access to all classified information was terminated. The reason for the revocation was due to a falsification of an official record.⁸

Applicant was aware that his security clearance was suspended and later revoked. Applicant failed to disclose this information in the security clearance application (SCA) he completed on February 3, 2011. Section 25: 1.b. of the SCA asks: "To your knowledge, have you EVER had a clearance or access authorization denied, suspended, or revoked . . ." Applicant answered "no." Applicant explained that because his nonjudicial punishment sentence was remitted after the period of suspension elapsed without further misconduct, he believed that the suspension reinstatement also applied to his security clearance. This explanation does not address why he did not disclose his security clearance was suspended and later revoked. It is irrelevant if it was ever reinstated. He acknowledged at his hearing that he knew his security clearance was suspended, but he was still working in the same location and was being escorted. He stated he was confused. He stated he "failed to check the block," and he was not trying to hide anything. He stated that he made a mistake. His explanations were not credible.⁹

Applicant has a history of financial difficulties. In 1997, he got behind on credit card payments. He consulted his supervisor who referred him to credit counseling. His debts were consolidated and he paid them through an allotment. He resolved those debts.

In 1997, Applicant did not have enough money to purchase an airline ticket so he could return to his duty station overseas. He misused his government credit card to purchase the ticket. He also made numerous unauthorized automatic teller withdrawals

⁷ AE F.

⁸ GE 3.

⁹ Tr. 30-37, 41-59.

for cash. He received nonjudicial punishment for his actions. (SOR ¶ 1.n) He repaid the amount he owed.¹⁰

Applicant has numerous debts alleged in the SOR. He was interviewed by a Government investigator on March 10, 2010, and was aware his finances and delinquent debts were a security concern. Applicant stated he attempted to contact a credit consolidation company in July 2011, but they just took his money and did not apply it to his delinquent debts. He believes he paid three months. He discontinued their services. The company kept its fees, but returned the money he provided to pay his debts. He attempted to work with another company, but learned it did not have a consolidation program. In November 2012, he made an agreement with a consumer credit company to consolidate his debts.¹¹

The debt in SOR ¶ 1.a (\$211) is a collection account for telephone service. Applicant incurred this debt in 2001. He stated he believed it was paid until he reviewed his credit bureau report. It is not listed on his consolidated debt agreement.¹²

The debt in SOR ¶ 1.b (\$1,616) is for braces and surgery for Applicant's daughter. This debt was incurred in 2007. Applicant was aware of the debt and was receiving bills, but did not pay them. He stated he is attempting to find where the account is located. It is not resolved.¹³

The debt in SOR ¶ 1.c (\$994) is not paid and not enrolled in Applicant's consolidated debt agreement. He stated he did not recognize the debt. He stated he was making calls to find out who the creditor is. The debt is not resolved.¹⁴

The debt in SOR ¶ 1.d (\$2,492) is for a computer Applicant purchased in 2007. He has received demands for payment in the past. A notation on the debt consolidation agreement states "need statement." Applicant explained that the consolidation company is investigating the debt to see who the current creditor is. The debt is not resolved.¹⁵

The debt in SOR ¶ 1.e (\$2,119) is a loan Applicant received in 2007. The creditor wants full payment. Applicant was unable to pay the amount requested. It is listed on his debt consolidation agreement, but no payments have been made to it.¹⁶

¹⁰ Tr. 88-90; GE 2, 4.

¹¹ Tr. 37, 81-84.

¹² Tr. 60-61; GE 6, 7; AE G.

¹³ Tr. 61-63.

¹⁴ Tr. 63-64.

¹⁵ Tr. 65; AE G.

¹⁶ Tr. 65-66; AE G.

The debt in SOR ¶ 1.f (\$1,300) is an education loan that was to be paid through the GI Bill. He incurred the debt in 2009. Because Applicant failed the class, he is responsible for payment. It is included in the debt consolidation agreement. It appears he has paid two payments of \$50. The debt was incurred in 2009.¹⁷

The debts in SOR ¶¶ 1.g and 1.h (\$1,916 and \$800) are included in the debt consolidation plan. He has made two \$60 payments.¹⁸

The debts in SOR ¶¶ 1.i and 1.j (\$471 and \$434) are for unpaid parking fines. Applicant stated he believes he has paid the fines. They increased when they were not paid. They are enrolled in the debt consolidation plan, and he has made two \$30 payments.¹⁹

The debt in SOR ¶ 1.k (\$2,042) is a credit card debt. It is included in the debt consolidation plan, but no payments have been made at this time.²⁰

The debt in SOR ¶ 1.l (\$525) is for cable equipment that was not returned. Applicant stated he returned the equipment. He did not provide documentary proof that the debt is resolved.²¹

The debt in SOR ¶ 1.m (\$220) is for jewelry he purchased for his wife. Applicant stated he thought he paid it. It is enrolled in the debt consolidation plan. He has made two \$20 payments. The current balance is \$120.²²

Applicant has had two cars repossessed in the past. He believes he owes one creditor about \$7,000 and another about \$1,000.²³

Applicant's gross military retirement pay is about \$1,321 a month. His personal financial statement was based on a salary of \$63,000. He received two raises since he completed it. He estimated he is now earning about \$71,000 annually. He estimated that he had \$558 remaining after paying his bills, including the \$410 he pays to the debt consolidation plan. Applicant admitted that for the past three years he has received federal income tax refunds of about \$2,400 annually. He did not use any of the refunds

¹⁷ Tr. 66-68; AE G.

¹⁸ Tr. 68-69; AE G.

¹⁹ Tr. 69-70; AE G.

²⁰ Tr. 70 76-77, AE G.

²¹ Tr. 77-79.

²² Tr. 79-80.

²³ Tr. 70-76. Applicant's car repossessions are not considered for disqualifying purposes but are considered when analyzing the "whole person" and Applicant's credibility.

to pay his delinquent debts. He hopes to have all of his debts paid off in two and half years.²⁴

Applicant provided character statements. They state that Applicant is a person of high integrity. He is a leader, and a great friend, father, and husband. He practices good sportsmanship and is dependable. He exhibits good judgment, is dedicated and trustworthy.²⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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 mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

²⁴ Tr. 38-39, 84-88.

²⁵ Tr. 40; AE A, H.

the possible risk 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.

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 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 all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has a history of delinquent debts that he is unable or unwilling to satisfy. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

(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 has a history of financial problems. Even when he was on active duty and his wife was working, he had difficulty paying his bills. He does not have a grasp on managing his money and paying his creditors. Some of his delinquent debts are included in his consolidation program, others are not. AG ¶ 20(a) is not established because his behavior is recent because his numerous delinquent debts are still being resolved, and based on his past financial history future financial problems are likely to recur.

Applicant attributes his financial problems to his wife's medical issues and her inability to work. His wife's inability to work is a condition that is beyond his control. In order for AG ¶ 20(b) to fully apply, Applicant must have acted responsibly under the circumstances. Applicant has not established that he has acted responsibly. Applicant has a significant history of not paying his bills. While in the military, he had delinquent debts and paid them through a consolidation program. This should have been a wake-up call to him about being fiscally responsible and budgeting his resources. Instead, he again experienced financial problems. Applicant incurred some of his delinquent debts before his wife was unable to work full-time. Some of his debts date back to 2007. He has been aware that his finances were a security concern since at least 2010. His recent consolidation plan does not address all of his delinquent debts. Applicant has not provided sufficient evidence to conclude he has acted responsibly in addressing his delinquent debts. I find AG ¶ 20(b) partially applies.

Applicant is participating in a debt consolidation plan and has likely received some financial counseling. All of his delinquent debts are not included in the plan. He is not making payments on some debts at this time. Until he gets a firm grasp on managing his finances and has a significant track record of paying off his delinquent debts and paying his current expenses on time, I cannot conclude there are clear indications his financial problems are being resolved or are under control. I find AG ¶ 20(c) partially applies.

Applicant is making payments through the debt consolidation plan to some creditors, but he has not made payments or resolved other debts. I find AG ¶ 20(d) partially applies. Applicant failed to provide documented proof of the basis of his dispute with certain creditors, so AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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.

Applicant deliberately failed to disclose on his security clearance application that his security clearance had been suspended and later revoked in 2001. Applicant's actions were intentional. His explanations were not credible. I find AG ¶ 16(a) applies.

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;

(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.

(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.

I have considered all of the mitigating conditions and conclude none apply. Applicant was aware his security clearance had been suspended and later revoked. He deliberately failed to disclose this information. His explanation was disingenuous. Whether he believed his security clearance suspension was somehow tied to his nonjudicial punishment and later vacated, the question was clear that he was required to disclose the suspension. He did not promptly make a good-faith effort to correct his omission. His omissions are not minor, but rather are serious. There is no evidence to suggest that there were unique circumstances surrounding his omissions. His actions cast doubt on his reliability, trustworthiness, and good judgment. Applicant's actions to somehow rationalize why he did not disclose this important information cause me to conclude that his behavior may recur and that he has not taken positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, or duress. Applicant intentionally concealed negative information about prior security clearance status.

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.

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 42 years old. He retired honorably from the military. Applicant has a history of financial problems. He is addressing some of his delinquent debts through a debt consolidation program, but has not established a track record of fiscal responsibility. Applicant failed to disclose on his SCA that at one time, his security clearance was suspended and later revoked. His failure and then rationalization for not disclosing information he was clearly required to disclose is a serious security concern. He has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

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:

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| Paragraph 1, Guideline F | AGAINST APPLICANT |
| Subparagraphs 1.a-1.d: | Against Applicant |
| Subparagraphs 1.e-1.j: | For Applicant |
| Subparagraphs 1.k-1.l: | Against Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraph 1.n: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | Withdrawn |

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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge