



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-13231
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Esq., Department Counsel
For Applicant: *Pro se*

12/02/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from his finances. However, doubts persist about his trustworthiness and reliability because he deliberately falsified a federal employment form and his security clearance application. Clearance is denied.

Statement of the Case

On April 11, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). On April 18, 2013, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record.

On August 28, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government’s proposed findings of fact, argument, and twelve documentary exhibits. On October 15, 2013, Applicant responded to the FORM (Response) and submitted six exhibits. Government Exhibits (Gx.) 1 – 12 and Applicant’s Exhibits (Ax.) 1 – 6 are admitted into evidence without objection. On October 29, 2013, I was assigned Applicant’s case.

Findings of Fact

Applicant, 31, is married. He enlisted in the U.S. military in 2003 and after basic training was stationed overseas. He has continuously resided overseas since 2003. He completed his military service in March 2008 and received an honorable discharge. After leaving the military, Applicant was unemployed for about eight months. He has been continuously employed since December 2008. He was hired by his current employer in May 2011. (Gx. 5)

In October 2008, Applicant submitted a declaration for federal employment (2008 DFE) to work for the U.S. military as a civilian employee. On his 2008 DFE, Applicant disclosed his military service. He also disclosed that he was delinquent on his federal student loan obligation and promised to bring the account current the following month. (Gx. 12) He was subsequently hired, but four months later resigned after being told that his job performance was unsatisfactory. (Gx. 5 at 16, Gx. 6 at 8)

In March 2009, Applicant submitted another declaration for federal employment (2009 DFE). He again disclosed his prior military service and that he left his previous federal job under unfavorable circumstances. (Gx. 11 at 2) In response to a question asking whether he had any delinquent federal debt, to include student loans, Applicant answered "NO." (Gx. 11 at 1) A credit report from January 2009, reflects that Applicant's federal student loans were in collection status and his private student loans were at least 120 days past due. All of the student loan accounts are reflected on this earliest credit report as individual accounts. (Gx. 10 at 3)

In June 2011, Applicant submitted a security clearance application (SCA). In response to questions asking whether he had any delinquent debts, to include accounts in collection status, Applicant answered "NO." (Gx. 6 at 33) A credit report from July 2011 revealed that Applicant had three accounts in collection status: (a) a \$16,000 student loan account; (b) a \$6,000 consumer credit card; and (c) a \$75 telephone bill. (Gx. 9 at 4 - 5)

In October 2011, Applicant was interviewed as part of his background investigation for his security clearance (background interview). He was asked about the three collection accounts appearing on his July 2011 credit report and his failure to list them on his SCA. Applicant told the investigator that he did not list the three collection accounts because they were over seven years old and, per the relevant SCA question, debts over seven years old did not need to be disclosed.¹ He did not dispute the accuracy of the delinquent accounts listed on his credit report. When asked why he had not paid the accounts, Applicant "did not have any answer." (Gx. 6 at 9)

¹ The SCA question at issue asks, in pertinent part: "Section 26: Financial Record. For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosignor or guarantor. . . . "f. Have you defaulted on any type of loan?; g. Have you had bills or debts turned over to a collection agency?; h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . n. Are you currently over 90 days delinquent on any debt(s)?" (Gx. 5 at 32-33)

In about February 2013, Applicant was asked by DoD adjudicators about the status of the three collection accounts. Applicant stated that he had yet to resolve the student loan debt, but was in the process of working out a negotiated settlement with the creditor. As for the delinquent credit card account, he stated that the debt was being paid per an agreement with the creditor and submitted evidence that his monthly payments were being automatically debited from his bank account. He claimed to have successfully disputed the \$75 telephone bill and submitted a credit report, which does not reflect the debt. (Gx. 6 at 2, 13) Applicant's 2012 and 2013 credit reports also do not reflect the debt. (Gx. 7 – 8)

Applicant's SOR lists the three collection accounts as unpaid debts. (SOR ¶¶ 1.a – 1.c) The SOR further alleges that Applicant falsified his 2009 DFE and 2011 SCA by failing to disclose his delinquent debts. (SOR ¶¶ 2.a – 2.b)

Applicant provided documentary proof of settling his student loan and credit card debts. He provided a copy of the settlement letter regarding the student loan debt, as well as proof of having paid the required \$1,000 down payment and earlier payments towards satisfaction of the debt. He also submitted proof of having made monthly payments towards satisfaction of his credit card debt per his earlier agreement with the creditor. (Gx. 4; Ax. 1; Ax. 3; Ax. 5) He again claimed to have successfully disputed the \$75 telephone bill, but submitted a document from the collection company noting that the debt had been validated by the original creditor. (Ax. 4) He claimed to have received financial counseling, but provided no evidence to substantiate this later claim. (Gx. 4)

In his Answer, Applicant denied intentionally falsifying his 2009 DFE and 2011 SCA. He claims that he did not list his delinquent federal student loans on his 2009 DFE, because he assumed his mother, who he states was a co-signor on the loan, was paying the debt. (Gx. 4) As for the 2011 SCA, Applicant continues to maintain that he not disclose the three collection accounts because they were more than seven years old at the time he filled out the SCA. (Gx. 4) Applicant's earliest credit report reflects that his student loans were individual accounts.² It also reflects that the three collection accounts were first reported as falling delinquent between 2007 and 2008, or three to four years before Applicant submitted his SCA. (Gx. 10 at 3 - 5)

In his Response, Applicant again claims that he did not falsify his 2009 DFE and 2011 SCA. He maintains that he did not disclose his delinquent federal student loans on his 2009 DFE, because he assumed his mother was paying all his student loan obligations. (Response, ¶ 5) As for his failure to disclose the three collection accounts on his 2011 SCA, Applicant now claims that he did not understand the question on the SCA asking him to reveal past derogatory financial information. He also claims for the first time that he thought his grandfather was paying his delinquent credit card account. (Response, ¶ 6)

² Contrast with credit card debt, which is reflected as a joint account and corroborates Applicant's assertion that it was a joint account. (Gx. 9 at 4; Response, ¶ 6)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.³

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

³ See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's failure to pay his debts, notably his student loan obligation, raises this concern and establishes the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant has started to resolve his long-standing financial problems by entering into agreements with the creditors for the two major debts alleged in the SOR and disputing the minor telephone bill. Although Applicant was dilatory in addressing his past-due debts, he submitted evidence of having addressed his major debts and established a recent track record of debt repayment as to these debts. The validity of the minor telephone bill remains uncertain as of the closed record. Although the collection company claims it has verified the debt with the original creditor, the debt, which is less than seven years old, was not listed on Applicant's 2012 or 2013 credit reports. Accordingly, I find that Applicant mitigated the concerns arising from his past financial trouble and established the following mitigating conditions under AG ¶ 20:

(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 and provides documented proof to substantiate the basis of the dispute.

Guideline E, Personal Conduct

The personal conduct concern is set forth at AG ¶ 15:

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.

The guideline notes several disqualifying conditions that could raise a security concern under, and only the following warrants discussion:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The security clearance process relies on the honesty of all applicants. It begins with the answers provided in the SCA and other relevant government forms. The obligation to tell the truth continues throughout the security clearance process. An applicant should disclose any derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified their SCA or other relevant forms. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.⁴

Applicant intentionally falsified his 2009 DFE and 2011 SCA, when he failed to disclose the relevant information regarding his delinquent debts. Applicant's claim that he did not list his delinquent federal student loans because he thought they were being paid by his mother, who was purportedly a co-signor on the loans, is contradicted by the record evidence. Namely, Applicant's credit reports reflect that his student loan accounts were all individual accounts. Furthermore, Applicant's own words at the time contradict his assertions now that he was unaware his federal student loans were delinquent. Five months before submitting his 2009 DFE, Applicant admitted on a prior DFE that he was in arrears on his federal student loans. In light of this prior admission, Applicant's claim now that he was unaware that his federal student loans were delinquent is not credible.

Applicant's inconsistent and implausible claims that he did not intentionally falsify his 2011 SCA are also not credible. During his background interview, Applicant was initially confronted about his collection accounts and failure to disclose them on his SCA. He did not dispute the debts and did not provide an explanation for why he had failed to pay them. A reasonable person under similar circumstances would have told the investigator that the major debts at issue were being paid by his or her family – *if such claim were actually true*. Applicant's silence when confronted by the investigator leads me to conclude that he was aware that the three debts at issue were in collection status and decided not to reveal the adverse information on his 2011 SCA.

⁴ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

Furthermore, Applicant's explanation for failing to list his collection accounts on his 2011 SCA is contradicted by other record evidence. Notably, Applicant maintains that he did not list the three collection accounts because they were over seven years old when he filled out his SCA. However, the credit reports submitted with the FORM reveal that Applicant stopped paying on the three accounts between three to four years before he submitted his SCA. Accordingly, I find that Applicant was aware of his delinquent debts and deliberately failed to disclose them on his 2011 SCA.

Consequently, for the all reasons stated above, I find that AG ¶ 16(a) applies. After reviewing all the applicable mitigating conditions and considering Applicant's continued denial of responsibility, I find that none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. I specifically considered Applicant's military service and the nine factors listed at AG ¶ 2(a). However, Applicant's history of dishonesty leaves me with serious doubts about his eligibility for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

 Subparagraphs 1.a – 1.c: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

 Subparagraphs 2.a - 2.b: Against Applicant

Conclusion

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

Francisco Mendez
Administrative Judge