



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



In the matter of:)	
)	
[Redacted] ¹)	ISCR Case No. 11-14401
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant refuted the single allegation under Guideline E, but he did not present sufficient evidence to mitigate the Guideline F concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 30, 2011. On April 11, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

¹ Applicant's middle name was misspelled in the Statement of Reasons. His middle name is spelled correctly in the case caption of this decision.

Applicant received the SOR on April 23, 2013; answered it on May 10, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 30, 2013, and the case was assigned to an administrative judge on June 12, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 20, 2013, scheduling the hearing for July 23, 2013. Applicant failed to appear at the hearing. The administrative judge determined that Applicant received the notice of hearing, but that his employer sent him to a temporary duty location on an assignment that made it impossible for him to attend the hearing. The administrative judge gave Applicant until August 15, 2013, to obtain documentation of the duty assignment from his employer. (Transcript of proceedings of July 23, 2013). Applicant timely provided Hearing Exhibit (HX) I, explaining his failure to appear. The administrative judge determined that a termination of processing for failure to appear was not appropriate, and he granted a continuance.

The case was reassigned to me on August 20, 2013. DOHA issued a second notice of hearing on August 21, 2013, scheduling the hearing for September 20, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until October 4, 2013, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. Department Counsel's comments regarding AX A and B are attached to the record as HX II. DOHA received the transcript (Tr.)² of the September 20, 2013 hearing on October 4, 2013. My decision was delayed by the furlough of administrative judges from October 1 to October 11, 2013, due to the failure of Congress to timely appropriate funds for fiscal year 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations of delinquent debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.l, 1.m, and 1.n. He denied the allegations in SOR ¶¶ 1.c and 1.e-1.k. He admitted part of the allegation of falsifying his SCA in SOR ¶ 2.a. He admitted that he failed to disclose (1) a judgment entered against him; (2) an account suspended, charged off, or cancelled for nonpayment; and (3) debts that were more than 180 days delinquent. He denied failing to disclose liens placed against his property and debts that were currently more than 90 days delinquent. He denied that his failure to disclose relevant financial information was deliberate. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 49-year-old employee of a federal contractor. He has worked for his current employer since October 2010. He served on active duty in the U.S. Navy from July 1986 to July 1996, and was honorably discharged. He worked for another federal contractor from April 2000 to August 2007. He was unemployed from August 2007 to January 2008, and then worked for a non-government employer from January

² All references to a transcript in this recommended decision refer to the transcript of the proceedings on September 20, 2013.

2008 to September 2009. He worked for another federal contractor from September 2009 until he began his current job. He held a security clearance while in the Navy, but he does not currently hold a clearance. (Tr. 13-14.)

Applicant's unemployment from August 2007 to January 2008 occurred after he was fired for a safety violation. He was providing technical assistance to a team working on an elevator on an aircraft carrier, and one of the team members failed to secure part of a safety railing. A piece of the railing fell off, nearly striking a worker on a deck below. Applicant's employer held him responsible for not properly supervising the team member. (Tr. 44-48.)

Applicant married in January 1989 and divorced in June 2005. He had a daughter, now 17 years old, during this marriage. He married again in February 2007, and divorced in 2012. (Tr. 43; GX 2 at 7.) He provides money to his daughter on a regular basis, but he has no formal child-support obligation. ((Tr. 33-34.)

When Applicant submitted his SCA in August 2011, he answered "No" to questions asking if, during the last seven years, he had a lien placed against his property for failing to pay taxes or other debts; had a judgment entered against him; had debts turned over to a collection agency; had any account or credit card suspended, charged off, or called for nonpayment; or had been over 180 days delinquent on any debts. He also answered "No" to a question asking if he was currently over 90 days delinquent on any debts. (GX 1 at 33.) However, in response to questions about his employment record and police record, he disclosed his termination for a safety violation in 2007, a citation for expired vehicle tags, and a failure to appear in court for the vehicle tag violation. (GX 1 at 15, 29-30.)

Applicant's credit bureau report (CBR) dated September 15, 2011, reflected an unsatisfied federal tax lien filed against him in August 2008, alleged in SOR ¶ 1.a. His CBR also reflected two judgments filed against him for unpaid rent in November 2004, alleged in SOR ¶¶ 1.i and 1.j; two judgments filed against him for delinquent credit card debts filed in December 2006, which are not alleged in the SOR; and the delinquent debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.h, 1.k, 1.l, and 1.n. (GX 3 at 5-6.) During a personal subject interview (PSI) in October 2011, he told the investigator that he did not disclose the judgments because they had been paid. He also told the investigator that he did not disclose the delinquent debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.h, 1.k, 1.l, and 1.n in his SCA because he did not know that they existed. (GX 2 at 8-11.) At the hearing, he testified that he was careless and rushed through the SCA without carefully reading the questions. He denied intentionally failing to disclose derogatory information. (Tr. 67-68.)

The evidence concerning the status of delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a, federal tax lien for \$49,980. Applicant admitted that this debt was for unpaid federal income taxes. He testified that he had not filed his federal or state tax

returns for about seven years. In his October 2011 PSI, Applicant told the investigator that he knew about the tax lien and had hired a tax attorney to help him resolve this debt. (GX 2 at 8.) His January 2013 CBR reflected that the lien is unsatisfied. As of the date of the hearing, he had not filed any of his overdue income tax returns or made any payment agreements for his delinquent taxes. (Tr. 50-52.)

SOR ¶ 1.b, credit card account charged off in July 2008 for \$594. Applicant claimed in his PSI that he did not know this debt existed, but at the hearing he testified that he paid \$200 on this account and was issued another credit card by the same bank. He did not provide any documentation of the resolution of this debt. (Tr. 53-54.)

SOR ¶ 1.c, credit card account charged off in August 2006 for \$2,520. Applicant claimed in his PSI that he did not know this debt existed, but at the hearing he testified that he settled this debt in August 2006. He did not provide any documentation that the debt was settled. (Tr. 54-56.)

SOR ¶ 1.d, deficiency on repossessed automobile, referred for collection in January 2008 for \$10,356. Applicant claimed in his PSI that he did not know this debt existed. At the hearing, he testified that he voluntarily surrendered this vehicle because he could no longer afford the payments. He presented no evidence that he had contacted the creditor or otherwise resolved the debt. (Tr. 56-57.)

SOR ¶ 1.e, credit card account referred for collection in September 2007 for \$486. Applicant testified that he opened this account to pay for repairs to his vehicle. When he found out that his vehicle could not be economically repaired, he cancelled the credit card but did not resolve the debt. (Tr. 57-58.)

SOR ¶ 1.h,³ county tax lien filed in July 2003 for \$545. Applicant claimed in his PSI that he did not know this debt existed. In his response to the SOR and at the hearing, he denied owing this debt, but he has not contacted the county or disputed the debt with the credit reporting agencies. (Tr. 59-60.)

SOR ¶¶ 1.i and 1.j, judgments for unpaid rent for \$545 and \$593. Applicant denied this debt and claimed that the judgments had been satisfied. After the hearing, he presented documentary evidence that he owes no money to this creditor. (AX B.)

SOR ¶ 1.k, cell phone bill referred for collection in November 2004 for \$610. Applicant claimed in his PSI that he did not know this debt existed. In his response to the SOR and at the hearing, he denied owing this debt. He has not disputed it with the original creditor or the collection agency. (Tr. 63-64.)

SOR ¶ 1.l, charge account referred for collection in September 2011 for \$948. Applicant claimed in his PSI that he did not know this debt existed, but he

³ The SOR erroneously omitted ¶¶ 1.f and 1.g in the lettering of the subparagraphs of SOR ¶ 1.

admitted the debt in his response to the SOR and at the hearing. He testified that he contacted the creditor but was unable to settle it. The debt is unresolved. (Tr. 64-65.)

SOR ¶ 1.m, charge account referred for collection in September 2005 for \$690. In his PSI, Applicant told the investigator that he paid this debt. (GX 2 at 10.) In his response to the SOR and at the hearing, he admitted the debt, but he did not provide any documentation of payment. (Tr. 65.)

SOR ¶ 1.n, cell phone bill referred for collection in September 2011 for \$486. Applicant claimed in his PSI that he did not know this debt existed. At the hearing, he testified that the debt arose when he changed service providers before completing the term of his contract. He has taken no steps to resolve this debt. (Tr. 66.)

In February 2013, Applicant submitted a personal financial statement (PFS) to DOHA, in response to interrogatories. His PFS reflected net monthly income of \$3,200, expenses of \$1,200, debt payments of \$450, and a net monthly remainder of \$1,550. He listed two assets: a house worth \$150,000, and a motor vehicle worth \$4,000. (GX 2 at 12.) At the hearing, he testified that his net income has increased to between \$3,200 to \$3,400, and he also receives rental income of \$725 per month from a roommate in his home. (Tr. 70-73.) He testified that he has never received financial counseling or used a debt consolidation service. (Tr. 69.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about 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.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The SOR alleges 12 delinquent debts totaling \$68,318, including a federal tax lien for \$49,980. The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's CBRs, statements during his PSI, admissions in response to the SOR, and testimony at the hearing establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same"). The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and did not arise under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant has experienced two marital breakups. His termination of employment for a safety violation in August 2007 was partly his own fault for not properly supervising a subordinate, but the duration of his unemployment was beyond his control. He has not acted responsibly regarding his debts. He has no credible excuse for not filing his federal income tax returns. He failed to monitor his financial situation, to the extent that he was unaware of most of his

delinquent debts at the time of his PSI. He has sufficient income to start resolving his delinquent debts, but he has procrastinated and ignored them.

AG ¶ 20(c) is not established. Although Applicant told an investigator during his PSI that he intended to seek legal help in resolving his delinquent taxes, he presented no evidence that he had obtained counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.i and 1.j, but not for the other delinquent debts alleged in the SOR. Although Applicant claimed that he had made payments on the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.m, he presented no documentation to support his claim.

AG ¶ 20(e) is not established. Applicant denied owing the debts alleged in SOR ¶¶ 1.c, 1.h, 1.k, and 1.m; but he has not disputed the debts with the creditors or requested that they be removed from his credit record.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by deliberately failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a through 1.n. The concern under this guideline is set out in 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.

The relevant disqualifying condition in this case is "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." AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

In his PSI, Applicant admitted that he knew about the federal tax lien, but claimed that he was unaware of the judgments and most of the debts alleged in the SOR. Although he did not disclose the derogatory financial information reflected on his CBRs, he disclosed other derogatory information about his employment record and police record. Based on his demonstrated lack of concern about his delinquent debts, inattention to his overall financial situation, disclosure of derogatory information about his employment and police records in his SCA, and his candor and demeanor at the hearing, I found his explanation for his failure to disclose the derogatory financial information in his SCA plausible and credible. Thus, I conclude that AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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 served honorably in the U.S. Navy for ten years, during which he held a security clearance, apparently without incident. Since leaving the Navy, he has worked for defense contractors for a total of more than 11 years. He was candid and sincere at the hearing.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegation of falsifying his SCA, but he has not mitigated the security concerns based on financial considerations. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

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

Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.g:	Omitted from SOR
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Subparagraphs 1.k-1.n:	Against Applicant

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

Subparagraph 2.a:	For Applicant
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Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge