



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



In the matter of:)
)
) ISCR Case No. 12-01046
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 8, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F and Guideline E. DOHA acted under Executive Order (EO) 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.

Applicant answered the SOR on May 21, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 20, 2013. The FORM was mailed to Applicant

who received it on January 31, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to submit any additional information. The case was assigned to me on April 9, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. With regard to the Guideline E allegations, Applicant admitted that he provided incorrect information, but denied that he intentionally provided false information. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 54 years old. He is married and has two adult children from an earlier marriage. He has worked for his current employer, a defense contractor, since August 2010. He did not list any degree or diploma within the last ten years. He worked for a private security firm (WS) from 1990 to 2009. He was fired from that position because he tested positive for anabolic steroids. He was unemployed from April 2009 to July 2009. He served on active duty in the Air Force from 1982 to 1986 and received an honorable discharge.¹

The SOR lists three delinquent debts, the first, a credit card account in the amount of about \$13,960 (SOR ¶ 1.a), the second, a credit card account in the amount of \$14,799 (SOR ¶ 1.b), and third, a residual debt from a motorcycle repossession in the amount of \$11,317 (SOR ¶ 1.c). These debts are supported by credit reports dated September 2013, March 2013, and October 2011.²

Applicant's financial difficulties resulted when he was fired from his job with WS in 2009 and when his two nutritional foods stores, that he owned with a partner, went out of business. Without a steady paycheck, he could not make the necessary payment to keep his stores running. He claims that he and his business partner agreed to split the debts associated with the business. He further claims that he paid his share of the debts and that his partner filed for Chapter 7 bankruptcy protection to include his share of the business debts. He did not produce documentation showing what business debts he paid. He provided a copy of his partners bankruptcy discharge dated November 2011, but he did not include any schedules showing what debts were included in the bankruptcy. He claims that SOR ¶¶ 1.a and 1.b were debts associated with the business that his partner was supposed to pay. The dates of last activity for these two debts were November and March 2009, respectively. He has made no effort to pay these debts, instead he has followed his attorney's advice to let the debts proceed to default rather than file for bankruptcy himself so that they would fall off his credit report more quickly.³

¹ Items 5-6.

² Items 1, 7-9.

³ Items 4, 6, 9.

Because of his job loss, Applicant could not make the payments on a motorcycle (SOR ¶ 1.c) and after consulting his attorney, defaulted on the underlying debt and allowed it to be repossessed. The date of last activity for this account was December 2009. There is no evidence that he has made any payments toward this delinquent debt.⁴

On September 8, 2011, Applicant completed his security clearance questionnaire. He answered “no” to questions concerning whether he had any repossession, voluntary or involuntary, and whether he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. As the above-stated facts reveal, his answers were not true. In October 2011, during his personal subject interview, it was only after the investigator specifically confronted Applicant with the bad debt information that he acknowledged the debts and provided additional information about them. Applicant claimed that his failure to affirmatively acknowledge the above stated debts on his security clearance application was an unintentional error on his part.⁵

Applicant claims he is now in a stronger financial position. His personal financial statement indicated he has \$923 net remainder after his expenses and debt payments. This does not account for any payments toward the SOR-related debts. There is no evidence he sought financial counseling, other than seeking advice from his attorney.⁶

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.

⁴ Items 4, 6-9.

⁵ Items 5-6.

⁶ Items 4, 6.

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.

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 the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

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

- (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.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. Additionally, his abdication of his responsibility for these debts casts doubt on his reliability, trustworthiness, and good judgment. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that he was fired from his job, lost his business, and was unemployed for about four months, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He consulted an attorney about his business debts who advised him to default on the debts. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling, and there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the remaining debts. I find AG ¶¶ 20(c) and 20(d) do 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 in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire....

Applicant admitted he discussed his debts with an attorney who advised him to default on the debts rather than file for bankruptcy. I find it difficult to believe he would unintentionally fail to list this information on his application considering the debts were listed as delinquent since 2009. I also factor in that Applicant did not reveal this information to the investigator until he was specifically confronted with it. After evaluating all the evidence, I find Applicant deliberately provided false information concerning his repossession and charged-off accounts. AG ¶ 16(a) applies.

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

(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.

Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline 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 considered Applicant's past military service, his business loss, and his unemployment. However, he has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline F: Subparagraphs 1.a – 1.c: | AGAINST APPLICANT Against Applicant |
| Paragraph 2, Guideline E: Subparagraphs 2.a – 2.b: | AGAINST APPLICANT Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge