



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-01353
)	
Applicant for Security Clearance)	

Appearances

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

09/30/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his deliberate concealment of a relationship with a foreign national. He also failed to mitigate security concerns about his delinquent debts. His request for continued eligibility for access to classified information is denied.

Statement of the Case

On October 6, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, which included his responses to interrogatories from Department of

Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

On July 23, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed by Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On April 7, 2014, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on April 21, 2014, and was notified that he had 30 days to file a response to the FORM. The record closed after Applicant failed to submit any additional information within the time allowed. The case was assigned to me on September 15, 2014.

Findings of Fact

Under Guideline B, the Government alleged that Applicant's wife (SOR 1.a) and mother-in-law (SOR 1.b) are citizens of and reside in a foreign country. However, after reviewing all of the available information about those allegations, including Applicant's response to the SOR, Department Counsel withdrew these allegations and has not pursued disqualification of Applicant under Guideline B.⁵

Under Guideline E, the Government alleged that Applicant deliberately made a false statement to an agency of the United States by failing to disclose a close and continuing relationship with a foreign national, to wit, his then-girlfriend and current wife, as he was required to disclose in response to EQIP Section 19 (SOR 2.a). It was also disclosed that Applicant, while holding a DOD security clearance, deliberately concealed for nearly two years from his DOD contractor employer the fact that he had been dating a foreign national beginning in about December 2009 (SOR 2.b). Finally, DOD alleged that Applicant violated security regulations at an overseas U.S. military installation by taking his cell phone into secured areas, despite having been counseled against doing so (SOR 2.c) Applicant denied, with explanations, all three Guideline E allegations.

As to SOR 2.c, there appears to be no basis in this record for this allegation. Also, Department Counsel did not argue in support of that allegation in the FORM. Accordingly, I conclude SOR 2.c for the Applicant.

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

² Required by Executive Order 10865, as amended. See *also* Directive, Section E3.1.1.

³ See Directive, Enclosure 2. See *also* 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included 11 documents (Items 1 - 11) proffered in support of the Government's case.

⁵ FORM at p. 3.

Under Guideline F, the Government alleged that Applicant owes \$3,295 (SOR 3.a) and \$12,356 (SOR 3.b) for two delinquent accounts that were referred to collection agencies. Applicant admitted both allegations, and averred that he is paying off the debt at SOR 3.a, but has been unable to communicate with the SOR 3.b creditor to set up a payment plan. (FORM, Item 4)

In addition to the facts established by Applicant's admissions, I make the following findings of fact. Applicant is 37 years old and works as a field services technician for a nationally-known information technology (IT) corporation. He was hired for that job in July 2011 after a brief period of unemployment. Beginning in March 2009, Applicant worked as an IT customer service representative for his previous employer, who sponsored his first request for a security clearance. Applicant was granted the clearance for his work at an overseas U.S. military facility until April 2011. His current application for clearance is for work with his current employer at a different overseas location. (FORM, Items 5 - 7)

Applicant has been married three times. His first marriage in June 1997 ended by divorce in May 2001. He married his second wife in July 2001, but they separated in April 2009, around the time he deployed overseas for work. A divorce was pending as of December 2011. (FORM, Items 5 - 7)

In December 2009, Applicant began a relationship with a female foreign national in the country where he was working. They dated throughout his time there, and he eventually sponsored her for a visa so she could visit him in the United States beginning in May 2011. They lived together in the United States until she returned to her country in July 2011. Applicant returned to that country for a week to see her in October 2011. They were married in May 2012. (FORM, Item 7)

When Applicant submitted his latest EQIP in October 2011, he did not disclose his relationship with the foreign national who is now his wife. His first official disclosure of that relationship occurred in December 2011. (FORM, Items 6 and 8) In November 2011, when he was asked by a Government investigator why he had not disclosed this information in his EQIP, Applicant stated that he tried to input the information "but for reasons unknown was unable to do so." (FORM, Item 7, Summary of Personal Subject Interview at page 7) When Applicant responded to SOR 2.a, he averred that he had misunderstood the question posed in EQIP Section 19. The question requires disclosure of any such contacts and relationships occurring in the seven years preceding application for a clearance. (FORM, Items 4 and 5)

As to SOR 2.b, Applicant denied that he intentionally failed to disclose his relationship with his now-wife between 2009 and 2011. He claimed to have notified his superiors by email, and that he was aware, through training he and his co-workers received, of the security concerns associated with such a relationship. Applicant did not present copies of any emails or other documentation (FORM, Item 4)

A credit report obtained in 2011 subsequent to Applicant's most recent application for clearance showed he had numerous delinquent debts. His financial problems at that time stemmed from the breakup of his second marriage, and from

medical expenses associated with the treatment of one of his children. Unfortunately, that child died in 2006 at a young age. Applicant was left with significant medical expenses not covered by insurance. More recently, he has two significant unpaid debts. The debt alleged at SOR 3.a is for unpaid rent that accrued when Applicant broke his lease in 2011 to accept his current overseas job. Applicant averred in response to the SOR that he is paying this debt, but only documented a single payment of \$150 on a three-year-old debt of \$3,295. The payment was made two weeks after the SOR was issued.

Available information also shows, as alleged at SOR 3.b, that Applicant still owes \$12,356 for a delinquent auto loan that Applicant stopped paying in 2006, around the time his child died and after Applicant had left work to care for that child. Applicant worked with the creditor for about a year, but the car was eventually repossessed. The amount alleged represents the remainder due after the car was resold. Applicant did not take any action to resolve this debt until after receiving the SOR and is now unable to contact the creditor that currently holds this debt. (FORM, Items 4, 7, 9 - 11)

As to Applicant's current finances, a personal financial statement (PFS) he provided in response to DOD interrogatories shows he has about \$1,940 remaining each month after paying his expenses. No debt payments were included in his expenses. Credit reports obtained in 2013 and 2014 do not list new delinquencies after 2011. (FORM, Items 7, 10, 11)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. 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 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.

⁶ Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁸ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

No one is entitled to a security clearance. Thus, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.¹⁰ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.¹¹

Analysis

Personal Conduct

The information presented in the FORM is sufficient to raise a security concern about Applicant's personal conduct. That security concern is articulated 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, these facts and circumstances require application of the following AG ¶ 16 disqualifying conditions:

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, . . .

In response to the SOR 2.a allegation that Applicant deliberately omitted from his 2011 EQIP the fact that he had been in a relationship with a foreign national for two years, he stated that he misunderstood the question. However, in a 2011 interview with a Government investigator, he stated that he tried, but was unable, to input the information. His conflicting explanations are sufficient circumstantial evidence of intent to deceive within the meaning of AG ¶ 16(a).

Further, as to SOR 2.b, Applicant did not notify the Government, either directly or through his employer, about his close relationship to a foreign national for more than two years, all the while as he held a security clearance. He did not support his claims that he timely sent emails to his supervisor about his relationship. Also, he has not explained why the only official notification of record, again, occurred after two years had passed, despite his own acknowledgment that he and his coworkers had received training about the security implications of such conduct. All of the foregoing supports AG ¶¶ 16(d)(3) and (e)(1).

I have also considered the mitigating conditions at AG ¶ 17. Only AG ¶ 17(e) has any application here, insofar as the fact of his relationship to a foreign national is now a matter of record. Nonetheless, Applicant did not make any prompt, good-faith effort to correct his omissions from his EQIP, and delayed for two years notification of his foreign relationship while holding a security clearance. These facts underscore the security concerns about Applicant's willingness to be candid with the Government, and his ability to follow procedures designed to safeguard classified information. In sum, I conclude Applicant has not mitigated the security concerns raised under this guideline.

Financial

The Government's information is sufficient to show that Applicant has a history of past-due or unpaid debts for at least the past eight years. The facts established by SOR 3.a and 3.b raise a security concern that is articulated at AG ¶ 18, as follows:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

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

By contrast, the following AG ¶ 20 mitigating conditions are pertinent to these facts and circumstances:

- (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.

As to AG ¶¶ 20(a) and 20(b), Applicant's financial problems began around the time his child was ill. The resulting medical expenses and loss of income resulted in the car repossession debt alleged at SOR 3.b. Such circumstances are not likely to recur and were certainly beyond Applicant's control. However, the debt for unpaid rent,

represented by SOR 3.a, was incurred when Applicant decided to break his lease to take his current job. As to SOR 3.b, the experience of losing a child is tragic and the impact on one's finances cannot easily be imagined. Nonetheless, over time it is not unreasonable to expect more action to resolve delinquencies than is documented here. Coupled with Applicant's failure to pay anything on the debt at SOR 3.a, I cannot conclude that his indebtedness does not reflect adversely on his judgment, or that he has acted responsibly under the circumstances.

As to AG ¶¶ 20(c) and (d), Applicant did not establish that he acted in good faith to resolve his debts. There is no track record of correspondence with his creditors, and a single, post-SOR payment does not constitute a serious attempt to resolve a debt. Applicant's PFS shows he has sufficient monthly cash flow to embark on a meaningful repayment plan, but Applicant has not accepted the need to demonstrate that his finances are in order and no longer pose a security risk. On balance, I conclude he has not mitigated the security concerns raised under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). I conclude that doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, 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 B:	WITHDRAWN
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a - 3.b:	Against Applicant

Conclusion

In light of all available information, 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