



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-03046
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

11/28/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 10, 2013. On October 20, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. The DOD acted under Executive Order (Exec. Or.) 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) implemented by DOD on September 1, 2006. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on November 12, 2014, and requested a decision on the record without a hearing. Department Counsel submitted the Government's

written case on February 17, 2016. On the same day, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 29, 2016. He did not object to any items in the FORM and did not submit any additional evidence. The case was assigned to me on November 8, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.i and denied SOR ¶¶ 2.a and 2.b. His admissions are incorporated in my findings of fact.

Applicant is a 45-year-old welder employed by a defense contractor since June 2013. He worked for various non-federal employers before he was hired by his current employer. He has never held a security clearance.

Applicant married in October 1995 and divorced in September 2010. During the marriage they had a son, now 15 years old.

When Applicant submitted his SCA in June 2010, he answered "No" to a question whether he had filed a bankruptcy petition during the last seven years. He also answered "No" to questions whether, in the past seven years, he had defaulted on any type of loan, or had bills or debts turned over to a collection agency. Finally, he answered "No" to a question whether he was currently over 120 days delinquent on any debt. His credit bureau reports (CBRs) from June 2013, May 2014, June 2015, and February 2016 reflect the following delinquent debts alleged in the SOR.

SOR ¶ 1.a, collection account for \$2,980. Applicant's June 2013 CBR reflected this account. During a personal subject interview (PSI) by a security investigator in late June 2013, Applicant stated that he was unaware of this debt and did not recognize it. In his answer to the SOR, he again stated that he was unaware of the debt when he submitted his SCA, and he promised to make arrangements to pay it. He provided no documentation of payments or a payment agreement. It is unresolved.

SOR ¶¶ 1.b and 1.c, student loans placed for collection of \$2,775 and \$2,698. In the PSI, Applicant told the investigator that he decided not to disclose this debt in his SCA after contacting the collection agency and making arrangements for monthly \$70 payments. In his answer to the SOR, Applicant stated that he was making monthly \$53 payments by automatic withdrawals from his bank account. He did not submit any documentation of payments or a payment agreement.

SOR ¶ 1.d, cell phone bill referred for collection of \$505. This debt was not reflected in Applicant's June 2013 CBR and was not discussed during his PSI. It is reflected in his May 2014 CBR but not in the June 2015 and February 2016 CBRs. His

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

May 2014 CBR reflected that the last activity on the account was in April 2011 and the collection account was opened in June 2013. In his answer to the SOR, Applicant stated that he was making payments on this debt when he was able, and that his last payment was for \$75. He provided no documentation of payments.

SOR ¶ 1.e, telecommunications debt referred for collection of \$485 in March 2011. Applicant recognized this debt during his PSI and told the investigator that he began falling behind on his payments in 2010. The debt is reflected in his June 2013 and May 2014 CBRs, but not in his June 2015 and February 2016 CBRs. In his answer to the SOR, he stated that he was making \$40 payments when he was able. He provided no documentation of payments. The debt is not resolved

SOR ¶ 1.f, collection account opened in July 2013 for \$199. This debt was not reflected in Applicant's June 2013 CBR, but it is reflected in his May 2014 CBR. A collection account for the same creditor was opened in February 2015 and reflected in the February 2016 CBR. In his answer to the SOR, Applicant stated that he is making monthly payments of an unspecified amount on this debt. He provided no documentation of payments or a payment agreement.

SOR ¶ 1.g, cellphone bill referred for collection of \$146 in September 2012. This debt was reflected in Applicant's June 2013 CBR. In his PSI, he recognized the debt and stated his intention to resolve it. However, in his answer to the SOR he stated that he was unaware of the debt when he submitted his SCA. It is not resolved.

SOR ¶ 1.h, Chapter 7 bankruptcy petition filed in August 2008 and discharged in November 2008. This bankruptcy petition and discharge are reflected in Applicant's May 2013 CBR. In his PSI, he attributed his bankruptcy to living beyond his means. He told the investigator that he did not disclose the bankruptcy in his SCA because he did not understand the terminology in the SCA. (The SCA asks, "In the last seven (7) years have you filed a petition under any chapter of the bankruptcy code?") In his answer to the SOR, he stated that he believed that the bankruptcy petition was filed more than seven years before he submitted his SCA.

SOR ¶ 1.i, collection account for \$251, filed by insurance company. In his PSI, Applicant admitted that he had insurance with this creditor, but he was not sure why it was reflected as delinquent in his CBR. In his answer to the SOR, he stated that he was making monthly payments of an unspecified amount. He provided no documentation of payments.

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 § 2.

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.” 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 eight delinquent debts (SOR ¶¶ 1.a-1.g and 1.i) and a Chapter 7 bankruptcy (SOR ¶ 1.h). 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 admissions, corroborated by his credit bureau reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline 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.

None of the above mitigating conditions are established. Applicant's delinquent debts are numerous, ongoing, and were not incurred under circumstances largely beyond his control. He admitted that his bankruptcy was due to living beyond his means. While he would have been required to receive counseling as part of his Chapter 7 bankruptcy, his financial problems are not under control. He claimed to have made payments on several debts, but he provided no documentary evidence of any payments or payment agreements. Although he claimed to be unaware of some debts, he has not disputed any of them.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by deliberately failing to disclose a Chapter 7 bankruptcy (SOR ¶ 2.a) and deliberately failing to disclose the delinquent debts alleged in the SOR (SOR ¶ 2.b). The concern under this guideline is set out in 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 relevant disqualifying condition in this case is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" 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 experience and level of education 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).

Applicant's explanations for not disclosing his bankruptcy in his SCA are implausible and contradictory. He first claimed that he did not understand the terminology in the SCA, but he later claimed that he thought his bankruptcy preceded the SCA by more than seven years. He was aware of the debts in SOR ¶¶ 1.b, 1.c, and 1.e when he underwent his PSI, which was only about two weeks after he submitted his SCA, and he has not offered a plausible or persuasive explanation for not disclosing any of the debts alleged in the SOR. I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

Neither mitigating condition is established. Applicant did not correct his omissions from his SCA until he was confronted with the evidence during the PSI. His omissions were arguably infrequent, but they were not minor, because falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) They were recent and did not occur under unique circumstances making them unlikely to recur.

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, and I have considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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 not mitigated the security concerns raised by his delinquent debts and

falsification of his SCA. Accordingly, I conclude 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.i:	Against Applicant
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Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a and 2.b:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge