



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



In the matter of:)
)
) ISCR Case No. 14-05928
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2017

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has mitigated the concerns under personal conduct, handling protected information, misuse of information technology systems and criminal activity, but has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on September 8, 2013. On August 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations; E, personal conduct; K, handling protected information; M, misuse of information technology systems; and J, criminal activity.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel*

Applicant responded to the SOR on November 13, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 6, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 22, 2016, but did not submit a response. The case was assigned to me on December 12, 2016. The Government's exhibits included in the FORM (Items 1 to 7) are admitted into evidence.

Findings of Fact

The SOR alleges Applicant is indebted on 14 delinquent debts totaling approximately \$21,710. He is 57 years old and has been employed as a support desk technician by a defense contractor since 2012. He was unemployed from August 2012 to October 2012, and from March 2011 to September 2011 after he was terminated from his job for computer misconduct. He has been married since 1987 and has two children.³ He has previously held a security clearance.

Applicant admitted SOR allegations ¶¶ 1.a–1.d, 1.f, 1.h, and 1.k, totaling about \$21,087, and denied ¶¶ 1.e, 1.g, 1.i–1.j, and 1.l–1.n, totaling about \$623. He also admitted ¶¶ 2.a and 2.b (Guideline E), but failed to answer allegations under ¶¶ 3–5 (Guidelines K, M and J), which are deemed denied. Applicant did not provide explanations with his answers to the SOR allegations, or any documentary evidence in mitigation.

The record evidence and Applicant's Answer support the SOR allegations. Applicant did not provide evidence in support of the SOR allegations he denied. When interviewed by the Office of Personnel Management investigator, Applicant was not aware of the details of delinquent accounts because his spouse handles the family finances. He indicated in his personal subject interview (PSI) that his financial problems resulted from his periods of unemployment. He arranged to make payments to a credit repair company, and pays \$600 per month toward his credit card debt, but did not indicate which debts are being paid with this process. He stated that he is capable of meeting his monthly financial obligations, but is living paycheck-to-paycheck. There is no evidence of Applicant's current financial status, budget, financial counseling, or other mitigation efforts.

Applicant previously worked as computer help-desk technician for a government contractor supporting the U.S. Department of State, from 1992 to 2011. From March 2007 to March 2008, while working the night shift, he accessed about 60 confidential passport

Security Clearance Review Program (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

³ Applicant did not list children in his SCA, but noted his daughter and step-daughter during his personal subject interview (PSI).

records of prominent people, family members and others. Although he had access to the particular computer database by virtue of his employment, he exceeded his authorized access to this database in violation of federal law. In March 2010, Applicant pleaded guilty to unauthorized computer access, a misdemeanor offense. He was sentenced to 12 months of counseling, 12 months of probation, 100 hours of community service, and fined. In March 2011, he was terminated from his job, and remained unemployed until September 2011. He was again employed as a computer support technician from September 2011 to August 2012, and from October 2012 to present. He completed his sentence requirements, including counseling, and has had no further incidents or violations. He stated that an incident like this will not happen again.

Law and Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁴ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁵

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

they must, on the side of denials.” Under *Egan*, Exec Or. 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁶

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 the 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.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant incurred long-standing delinquent debts that have remained unresolved. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

⁶ *Egan*, 484 U.S. at 531.

(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;

(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 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.

Although he suffered from periods of unemployment, the longest period as a result of his misconduct, he has been steadily employed since 2012, but has not shown that he has addressed his financial delinquencies. His claim of working with a credit repair company to pay credit card delinquencies is not supported by documentary evidence nor supported by his most recent credit bureau report (CBR).

Applicant's financial issues have been long-standing and remain recent and ongoing. No credit counseling or budget education has been shown. Applicant has not acted responsibly under the circumstances to resolve his debts. His overall financial solvency remains a concern, and his lack of financial responsibility casts doubt on his current reliability, trustworthiness, and good judgment. His efforts to date have been inadequate to demonstrate that his financial circumstances are under control or that he is willing and able to resolve his delinquent debts and meet his future financial obligations. No full mitigation credit is warranted.

Guideline E, Personal Conduct

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 under AG ¶16 is:

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(4) evidence of significant misuse of Government or other employer's time or resources; 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,

Although the SOR offense listed under Guidelines K, M, and J, that underlie the Guideline E allegations are sufficient for an adverse determination under those guidelines, I will consider them under AG ¶ 16, as well. Applicant's criminal misuse of a government computer system and subsequent criminal conviction invokes an assessment of questionable judgment and an unwillingness to comply with rules and regulations. AG ¶¶ 16(d) and (e) apply.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are 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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The underlying criminal conduct from 2007 to 2008 resulted in a misdemeanor conviction for misuse of a government computer system. Applicant acknowledged his

behavior, pleaded guilty to the charge, obtained counseling, served his sentence, and continues to work as a computer support technician. I believe sufficient time has lapsed since the conduct occurred without further incidents. There is no indication that a similar incident will occur again, and Applicant's judgment is no longer at issue. AG ¶ 17(c) and (d) apply.

Guideline K, Handling Protected Information

AG ¶ 33 expresses the security concern pertaining to handling protected information:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

I have considered all the Handling Protected Information disqualifying conditions under AG ¶ 34 and determined the following apply:

(d) inappropriate efforts to obtain or view classified or other protected information outside one's need to know; and

(g) any failure to comply with rules for the protection of classified or other sensitive information.

Applicant admitted accessing restricted information on a government computer system for a purpose for which he was not authorized. AG ¶¶ 34(d) and (g) apply.

All the mitigating conditions for Handling Protected Information under AG ¶ 35 were considered and the following were found relevant under these circumstances:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

Applicant's actions occurred over eight years ago. He pleaded guilty to a misdemeanor charge, and completed counseling and other sentence requirements. Sufficient time has passed since the incident, and no further incidents have occurred. Applicant's current reliability, trustworthiness, and good judgment are no longer in doubt. AG ¶¶ 35(a) and (b) apply.

Guideline M, Use of Information Technology Systems

AG ¶ 39 expresses the security concern pertaining to use of information technology systems:

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

AG ¶ 40 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) unauthorized use of a government or other information technology system.

Applicant's unauthorized use of a government database raises this security concern. AG ¶ 40(e) applies.

I considered all of the mitigating conditions under AG ¶ 41. The following mitigating condition is relevant:

(a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's conduct was discovered in 2008 and he pleaded guilty to a misdemeanor violation. He served his sentence, to include counseling. He has worked again in computer support since 2011 without further incident. AG ¶ 41(a) applies.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was charged and convicted of the misdemeanor offense of unauthorized computer access. The above disqualifying conditions are applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant admitted the offense, pleaded guilty and successfully served his sentence. He received counseling and has worked in the computer support field since 2011 without incident. AG ¶ 32(a) and (d) 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 relevant 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 guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F, E, K, M and J in this whole-person analysis.

Applicant has not provided evidence of resolution of the debts listed in the SOR despite the opportunities and time given to do so. Although he claims his overall financial condition is satisfactory, he did not follow through with documentary evidence in support of his claim, or evidence of resolution of any of the SOR debts. The remaining security concerns have been mitigated as previously discussed. However, Applicant's financial record leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

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:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.n:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a – 2.b:	For Applicant
Paragraph 3, Guideline K:	For Applicant
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline M:	For Applicant
Subparagraph 4.a:	For Applicant
Paragraph 5, Guideline J:	For Applicant
Subparagraph 5.a:	For 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.

Gregg A. Cervi
Administrative Judge