



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06281

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: John R. Teakell, Esq.

09/09/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 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 the DOD on September 1, 2006.

Applicant responded to the SOR on February 26, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 6, 2015, scheduling the hearing for October 21, 2015. The case was continued when Applicant retained counsel. Rescheduling of the case was

delayed because Applicant's counsel stopped representing him for a period and then was retained again. The case was reassigned to me on April 12, 2016. DOHA issued a notice of hearing on May 20, 2016, scheduling the hearing for June 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) 1 through 4 and 7 through 9, which were admitted without objection. Applicant's brief was marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on June 29, 2016.

Findings of Fact

Applicant is a 58-year-old engineer employed by a defense contractor. He has worked for his current employer at different locations since 1996. He served on active duty in the military from 1977 to 1981 and in the reserves from 1981 until he was honorably discharged in 2003. He seeks to retain a security clearance, which he has held for many years. He has a bachelor's degree that was awarded in 1986. He married in 2006 and divorced in 2012. He has a minor child from the marriage and two minor children from previous relationships.¹

Applicant bought a house in 1997. Credit reports show a 1997 mortgage loan with a high credit of \$215,222. He refinanced the mortgage loan in 2006. Credit reports show the refinanced loan with a high credit of \$369,416. Applicant stopped paying the mortgage loan in about October 2011. He wanted a lower interest rate, and he was told the bank would only work with him if the loan was delinquent. The loan was modified at an unspecified date, but Applicant still did not pay the loan. He lived in the house without paying the mortgage loan until his company relocated him to another state in 2013. The loan was transferred and the balance due increased because of interest. A credit report from June 2016 shows the loan in foreclosure with \$90,730 past due and a \$423,639 balance. Applicant stated that the house was sold, but he was unaware of the sales price.²

The SOR alleges the delinquent mortgage loan and 17 additional delinquent debts. However, the following debts are duplicates: SOR ¶¶ 1.d (\$538), 1.l (\$499), and 1.n (\$333). The 15 non-duplicate debts total about \$5,850.

In his response to the SOR, Applicant admitted owing the \$1,941 and \$333 (duplicate of SOR ¶ 1.d) department store accounts alleged in SOR ¶¶ 1.b and 1.n, but he stated the accounts were used by his ex-wife. He admitted owing the \$368 utilities account (SOR ¶ 1.g) and the \$95 debt owed to the city where he used to live (SOR ¶ 1.m), but he stated the accounts were tied to a pending insurance claim at his foreclosed house when the pipes burst. He stated the accounts would be paid by the insurance company after the work on the house was completed. He admitted owing the medical debts alleged in SOR ¶¶ 1.c (\$686), 1.f (\$461), and 1.h (\$250). He wrote that he was finally in the financial position where he could pay the debts. He denied owing

¹ Tr. at 20-24, 27, 62-64; Applicant's response to SOR; GE 1, 5.

² Tr. at 65-69, 82-83; Applicant's response to SOR; GE 2-5.

most of the remaining debts. All of the debts alleged in the SOR are listed on at least one of the three credit reports in evidence.³

Applicant attributed his financial problems to his ex-wife not paying her share of the household expenses and opening accounts without his knowledge, his divorce, paying about \$4,200 per month in child support to the three mothers of his children, and relocating for his job. His annual salary is about \$142,000, and he contributes 6% of his income to his 401(k) retirement account, which has a balance of about \$400,000. He has not paid any of the debts alleged in the SOR. He testified that he lives a frugal lifestyle. He received financial counseling. He will start receiving his military retirement pay in about a year, which will provide additional income that can be used to pay his debts.⁴

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2013. He did not divulge a 2010 arrest for failure to obey traffic control device, reckless driving, and driving under the influence (DUI), which resulted in a 2011 conviction of reckless driving.⁵ He also answered “No” to all the financial questions under Section 26, including the following:

In the past seven (7) years, you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

In the past seven (7) years, you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

You are currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).⁶

Applicant discussed his finances when he was interviewed for his background investigation in April 2013. He admitted that he had not been paying his mortgage loan. He stated that he was in a hurry to complete the questionnaire and he could not recall

³ Tr. at 66; GE 2-5.

⁴ Tr. at 23-42, 60-63, 69-81, 84-87; Applicant's response to SOR; GE 5.

⁵ Tr. at 55-58; GE 1; AE 9. The SOR did not allege the arrest and conviction or that Applicant falsified the SF 86 by failing to report them. Those matters will not be considered for disqualification purposes. I am using them solely to determine Applicant's credibility.

⁶ GE 1.

the last time he looked at his credit report. He stated that he did not recognize most of the other delinquent accounts that were listed on the March 2013 credit report. He stated that he would obtain a copy of his credit report and contact the creditors. He stated that he would pay the accounts that were his.⁷

Applicant denied intentionally falsifying the SF 86. He stated that he completed the SF 86 in a rush and he was unaware of many of the delinquent accounts. He admitted that he was aware that his mortgage loan was considerably delinquent. He stated that he intended to go back and update the questionnaire in about six months after his finances had stabilized, but he just never got around to doing so.⁸ Having considered all the evidence, I am convinced by substantial evidence⁹ that Applicant intentionally falsified the SF 86 when he failed to report his delinquent debts.

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his reliability, trustworthiness, judgment, professional knowledge, honesty, ethical values, and integrity.¹⁰

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 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(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.

⁷ GE 5.

⁸ Tr. at 32-37, 48-54, 58-59, 62, 65-66; Applicant's response to SOR; GE 5.

⁹ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." ISCR Case No. 10-09035 at 5 (App. Bd. Jun. 13, 2014) (citing Directive ¶¶ E3.1.14; E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).

¹⁰ AE 1-4.

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.”

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 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 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 EO 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* EO 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
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that he is unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

SOR ¶¶ 1.d, 1.l, and 1.n are duplicates. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicate allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). SOR ¶¶ 1.l and 1.n are concluded for Applicant.

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

- (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.

Applicant attributed his financial problems to his ex-wife not paying her share of the household expenses and opening accounts without his knowledge, his divorce, paying about \$4,200 per month in child support to the three mothers of his children, and relocating for his job. His annual salary is about \$142,000, and he contributes 6% of his income to his 401(k) retirement account, which has a balance of about \$400,000. He has known that his finances were an issue since his background interview in April 2013, but he has not paid any of the debts alleged in the SOR. He stated that he will start receiving his military retirement pay in about a year, which will provide additional income that can be used to pay his debts. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) (financial counseling) is applicable; the second section (clear indications that the problem is being resolved or is under control) is not applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant intentionally falsified his SF 86 when he failed to report his delinquent debts. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Having determined that Applicant intentionally provided false information on the SF 86, I have also determined that his explanations that the omission was unintentional were also false. It would be inconsistent to find that conduct mitigated.¹¹

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

¹¹ See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. I considered Applicant's character evidence and his honorable military service. However, he has unresolved financial problems and he intentionally provided false information about his finances on his SF 86.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and financial considerations security concerns.

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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o-1.r:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge