



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-00213
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2016

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 25, 2014. On August 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (Exec. Or.) 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. The adjudicative 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 3, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 14, 2016, and the case was assigned to me on May 4, 2016. On May 12, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 8, 2016. Applicant was unable to attend the hearing due to overseas operational requirements. The hearing was continued, to be resumed on a date to be determined. On July 27, 2016, DOHA notified Applicant that the continuation of the hearing was scheduled for August 18, 2016. I reconvened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until September 2, 2016, to enable him to submit additional documentary evidence. He did not submit any additional evidence. DOHA received the transcript (Tr.) of the June 8 hearing session on June 16, 2016 and the transcript of the August 18 hearing session on August 29, 2016.

Findings of Fact¹

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

Applicant is a 42-year-old electronic technician employed by defense contractors since October 2007. He served in the U.S. Marine Corps from October 1994 to February 2007, attained the rank of sergeant, and received an honorable discharge. He deployed in support of combat operations three times during his military service. (Tr. 28-29.) He was involuntarily discharged in accordance with the Marine Corps tenure rules because he was passed over for promotion. (Tr. 58.) He worked as a correctional officer for about eight months before beginning his employment by a defense contractor. He attended a technical college from May 2008 to June 2010 and received an associate's degree. He has held a security clearance since 1995. (Tr. 8, 29.)

Applicant married in October 2002 and divorced in February 2012. He married again in April 2013, separated in January 2014, and divorced in November 2015. (Tr. 26.). He has two children from his first marriage, ages 13 and 9, for whom he voluntarily pays child support of \$600 per month. His child support payments are current. (GX 2 at 5; AX A.)

When Applicant submitted his SCA in June 2014, he answered "no" to a question asking whether, in the last seven years, he had consulted with a health care professional regarding an emotional or mental health condition or had been hospitalized for such a condition. He did not disclose that, in February or March 2014, he sought counseling from a counselor and a medical doctor and received a prescription for depression, which he still takes. When he was interviewed by a security investigator in

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

July 2014, he stated that he did not disclose the counseling because he was embarrassed. (GX 1 at 31; GX 2 at 7.) At the hearing, he testified that he knew he should have answered "yes," but he was afraid that it would affect his ability to continue his security clearance. (Tr. 55-57.)

Applicant filed a petition for Chapter 7 bankruptcy in September 2007 and received a discharge in January 2008. The bankruptcy is alleged in SOR ¶ 1.a. He attributed his bankruptcy to his inability to find a well-paying job after his discharge from the Marine Corps, his child-support payments, and financial mismanagement. (GX 2 at 8.) As a correctional officer from February to October 2007, his pay was about half of what he earned in the Marine Corps. (Tr. 34). His initial pay as an employee of a defense contractor was even less than his pay as a correctional officer, but he voluntarily left his job as a correctional officer because he found the job too stressful. (Tr. 34; GX 2 at 4.)

Applicant testified that his current financial problems began after he was divorced in February 2012. He was laid off from work for almost six months, and his unemployment compensation was about 60 percent of what he had been making.

In addition to the Chapter 7 bankruptcy alleged in SOR ¶ 1.a, the SOR alleges nine delinquent debts totaling about \$19,000. The debts are reflected in his credit bureau reports (CBRs) from July 2014 (GX 3) and July 2015 (GX 4). The status of these debts is summarized below.

SOR ¶ 1.b: deficiency after auto repossession (\$10,748). Applicant's July 2014 CBR reflects that this account was opened in June 2006 and referred for collection in October 2010. Applicant testified that he cosigned the loan to purchase a vehicle for his wife, with the understanding that she would make the payments. His wife failed to make the payments, and the vehicle was repossessed. Applicant has taken no action to resolve the debt. (Tr. 40-43.)

SOR ¶ 1.c: judgment filed in September 2012 for unpaid rent (\$3,431). Applicant testified that he was unable to pay his rent because he was separated from his wife and laid off. In his answer to the SOR and at the hearing, he stated that the judgment was satisfied by garnishment of his pay in 2014. (Tr. 43.) He testified that he had documentary evidence that the judgment was satisfied. (Tr. 43-45.) However, he submitted no such evidence.

SOR ¶ 1.d: judgment filed in September 2012 for delinquent credit-card account (\$864). Applicant admitted this debt in his answer to the SOR. He testified that he has taken no action to resolve it. (Tr. 45-46.)

SOR ¶ 1.e: judgment filed in January 2012 for unpaid rent (\$889). Applicant testified that the judgment was satisfied by garnishment of his pay. His July 2014 CBR reflects that it satisfied in February 2012. (GX 3 at 4.)

SOR ¶ 1.f: judgment for delinquent credit-card account filed in November 2008 (\$945); SOR ¶ 1.h: delinquent credit-card account placed for collection (\$204); SOR ¶ 1.i: medical bill placed for collection (\$464); and SOR ¶ 1.j: medical bill placed for collection (\$701). In his answer to the SOR and at the hearing, Applicant stated that he paid these debts. (Tr. 46-49.) However, he provided no documentation of payment by the time the record closed.

SOR ¶ 1.g: delinquent credit-card account placed for collection (\$953). Applicant testified that he has taken no action to resolve this debt. (Tr. 47.)

Applicant's net income varies widely, depending on the amount of overtime. Between January to July 2016, he worked overtime in 10 of the 14 two-week pay periods, ranging from 16 to 74 hours. During 14 two-week pay periods from January to July 2016, his net pay ranged from a low of \$32 (when he was docked \$1,201 for unpaid leave) to \$2,130 (when he worked 74 hours of overtime). (AX B.) He testified that he lives paycheck to paycheck. (Tr. 53.)

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 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 and the documentary evidence submitted at the hearing 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 mitigating conditions are established. Applicant delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. His income varies widely, and he has experienced periods of unemployment, but he has not acted responsibly. He satisfied one judgment for unpaid rent, but it was satisfied by an involuntary garnishment. He claimed that he paid the debts in SOR ¶¶ 1.c, 1.f, and 1.h-1.j, but he submitted no documentation of payment, even though he was given additional time to provide it. He admitted that he has taken no action to resolve the debts in SOR ¶¶ 1.b, 1.d, and 1.g. He has not sought or received financial counseling. He has not disputed any of the debts.

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 in this case is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” This disqualifying condition is established by Applicant’s admissions that he falsified his SCA because he was embarrassed and was afraid that a truthful answer would affect his application to continue his security clearance.

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 of these mitigating conditions is established. Applicant made no effort to correct his falsification until he was confronted with the evidence by a security investigator. His falsification was 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.) His falsification was arguably infrequent, but it did not happen under unique circumstances making it 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). 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 continue his 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.d:	Against Applicant
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Subparagraph 1.e:	For Applicant
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Subparagraphs 1.f-1.j:	Against Applicant
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Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge