



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-00441
)	
Applicant for Security Clearance)	

Appearances

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

04/27/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from his financial problems and falsification. Eligibility for access to classified information is denied.

Statement of the Case

On August 11, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). 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 December 21, 2015, and he elected to have the case decided on the written record in lieu of a hearing. On March 24, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on April 5, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. He did not respond to the FORM. The case was assigned to me on March 8, 2017.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-5.¹ FORM Item 3 consists of an unauthenticated summary of an interview with a government investigator conducted on April 18, 2013. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant did not respond to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's work experience, I find his waiver to be knowing and intelligent.² FORM Items 2-5 are admitted into evidence as Government Exhibits 2-5, without objection.

Findings of Fact

The SOR alleges eight delinquent debts (SOR ¶ 1), two falsifications (SOR ¶¶ 2.a. and 2.b.), and a 2009 criminal charge (SOR ¶ 2.c.). In his response to the SOR, Applicant did not explicitly admit any of the allegations. Absent clear admissions, I construe Applicant's response to the SOR as denying all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 47 years old. He graduated from high school in 1988, and he attended some undergraduate-level classes in 2005. He served on active duty in the U.S. military from April 1992 to June 1998, when he received a medical discharge. Since March 2000, he has been gainfully employed full time as an engineer for several different federal contractors. He has been married and divorced three times, with his most recent divorce in November 2012.³

In March 2013, Applicant submitted a security clearance application (SCA), wherein he listed an August 2009 criminal charge for solicitation. The charge resulted in a fine and suspended sentence, but no conviction. On the SCA, he denied any delinquent debts, collection accounts, unpaid judgments, or charged-off debts, in response to the following questions:

¹ FORM Item 1 consists of the SOR and Applicant's response to the SOR, which are pleadings and are entered into the administrative record.

² See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

³ GE 2; GE 3.

In the past seven (7) years, [have] you had a judgment entered against you?

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency?

In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?⁴

Applicant's March 2013 and June 2014 credit reports establish the eight alleged debts, which became delinquent between 2010 and 2012. During his April 2013 security interview, he attributed his delinquent debts to living beyond his means and being irresponsible with his finances. He averred that he would hire a credit counseling service and resolve his debts by the end of 2013, though there is no evidence that he engaged such services.

In his response to the SOR, Applicant claimed the judgment (SOR ¶ 1.e.) was paid through a garnishment and to have made payment arrangements on another account (SOR ¶ 1.h.), but he provided no documentation to substantiate these claims. Similarly, he denied the debts in SOR ¶¶ 1.c. and 1.g. and disputed liability on the debts in SOR ¶¶ 1.d. and 1.f. These debts are listed on the credit reports that were forwarded to him with the FORM. He provided no documentation to substantiate his disputes or to show any debt-resolution efforts or payments.⁵

During his April 2013 security interview, Applicant also admitted to soliciting a prostitute, resulting in the charge, fine, and suspended sentence in 2009. When confronted by the government investigator, he admitted that he was aware of his financial problems. He claimed that he was rushed when he completed the SCA and did not have the specific account information with him at the time. He was not aware that a judgment had been filed (SOR ¶ 1.c), but he was aware of some of the alleged delinquent debts (SOR ¶¶ 1.a. and 1.b.) including a vehicle repossession and more generally that he had financial problems.⁶

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.

⁴ GE 2.

⁵ Response to SOR; GE 3-5.

⁶ GE 3.

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.

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's eight delinquent debts total approximately \$30,226. These debts became delinquent between 2010 and 2012. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Conditions that could mitigate the 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's financial struggles date from 2010 and are ongoing. There is no evidence of any steps to resolve the eight alleged debts. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control, and (2) Applicant acted responsibly under the circumstances. Applicant attributed his financial delinquencies to living beyond his means and financial irresponsibility. He has not established that his financial problems resulted from circumstances beyond his control, and he has not

⁷ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

provided evidence of a debt-resolution plan and efforts in furtherance of a plan. AG ¶ 20(b) does not apply.

Applicant expressed an intent to consult a credit counseling service, but there is no evidence that he actually engaged such services. There is also no evidence that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.”⁸ Applicant claims to have satisfied the alleged judgment (SOR ¶ 1.e.), but there is no documentation of any payments or debt-resolution efforts on this debt or the other alleged debts. AG ¶ 20(d) does not apply.

Applicant did not supply evidence to substantiate his claims denying the debts alleged in SOR ¶¶ 1.c., 1.d., 1.f., 1.g., and 1.h. Absent such evidence and substantial evidence of debt-resolution efforts and financial responsibility, I find that security concerns about Applicant’s financial problems remain.

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.

Under Guideline E, the SOR alleges personal conduct concerns about two falsifications on Applicant’s 2013 SCA and his 2009 criminal charge. The following disqualifying conditions under AG ¶ 16 are 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; and

(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 information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and

⁸ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

regulations, or other characteristics indicating that the person may not properly safeguard protected information.

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.⁹

On his March 2013 SCA, Applicant denied having any judgments, charged-off debts, or collection accounts. During his April 2013 security interview, he admitted that he was generally aware of his financial problems, including the delinquent credit card (SOR ¶ 1.a.) and the vehicle repossession (SOR ¶ 1.b.). He claimed that he was unaware of the judgment (SOR ¶ 1.c.) and the remaining delinquent debts and that he rushed completing the SCA without obtaining the necessary account information at the time. Nonetheless, Applicant did not disclose any information about his delinquent debts on his SCA, either under Section 26 or under Additional Comments, and failed to put the Government on notice about potential financial concerns. Applicant certified his SCA as true, accurate, and complete while aware that he had not disclosed his financial delinquencies. Because Applicant was unaware of the judgment, Department Counsel did not establish a deliberate falsification as to SOR ¶ 2.a. However, because Applicant was aware of the debts in SOR ¶¶ 1.a. and 1.b., Department Counsel did establish a deliberate falsification as to SOR ¶ 1.b. AG ¶ 16(a) applies.

In 2009, Applicant solicited a prostitute and was charged. He was fined and received a suspended sentence. AG ¶ 16(d) applies.

The Government established security concerns, thereby shifting the burden to Applicant to demonstrate mitigation. The following mitigating conditions under AG ¶ 17 are potentially applicable:

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

(c) the offense is so minor, or such 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.

There is no evidence that Applicant attempted prompt, good-faith efforts to correct these omissions following the submission of his SCA prior to being confronted during his April 2013 security interview. AG ¶ 17(a) does not apply.

Significant time has passed since Applicant's criminal conduct in 2009. AG ¶ 17(c) applies. Applicant mitigated the security concerns stemming from his 2009

⁹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

criminal conduct, but personal conduct security concerns remain as to the falsifications on his SCA.

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 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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant's financial problems resulted from living beyond his means and financial irresponsibility. He has not provided any documentary evidence of debt-resolution efforts or payments. He knowingly omitted delinquent debts on his SCA, and he has not provided evidence of reform and rehabilitation. As a result, the totality of 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 financial considerations and personal conduct 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.h.:	Against Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraphs 2.a.:	For Applicant

Subparagraph 2.b.

Against Applicant

Subparagraphs 2.c:

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.

Eric H. Borgstrom
Administrative Judge