



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



In the matter of:)
)
) ISCR Case No. 15-00736
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to mitigate personal conduct security concerns under Guideline E and financial considerations security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On January 24, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on May 13, 2014. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 9, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct under Guideline E and financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on September 29, 2015. He admitted four and denied two of the six allegations of personal conduct with detailed explanation. He admitted the two financial allegations under Guideline F with explanation. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 29, 2016.¹ Applicant received a complete file of relevant material (FORM) on February 10, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a reply to the FORM on February 26, 2016. I was assigned the case on May 5, 2016.

Procedural Issues

Applicant was advised in the FORM² that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as it was not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not comment on the admissibility of the PSI when he replied to the FORM. Applicant waived any objection to the admissibility of the PSI summary by not providing any comments on admissibility when responding to the FORM. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 62 years old. He received a bachelor's degree in 2012. He was a government civilian employee as a logistics management specialist for over 35 years, retiring in November 2013. He has been employed as an acquisition specialist for a defense contractor since December 2013. While serving as a government employee and since his retirement, he has been granted eligibility for access to classified information. He married in November 1973 and divorced in May 1978. He married again

¹ The FORM was incorrectly dated as January 29, 2015.

² The FORM lists four attachments, Item 1, the SOR and related documents; Item 2, the E-QIP; Item 3, a credit bureau report dated June 6, 2014; and Item 4, the PSI. However, in addition to the correctly numbered and named Items 1 and 2, the actual Items attached to the FORM are Item 3, the 2012 Chapter 7 bankruptcy documents filed by Applicant; Item 4, a 1998 Department of Navy Central Adjudication Facility (DON CAF) determination of Applicant's eligibility for access to classified information; and Item 5, the PSI of May 13, 2014. I added Applicant's response to the FORM and Department Counsel's endorsement of no objection as Item 6.

in October 1994 and divorced in January 2012. He has two adult children. (Item 2, e-QIP, dated September 9, 2015; Item 5, PSI, dated May 13, 2014)

The SOR alleges personal conduct security concerns for unauthorized use of a Government travel card (GTC) from July 2012 to July 2013 (SOR 1.a); that Applicant retired in November 2013 from his government civilian position in lieu of being fired for the misuse of the travel card (SOR 1.b); that Applicant used his Government charge card (GCC) for unauthorized personal charges in October 1994 (SOR 1.c); that Applicant was placed on administrative leave for three months for misusing his GCC (SOR 1.d); that Applicant misrepresented material facts on his security clearance application concerning the improper use of his GTC from July 2012 to July 2013 (SOR 1.e); and that Applicant misrepresented on his e-QIP the amount of his debt listed in his 2012 bankruptcy documents (SOR 1.f).

The SOR financial allegations are that Applicant filed a Chapter 7 bankruptcy in February 2012 with debts discharged in 2012 (SOR 2.a); as well as the misuse of the GTC and GCC as noted in SOR 1.a to SOR 1.d (SOR 2.b). Applicant admitted SOR personal conduct allegations 1.a to 1.d. He denied the two falsification allegations under SOR 1.e and 1.f. He admitted the financial allegation concerning filing a bankruptcy in 2012. Since SOR financial allegation 2.b was based on personal conduct allegations in SOR 1.a to 1.d. Applicant admitted SOR allegation 2.b.

Applicant admitted the unauthorized use of a GCC for personal purchases in July 2012 to July 2013. Applicant admits he had to voluntarily retire from his Government civilian position in November 2013 in lieu of being fired for the improper use of this GTC. (SOR 1.b) Applicant admitted to previously using his GCC for unauthorized purchases in 1994, to include for his wedding and honeymoon. He had retained the credit card when he transferred to a new command in 1993. He continued to use the charge card for personal purchases as he had done in the previous command. He did not know using the card for personal purchases was improper until after being so advised in his new command in 1994. Applicant admitted he was placed on administrative leave in 1994 for the improper use of the GCC. He never used it improperly again while working for this command. (SOR 1.d) He continued to work for this command until 2008 and he was eligible for access to classified information. (SOR 1.c) He voluntarily left this command in September 2008 for a position in another command.

In his response to the SOR, Applicant admitted using his GTC from July 2012 to July 2013 for unauthorized purchases in a new command. He again claimed that he believed at the time that the use of the card for personal reasons was proper. The travel card administrator knew how he was using the card and never told him to stop. He was only advised to be sure to pay the bill on time. He claims that he always paid the bill on time, but he presented no information to verify his claim of timely payment. He also used the card for personal purchases while employed previously by a different command. He reported that the unauthorized charges were not detected in an audit of his account, but that he reported the unauthorized charges to his supervisor after

learning from travel card training that use of the card for personal purchases was improper. (Item 1, Response to SOR, dated September 29, 2015)

Applicant, in his response to the SOR, denied misrepresenting material facts on his security clearance application concerning the improper use of his GTC in 2012/2013. During this timeframe, he reported that he used the travel card just like a regular credit card. The command travel card administrator knew how he was using the card and did not tell him the use was improper. He no longer has the travel card. (SOR 1.e) Applicant denied deliberately providing false information about the amount of debt in his 2012 bankruptcy action. He inadvertently did not include the amount of a second mortgage on his house in calculating the amount of his liability. It was not his intent to deliberately misrepresent the amount of the debt. (SOR 1.f)

Applicant's explanation of how he used his GTC and GCC has been consistent since the issue was first raised in 1994. He claims not to have known it was improper to use the Government-issued cards for private purchases until he received training in 2012. Once he learned about the improper use, he immediately stopped using the card for personal purchases.

Applicant's second wife left him in 2012. He was unable to pay all of his debts without his wife's income. His house was foreclosed satisfying his first mortgage. The second mortgagee did not receive any funds from the foreclosure, so the second mortgage creditor garnered Applicant's wages to cover the second mortgage. Applicant had mounting debt because he was without his wife's income and his wages were being garnished. He filed a Chapter 7 bankruptcy in February 2012, and his debts were discharged in November 2012. The total amount of liability in the bankruptcy was approximately \$127,000. (Item 3 at 6) In his e-QIP, Applicant listed debt of only \$30,000 in response to the bankruptcy question at Section 26 of the e-QIP. He inadvertently did not include the second mortgage in his calculation of the debt. He stated that he simply made a mistake with no intention to mislead or misrepresent the amount of his debt. (Response to SOR, dated September 29, 2015 at 1)

Applicant reports that he has no financial issues. He reestablished his credit after the 2012 bankruptcy. His debts are paid as agreed, and he is living within his means. He earned a college degree and has significant funds in savings. He had a difficult time financially when his wife left him, but he is no longer financially overextended. His current finances are excellent. (Item 6 at 1)

In his response to the FORM, Applicant noted that his finances are now sound. Since his wife left him in 2010 and their divorce and bankruptcy discharge in 2012, he rented a house and paid his lease on time. He purchased a car and his car payments are timely. He saved over \$8,500, received his college degree, and is not financially overextended. He pointed out again that he filed the Chapter 7 bankruptcy in 2012 because his pay was being garnished for over \$1,700 month to pay the second mortgage on his foreclosed house. The erroneous amount of debt in the bankruptcy he listed on his e-QIP was an honest mistake. He had no reason to mislead adjudicators

concerning the amount of debt. He also noted that he has held a security clearance, including access to top secret and sensitive compartmented information, without issue for over 43 years.

Applicant again reiterated in response to the FORM that he believed that he could use the GTC as if it were a regular credit card. The card administrator for the command knew how he was using the card, and he was never told he could not use the card as a regular credit card. He did not realize he could not use the card in this manner until he took the travel card training in 2013. He always paid the balance owed on the card on time. When he realized his use of the card was not correct, he stopped using the card and notified his supervisor. He accepts his improper use of the card. It has cost him his Government career.

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 must be considered 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

Analysis

Personal Conduct

Personal conduct is a security concern because 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant admitted he made personal unauthorized charges for his wedding and honeymoon on his Government-issued charge card in 1994. In December 1994, he was placed on administrative leave for over two months for his misuse of the charge card. Applicant admitted he again used a GTC from July 2012 until July 2013 for unauthorized personal purchases. He retired from Government service in November 2013 rather than being terminated because of his improper charges on his GTC. The charging of personal purchases to the charge and travel cards are in violation of the rules concerning the proper charges to the cards. These actions are security concerns and raise the following Personal Conduct Disqualifying Conditions under AG ¶ 16:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, considered as a whole, supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other characteristics indicating that the person may not properly safeguard protected information); 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 available information supports a whole-person assessment of questionable judgement,

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:

(3) a pattern of dishonesty or rules violation;

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

Applicant potentially misrepresented material facts on his January 24, 2014 security clearance application when he provided his explanation for why he used the GCC for personal and not Government purchases. Applicant also misrepresented material facts on the same security clearance application when he listed his liabilities in his Chapter 7 bankruptcy as only \$30,000 when in fact his liability was in excess of \$127,000. The misrepresentation of material facts raises the following Personal Conduct Disqualifying Conditions under AG ¶ 16:

(a) Deliberate omission, concealment, or falsification of relevant facts from any personal 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) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

I considered the following mitigating conditions under AG ¶ 17 for all of the disqualifying conditions: under personal conduct:

(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 by 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 circumstance 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 untrustworthiness, unreliable or other inappropriate behavior, and such behavior is unlikely to recur; and

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

There are two types of personal conduct security concerns raised by Applicant's conduct: conduct that shows questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations; and second the failure to provide full, complete, and candid answers during the security clearance process.

Applicant knew that he could not use the GTC and GCC for personal purchases. He received training on the use of the card when it was issued to him in 1993. It is commonly known by Government employees that the GCC cannot be used for personal purposes. It can be used only for Government required expenses. Applicant admits that he misused his GCC in 1993/1994 to purchase personal items to include paying for his marriage and honeymoon. He was placed on administrative leave for over two months for this unauthorized use of the charge card. From this time forward, there is no question that Applicant knew or should have known that the use of a GCC or GTC for personal purchases was improper. Applicant again used the card for personal purposes from July 2012 to July 2013. At this time, Applicant was in a tight financial circumstance because he lost the benefits of his wife's income when she left him in 2012. Even though he paid the balance on the card monthly, he was using it for improper purposes. He was terminated in November 2013 for misusing the card. I find against Applicant for misconduct under Guidelines E. He knew he could not use the card for personal purposes but he used it knowingly and purposely. He knew the use of the card for personal purchases was improper and contrary to rules and regulations. He was suspended from work for over two months for the improper charges to the Government credit card. SOR allegations 1.a to 1.d are decided against Applicant.

Applicant denied intentional falsification in explaining that he thought the GTC could be used for personal use. He claims he did not know it was improper to use the card for personal purposes until he received training in July 2013. As noted above, Applicant knew or should have known the use of the GTC for personal purchases was improper in July 2012 since he had previously been disciplined for the using the card for personal purchases. His statement that he did not know about the proper use of the card until he received training in July 2013 is not credible. Also not credible is Applicant's claim that the card administrator knew of his use of the card and permitted him to continue to use the card improperly. He presented no statement from the command credit card administrator to corroborate his claim. It is not reasonable to believe a program administrator would knowingly permit improper use of the card since he himself could be disciplined under the circumstances. However, it is conceivable that Applicant inadvertently listed the wrong amount of the bankruptcy on his e-QIP. I find against Applicant on SOR 1.e but for Applicant on SOR 1.f.

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Applicant's improper use of the GTC and the filing of a Chapter 7 bankruptcy in February 2012 is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under 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;
- (b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

Applicant's wife left him in 2012 with two children and the loss of her income. He was unable to meet the requirements of his debts and mortgage. His house was foreclosed and the primary mortgage was satisfied. There were insufficient funds to satisfy the second mortgagee so that mortgage holder garnished his wages. He filed a Chapter 7 bankruptcy to permit him to care for his children. Bankruptcy is a legal and permissible means of resolving debt. Applicant's financial situation from his wife's departure was correctly resolved by bankruptcy discharge. I find for Applicant on SOR 2.a. SOR allegation 2.b is held against Applicant for the same reasons noted in the discussion of the personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant knew that the use of Government charge and travel cards for personal purchases was improper and contrary to the rules and regulation for the use of the cards. He used his card improperly in 1994 and was suspended for three months. He used his travel card again for personal purchases in 2012 and was terminated from Government employment. His personal conduct shows questionable judgment, dishonesty, and unwillingness to comply with rules and regulations thereby questioning his reliability, trustworthiness, and ability to

safeguard protected and classified information. Even though Applicant has been eligible for access to classified information for over 43 years without a known security violation, his violation of charge card rules and regulations is sufficient to raise doubts about his ability to continue to protect classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and his personal conduct.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a -1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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 grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge