



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-00970
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/21/2017

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 August 22, 2014. On August 8, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June

Applicant answered the SOR on October 17, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 14, 2016, and sent a complete copy of the file of relevant material (FORM) to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 28, 2016, and submitted Applicant's Exhibits (AX) A through C. The case was assigned to me on July 1, 2017.

Findings of Fact²

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d. He did not admit or deny the allegation in SOR ¶ 2.a, but he asserted in his answer to SOR ¶¶ 1.a-1.d that there was no SOR ¶ 2.a. I have treated his lack of response as a denial, recognizing that he may not have received the page of the SOR containing SOR ¶ 2.a. His admissions are incorporated in my findings of fact.

Applicant is a 59-year-old pipefitter employed by a defense contractor since September 2014. (Item 6 at 5.) He worked as a pipefitter for various non-federal employers from June 1980 until he was hired for his current position. He had several short periods of unemployment between jobs and was unemployed from May 2013 to March 2014 due to a work-related injury. (Item 6 at 5.) He has never held a security clearance.

Applicant served on active duty in the U.S. Air Force from May 1976 to April 1978. He received an associate's degree from a technical college in June 1985. He married in September 1992. He and his wife have two sons, ages 17 and 20. He has a 32-year-old daughter from a previous relationship.

Applicant's credit bureau reports (CBRs) from September 2014, July 2015, and August 2016 reflect the four delinquent debts alleged in the SOR. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: past-due mortgage loan payments. Applicant obtained a mortgage loan for \$291,000 in February 2008. In August 2009, he applied for a loan modification, which was denied. He continued to make payments until May 2013, when he lost his job due to a work-related injury, and he tried again to negotiate a loan modification. In September 2013, he filed a *pro se* Chapter 7 bankruptcy petition. In a personal subject interview (PSI) in October 2014, Applicant told the investigator that the mortgage loan was the only debt included in the petition. (Item 6 at 7.) The petition was dismissed in October 2013 for failure to file required documents. (Item 10.) In May 2014, the lender foreclosed on the home and purchased it at the foreclosure sale. In September 2014,

8, 2017. My decision is based on the guidelines in SEAD 4, referred to in this decision as "AG." The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant filed a lawsuit against the lender, claiming that it failed to timely act on the application for a loan modification and failed to comply with its obligations under the Home Affordable Modification Program (HAMP). (Item 7.) In January 2016, the parties settled the lawsuit under an agreement that allowed Applicant to purchase the home for \$140,000. Using funds from his father-in-law, Applicant purchased the home and received a quit-claim deed in March 2016. (AX A, B, and C.) The debt is resolved.

SOR ¶ 1.b: overdraft on checking account charged off for \$923 in 2012. Applicant attributed this debt to one of his periods of unemployment. The last activity on this account was in April 2012. (Item 8 at 3.) The debt is not resolved.

SOR ¶ 1.c: credit-card account charged off for \$553. This account was reflected as current in the September 2014 CBR. (Item 11 at 5.) It was reflect as past due for \$553 in the July 2015 CBR (Item 9 at 2.) In his answer to the SOR, Applicant stated that he sent the collection agency \$400 and was told to not send any money to the original creditor until he received “some paperwork,” but he did not receive anything further. The August 2016 CBR reflected that the debt was charged off, the loan was sold to another lender, and the debt was paid in May 2016. (Item 8 at 3.) The debt is resolved.

SOR ¶ 1.d: telecommunications bill placed for collection of \$838. In the October 2014 PSI and his answer to the SOR, Applicant stated that he switched cellphone providers, and the new provider promised to cancel the contract with the previous provider but failed to do so. He did not state when he changed providers. He told the investigator that he continued to receive bills from the previous provider (the creditor alleged in the SOR) for the monthly minimum fee, and that he contacted the previous provider and disputed the monthly fees. The September 2014 CBR states, “Account closed by consumer.” It reflects that the last activity on the account was in November 2012 and the balance due was \$838. (Item 11 at 4.) The CBR does not indicate whether the \$838 was for service before or after November 2012. In the PSI, Applicant told the security investigator that he did not intend to pay the bill. (Item 6 at 7.) He has not filed disputes with any of the credit bureaus. The debt is not resolved.

During the October 2014 PSI, Applicant told the security investigator that he did not disclose the delinquent debts alleged in SOR ¶¶ 1.b-1.d in his SCA because he did not remember them. (Item 6 at 7.) He admitted that he had not made any payments on the mortgage loan alleged in SOR ¶ 1.a since May 2013. (Item 6 at 5.) He told the investigator that he did not disclose his bankruptcy petition in his SCA because it was dismissed. (Item 6 at 6.)

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 adjudicative guidelines. 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 security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 evidence in the FORM establish that the debts alleged in SOR ¶¶ 1.a and 1.c have been resolved. The debts alleged in SOR ¶¶ 1.b and 1.d are not resolved and are sufficient to raise the following disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially relevant:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to 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.

AG ¶¶ 20(a), 20(b) and 20(d) are established for the debts alleged in SOR ¶ 1.a and 1.c. However, these mitigating conditions are not established for the debts alleged in SOR ¶¶ 1.b and 1.d, which are unresolved, recent, and were not incurred under circumstances making them unlikely to recur. Applicant's unemployment was a condition beyond his control, but he has not acted responsibly regarding the debts in SOR ¶¶ 1.b and 1.d.

AG ¶ 20(e) is not established for the debt alleged in SOR ¶ 1.d. While Applicant has denied this debt, he has not submitted documentary evidence showing that he was charged for service after he closed the cellphone account.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a-1.d. The SOR does not allege his failure to disclose his Chapter 7 bankruptcy petition. 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

Applicant's explanation for not disclosing his delinquent debts in his SCA is not plausible or credible. He admitted in the PSI that he had not made any payments on his mortgage loan since May 2013. The amount of detail he was able to provide in the PSI regarding the debts in SOR ¶¶ 1.b-1.d undercuts his claim that he forgot about them. His failure to disclose his delinquent debts in his SCA establishes the following disqualifying condition in AG ¶ 16(a):

[D]eliberate 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

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;

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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established. Applicant made no effort to correct his omissions from his SCA until he was confronted with the evidence during the PSI.

AG ¶ 17(c) is not established. Applicant's conduct was arguably infrequent, since only one falsification occurred, but it was not "minor," because falsifying an SCA undermines the integrity of the security clearance process. It did not occur under unique circumstances.

AG ¶ 17(e) is established. Applicant made full disclosure of his delinquent debts in the PSI and in his answer to the SOR.

Whole-Person Concept

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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.

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 and 1.c: For Applicant

Subparagraphs 1.b and 1.d: Against Applicant

Paragraph 2, Guideline E (Personal Conduct):

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge