



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



In the matter of:)	
)	
)	ISCR Case No. 15-02265
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Kataukas, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2016

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 November 9, 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 December 18, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on January 29, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on February 8, 2016. As of August 3, 2016, he had not responded. The case was assigned to me on August 16, 2016.

Evidentiary Rulings

The Government exhibits identified as Items 5, 7, 8, and 11 are admitted in evidence. Items 6, 9, and 10 consist of reports of investigation (ROIs) prepared by the Office of Personnel Management (OPM) during Applicant's background investigation. Section E3.1.20 of Enclosure 3 of the Directive states that "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." There was no authenticating witness so the documents are inadmissible absent a waiver by Applicant. Department Counsel informed Applicant of his right to object to Item 6, which is an ROI of an interview conducted of Applicant. Applicant did not respond to the FORM, which I consider a waiver of his right to object to the document. Item 6 is admitted in evidence. Department Counsel did not inform Applicant of his right to object to Items 9 and 10, which are ROIs of criminal records and motor vehicles records. There was no waiver to the admissibility of Items 9 and 10. They are not admitted in evidence.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since May 2014. He is applying for a security clearance for the first time. He attended college for a period, but he did not earn a degree. He has never married. He has an 11-year-old child.¹

Applicant has an extensive record of criminal arrests and motor vehicle violations. He was arrested or cited 18 times between 2004 and June 2013 for: trespassing on church or school property (August 2004); driving under revocation or suspension (January 2005; April 2005; July 2005; August 2005; August 2009; June 2011); possession of marijuana (June 2005); failure to appear in court or contempt of court (November 2005; March 2008; June 2009; October 2009; July 2010; October 2010); reckless driving and speeding (June 2008); driving under suspension and possession of marijuana (February 2009); driving under revocation or suspension and receiving stolen property (October 2010); and carrying a concealed weapon (June 2013). A number of the arrests and citations resulted in convictions and fines. Some of the charges were dismissed.²

The SOR alleges nine delinquent debts totaling about \$8,588. Applicant admitted owing all the debts. The largest debt (\$4,527) is for child support arrearages. Applicant stated that his financial problems resulted from having to pay child support and his many fines. There is no evidence that any of the debts have been paid. However, it appears that his child support and arrearages are being garnished from his pay. The

¹ Items 5, 6.

² Items 4-6, 11.

September 2014 credit reports lists a balance of \$4,784, and the February 2015 credit report lists the balance as \$4,527.³

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2014. He reported his criminal record and his financial problems. He discussed the same matters with the OPM investigator during his background investigation in September 2014.⁴

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.

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

³ Items 4-8.

⁴ Items 5, 6.

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 was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant stated that his financial problems resulted from having to pay child support and his many fines. There is no evidence that any of the debts have been paid. However, his child support arrearages are being garnished from his pay. That is insufficient to mitigate the concerns about Applicant's finances.

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 conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, 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;

(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 judgment, 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 rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such

as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's criminal acts and motor vehicle violations reflect questionable judgment and an unwillingness to comply with rules and regulations. They also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c), 16(d), and 16(e) are applicable.

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

(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; and

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

Applicant receives credit for being forthcoming about his record. AG ¶ 17(c) is applicable. However, his record of disregarding the law is too long and too recent to be mitigated.

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 E and F in my whole-person analysis.

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.i:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.r:	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 a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge