



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-03911
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

0/05/2017

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 April 2, 2014. On January 17, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. 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. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on March 22, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written

case on May 4, 2016. On May 10, 2016, a complete copy of the file of relevant material (FORM) was sent 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 May 16, 2016, and did not respond.¹ The case was assigned to me on March 30, 2017.

Findings of Fact²

In his answer to the SOR, Applicant admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old supervisor who has been employed by defense contractors since January 2011. He received a security clearance in December 2003.

Applicant did not complete high school. He has never married, but he has three children, ages 18, 11, and 6. He and the mother of his children live in the same house for the sake of the children, but they do not have a spouse-like relationship.

In 2006, Applicant obtained a \$536,000 adjustable-rate loan to purchase a home. When the interest rate adjusted, his monthly payments increased from \$1,780 to \$3,700, causing him to fall behind on credit-card payments and other debts. He refinanced the loan in 2011 and reduced his monthly payments to about \$1,480. (Item 3.) The payments are current and are not alleged in the SOR, but his payments on a second mortgage loan were 180 days past due in the amount of about \$32,000 when he submitted his SCA. The delinquent second mortgage payments are alleged in SOR ¶ 1.a, and he has numerous delinquent credit-card and installment accounts alleged in SOR ¶¶ 1.b-1.l, 1.n, and 1.o. The debt alleged in SOR ¶ 1.m is a delinquent medical bill for \$1,103. Applicant has not submitted any documentary evidence of payments, payment agreements, or other resolution of the debts alleged in the SOR.

When Applicant submitted his SCA, an April 2014 CBR reflected 15 delinquent debts totaling about \$169,000, but he answered "No" to all questions asking about financial delinquencies during the preceding seven years, and he did not disclose any of the delinquent debts alleged in the SOR. During a personal subject interview (PSI) in May 2014, he told the investigator that he did not disclose the debts because he did not know about some of them and he thought he was required to disclose only federal

¹ The FORM included Item 3, a summary of a two personal subject interviews (PSIs) conducted on May 21, 2014, and June 16, 2014, which were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summaries; make any corrections, additions, deletions or updates; or object to consideration of the PSIs on the ground that the summaries were not authenticated. I conclude that he waived any objections to the PSI summaries by failing to respond to the FORM. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

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

debts. (Item 3 at 13.) In his answer to SOR, he admitted that he falsified his SCA. He explained: "I have no excuse. I responded to the question hoping that the delinquency involving all accounts had been prior to seven years. It had been near 5 years at the time of investigation." While some of the accounts alleged in the SOR had been opened more than seven years preceding Applicant's SCA, they all became delinquent in May 2009 or later, within five years of the submission of his SCA.

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 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 in his answer to the SOR and the documentary evidence in the FORM 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. The fluctuation in the interest rate on his mortgage loan, the turbulence in the housing market, and the medical bill alleged in SOR ¶ 1.m may have been due to conditions beyond his control, but he has not acted responsibly. He has presented no evidence of counseling, payments, payment agreements, or grounds for disputing any of the debts, even though he has been employed since January 2011.

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" In his answer to the SOR, Applicant admitted falsifying his SCA. He offered inconsistent explanations for failing to disclose his delinquent debts: that he did not know about some of them, that he thought the questions pertained only to federal debts, and that he hoped that they were outside the seven-year window for the financial questions in the SCA. His explanations are inconsistent, implausible, and unpersuasive.

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;

AG ¶ 17(a) is not established, because Applicant did not disclose his delinquent debts until he was confronted with the evidence by a security investigator. AG ¶ 17(c) also is not established. Applicant's 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.) It was arguably "infrequent," but it did not occur 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). I have considered that Applicant has held a security clearance for many years and has acknowledged his culpability for the conduct in the SOR. 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 lack of candor in

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.o:	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 eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge