



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



In the matter of:)
)
) ISCR Case No. 15-03937
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2017

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (financial considerations) and E (personal conduct). Clearance is denied.

Statement of the Case

On June 26, 2013, Applicant submitted a Questionnaire for National Security Positions (SF-86). On January 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and E and detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred his case to

an administrative judge to determine whether his clearance should be granted or denied.

On February 9, 2016, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 30, 2016, was provided to him by letter dated March 31, 2016. Applicant received the FORM on April 7, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the 30-day period. On February 10, 2017, the case was assigned to me.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions are accepted as findings of fact.

Background Information¹

Applicant is a 61-year-old laboratory technician employed by a defense contractor since April 2013. (Item 3) He graduated from high school in 1974. (Item 4). He served in the U.S. Army from 1975 to 1995, and was honorably discharged. (Items 3, 4) Applicant married in 1982, and has four children. (Items 3, 4) He has held a security clearance since 1975. (Items 3, 4)

Financial Considerations

Applicant's SOR lists nine delinquent debts totaling approximately \$38,509, ranging from a \$634 charged-off credit card account to a 2009 judgment for \$15,126. One of those debts is a mortgage with a past-due amount of \$9,262 on a \$221,373 balance. These debts are substantiated by Applicant's admissions, his July 2013 Office of Personnel Management Personal Subject Interview (OPM PSI) and his July 2013, April 2015, and March 2016 credit reports. (SOR ¶¶ 1.a – 1.i; Items 4, 5, 6, 7)

Applicant attributes his financial difficulties to loss of income without providing specific details. He points to the timeframe of 2008 and 2009 when he incurred most of these debts. (Item 4) Applicant has not held a full-time job since 2006. (Item 3) Since 2013, he has also worked part-time for a health-based cleaning system company that his wife owns. (Item 4) The FORM does not elaborate whether Applicant is unable or unwilling to work full-time.

In his SOR answer, Applicant stated that his wife was diagnosed with cancer in 2012 and at that time, he was the sole home care provider for her as well as their teenage son and daughter. (Item 2) He did not; however, provide any specific

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

information as to the extent to which his caregiver status or his wife's illness impacted their past or present financial situation.

The file lacks any evidence that Applicant paid, arranged to pay, settled, compromised, disputed, or otherwise resolved any of the delinquent SOR accounts. He did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM)

Personal Conduct

When Applicant completed his June 2013 SF-86, he failed to list required information regarding past debts as well as a 1993 driving while intoxicated (DWI) arrest. (Items 2, 3) After being confronted during his July 2013 OPM PSI, Applicant acknowledged five of the debts alleged in the SOR and claimed they had been previously resolved except for SOR ¶ 1.b, which he had been paying but still had a balance due. (Item 4) However, in his SOR answer, Applicant admitted that those same debts remained delinquent.

During the same OPM PSI, Applicant further claimed that he did not list his delinquent accounts on his SF-86 because he had not recently reviewed his credit report and did not know the details regarding his accounts. (Item 4) In his SOR answer, he admitted providing false information. (Item 2)

Furthermore, during his OPM PSI regarding his past arrest for DWI, he "agreed" that he had never been arrested for alcohol or drugs. (Item 4) Yet in his SOR answer, he admitted his 1993 DWI, but explained that he believed that the DWI was not a public record based on the disposition of probation before judgment that he received. (Item 2) He further added in his SOR answer without referring to the financial or arrest falsification that he did not intend to falsify any material facts on his SF-86 and that he could not remember some of the events from his past due to "stressful times," including the impact of his wife's 2012 cancer diagnosis on their family. (Item 4)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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

applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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

Financial Considerations/Personal Conduct

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR or the FORM. Applicant did not show that he had paid or otherwise resolved any of his delinquent debt.

The Government also met its burden of production in support of the allegation under personal conduct. The facts established raise a security concern addressed in relevant part, at 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.

More specifically, available information requires application of the disqualifying condition at AG ¶ 16(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*).

Applicant failed to list his debts and DWI charge as required on his SF-86. None of the mitigating conditions in AG ¶ 17 apply. Applicant does receive some credit for later acknowledging his debts after being confronted during his OPM PSI and admitting his debts and DWI in his SOR answer. However, this fact and his rather qualified response is not enough to overcome his willful misrepresentation of his true financial

situation or past personal conduct.² He knowingly and deliberately chose not to disclose complete and accurate information regarding his financial history and personal conduct.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guidelines F and E, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Similarly, Applicant was no neophyte to the security clearance process having held a security clearance since 1975. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against the Applicant.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

²The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge