



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



In the matter of:)
)
) ISCR Case No. 15-04216
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate both the personal conduct and financial considerations security concerns under Guidelines E and F, respectively. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 17, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on February 24, 2016, and elected to have his case decided on the written record. On March 14, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and

it was received on March 31, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's documents are identified as Items 1 through 8. Applicant provided documents within the time period. Applicant's documents were marked as AE A through F. Applicant did not object to the Government's evidence, but did provide corrections in AE A, regarding biographical information. Both the Government's and Applicant's documents are admitted into evidence. The case was assigned to me on September 20, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d, 2.a and 2.c. He denied the allegations in SOR ¶¶ 1.e through 1.h, 2.b, and 2.d through 2.g. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He never married. He has an 18-year-old child. He earned an associate's degree in 1995. He has been employed with his present employer, a federal contractor, since January 2013. He has been consistently employed by federal contractors since January 2007, except for two periods of unemployment from October 2006 to December 2006, and from October 2004 to February 2005.¹

Applicant completed his security clearance application (SCA) in March 2014. In June 2014 and July 2014 he was interviewed by a government investigator as part of his background investigation. He was sent interrogatories in 2015 asking him to verify if the summaries of his personal subject interviews were correct. He responded to the interrogatories in December 2015, verifying their accuracy. The debts alleged in the SOR are supported by credit reports from March 2014, March 2015, and December 2015.²

In February 2012, Applicant traveled for five days to a South American country for tourism. In May 2013, November 2013, and February 2014, Applicant traveled, each time for five days, to a Caribbean country for tourism.³

The SOR alleges unpaid medical debts in ¶ 1.a for \$594; 1.b for \$714; and 1.d for \$801. On his March 2014 SCA, with regard to each of these debts, Applicant stated: "No action has been taken on this debt at this time. I'm [not] sure whether this debt is for services provided, a mistake, or not covered by insurance." During his interview with a government investigator in June 2014, he indicated these debts were incurred in 2011, when he did not have medical insurance. He told the investigator that he did not know what he intended to do about the debts. In his February 2016 answer to the SOR,

¹ Item 2.

² Items 3, 5, 6, 7.

³ Item 2.

Applicant admitted he owed these debts. In response to each debt he wrote: "I will work out a payment plan for this medical debt." In his response to the FORM, Applicant stated: "For the medical items, I am currently and will continue to work to resolve these debts."⁴ He has not provided proof he has paid or resolved these debts.

During his 2014 interview, Applicant acknowledged he had a delinquent mortgage on rental property he owned (SOR ¶ 1.c \$81,224). He indicated that for a period of time he did not have a tenant and later when he did, the rent did not cover the mortgage and other fees associated with the property. He estimated he did not pay the mortgage for three years. He attempted to renegotiate the mortgage, obtain a modification, and enter into a short sale for the property with no success. In his answer to the SOR, he stated that the property was under contract for sale. In his response to the FORM, he indicated the property was sold, and he does not owe a balance. He provided a document supporting his assertion.⁵

Applicant denied the debts in SOR ¶ 1.e through 1.h (amounts alleged respectively are \$250, \$100, \$55 and \$55). These accounts were in collection. During his 2014 interview, he admitted he owed these debts for parking fines, some that were doubled because he failed to timely pay them. He indicated he paid the debts. A March 2014 credit report listed the debts as being in collection. Credit reports from March 2015 and December 2015 did not list the debts. Applicant provided a copy of his record from his state's department of motor vehicle, showing he does not owe any money. The unpaid alleged tickets were issued in a jurisdiction different from the state that issued his driver's license.⁶

Applicant was arrested in July 2011 and charged with driving under the influence of alcohol (DUI), Refusal 1st, driving on a suspended license, and drive right side of highway. Applicant admitted this allegation in SOR ¶ 2.a. Applicant explained during his interview that he did not disclose on his SCA that his license was suspended because the fine was less than \$250. He admitted he was arrested and could not recall if he was given a citation that same night, but he was informed he had an outstanding ticket. He was given a field sobriety test, which he passed. He declined to take a breathalyzer. He indicated that about a month later he went to court and showed he had paid the overdue fine. He indicated he did not know he was charged with DUI. Because he is diabetic, he does not drink alcohol often. He told the investigator that he did not have other information about this incident. He explained in his response to the FORM that he did not disclose this arrest on his SCA because:

I either misinterpreted the questions or did not provide a response because the way the question was worded a response was not required. For example section 22 under police record. The question is in the past 7

⁴ AE A.

⁵ AE F.

⁶ Items 3, 5, ,6, 7; AE A, B.

years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not check if all citations involve traffic infractions where the fine was less than \$300.00 and did not include alcohol or drugs). Since there is only one place to check for all questions under this section I'm assuming do not check means for all of them. Also since the fine was only \$181.00 and there wasn't any alcohol or drugs involved I checked no for this question.⁷

The DUI and the other charges were nolle prosequi, except the charge for refusing to take a breathalyzer. Applicant was found guilty of that misdemeanor offense and was fined \$181, which he paid. I find Applicant's explanation for failing to disclose this arrest plausible.⁸

SOR ¶ 2.b alleges that in March 2011 Applicant was terminated from employment because of a discrepancy in a laptop computer inventory. Applicant denied he was terminated, but stated he was "informed that my contract would not be renewed."⁹ He explained that when he started working for this employer there was an ongoing investigation into missing laptops. Six or seven months later he was tasked with the responsibility of assigning laptops. There was no procedure in place. Sometime later his supervisor took inventory and discovered additional laptops were unaccounted for. After the inventory his supervisor spoke to him about the procedure for assigning and keeping track of laptops. Applicant told the government investigator he could not recall what his supervisor said to him. Shortly after the inventory, Applicant's contract was terminated. He told the investigator he was not told why his contract was terminated, and he did not recall receiving any disciplinary action. Applicant indicated he did not disclose this information because he did not know he was terminated, but only thought his contract was not renewed.¹⁰ There is no independent evidence that explains what the reason was for Applicant's contract termination.

In August 2008, Applicant was reprimanded while employed with a federal contractor, for unauthorized personal internet usage (SOR ¶ 2.c). Applicant admitted this allegation. During his background interview, he stated that he may have inadvertently left the internet open after having used it for business purposes, but he did not believe he was on the internet for personal use for three hours.¹¹

In October 2006, Applicant was terminated from employment for sleeping during his shift (SOR ¶ 2.d). Applicant admitted in his answer to the SOR that he was terminated from employment for sleeping, but disputed that he was sleeping on the job.

⁷ AE A.

⁸ Item 4.

⁹ Item 1.

¹⁰ Item 3.

¹¹ Item 3.

During his background interview, Applicant explained that he was working the night shift at his job, and his supervisor thought he was sleeping on the job, so he was terminated. On his SCA, Applicant disclosed the reason he left this job was because: “[l]et go from the contract.”¹² I find Applicant deliberately provided misleading information regarding his termination (SOR ¶ 2.g).

In September 2003, Applicant was terminated from employment for tardiness (SOR ¶ 2.e). During his background interview, Applicant indicated he did not believe he was late to work. He thinks his attendance was incorrectly reported. He indicated in his answer to the SOR that he was terminated from employment, but the reason was not due to tardiness. He believes the person who was making the report was angry with him so this person made inaccurate and fraudulent allegations against him.¹³

Applicant indicated in his response to the FORM that he has received several awards. He provided a certificate of appreciation from 1997 and another exemplary performance award that is undated. He also indicated that he has received several cash awards for his performance over the years.¹⁴

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 are 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹² Items 2, 3.

¹³ Items 1, 3

¹⁴ AE A, C, D, E.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁵

¹⁵ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's mortgage loan became delinquent sometime in 2011. He had unpaid parking tickets that were sent to a collection agency. He has delinquent medical bills from 2011 that are unpaid or resolved. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 failed to pay his mortgage loan for several years until it was finally resolved through a settlement agreement. He failed to pay parking tickets owed from 2012, until the fines were doubled and sent to a collection agency. They are no longer on his credit report, so it appears they have been paid sometime in late 2014. He admitted he owed the three medical debts from 2011 when he did not have medical insurance. Despite repeated promises to resolve the medical debts, he has not. Applicant did not present evidence that his conduct occurred under circumstances that are unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant did not provide evidence to show his financial problems were largely beyond his control, and he acted responsibly under the circumstances. Applicant was financially able to take three vacations to foreign countries, but has failed to pay his

medical bills owed from 2011. His mortgage was delinquent for three years, despite having a tenant for part of the time. AG ¶ 20(b) does not apply.

There is no evidence Applicant has received financial counseling. He has resolved his mortgage debt and the delinquent parking tickets, but failed to resolve the medical bills. There are not yet clear indications that his financial issues are being resolved or under control. AG ¶ 20(c) does not apply. Applicant settled his delinquent mortgage loan, presumably through a short sale. He paid his parking tickets, but not until after they were sent to a collection agency. His conduct does not constitute a good-faith effort to pay overdue creditors. I find AG ¶ 20(d) does not apply, but acknowledge these debts are satisfied.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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. I find the following potentially applicable:

(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;

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

There is insufficient evidence to conclude Applicant deliberately failed to disclose on his SCA that he had been issued a summons, citation, or ticket to appear in a criminal proceeding; arrested by any police officer or charged, convicted, or sentenced for a crime in any court; or ever charged with an offense involving alcohol or drugs. Applicant's explanation for why he did not disclose his July 2011 arrest on his SCA was because he did not believe the charge involved alcohol or drugs and the fine was under \$300 is credible. I find he refuted the allegation in SOR ¶ 2.f, regarding the falsification allegation. However, I considered that he was arrested and charged with DUI, Refusal 1st, driving on a suspended license, and drive right side of highway. Applicant was found guilty of the misdemeanor for his breathalyzer refusal. (SOR ¶ 2.a) I find AG ¶¶ 16(c) and 16(e) apply.

I find there is insufficient evidence to conclude Applicant was terminated from employment in March 2011 due to his conduct. Applicant disputes he was terminated, and there is no independent evidence to support the allegation in SOR ¶ 2.b. There is sufficient evidence to conclude Applicant was terminated from his employment in October 2006 for sleeping during his shift, as alleged in SOR ¶ 2.d. He was aware he was terminated and deliberately provided false or misleading information on his SCA, as alleged in SOR ¶ 2.g.¹⁶ AG ¶ 16(a) applies.

Applicant was reprimanded by an employer for unauthorized use of the internet in 2008. He was terminated from his job in 2003 for tardiness. AG ¶¶ 16(c) and 16(e) apply.

The guideline also includes conditions that could mitigate security concerns arising from personal. The following mitigating conditions under AG ¶ 17 are potentially applicable:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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
- (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.

There is insufficient evidence to conclude that Applicant made good-faith efforts to correct his falsification before being confronted with the facts. AG ¶ 17(a) does not apply. Applicant has a history of inappropriate conduct at work that has led to being

¹⁶ Both SOR ¶¶ 2.b and 2.d were alleged under ¶ 2.g. I have only considered the falsification regarding the ¶ 2.d allegation.

reprimanded or terminated in 2003, 2006, and 2008. He was arrested in 2011 and found guilty of a misdemeanor. Applicant's behavior raises questions about his reliability, trustworthiness and good judgment. There is insufficient evidence to apply AG ¶¶ 17(c) or 17(d).

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 the 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. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 42-year-old man who has been steadily employed except for two periods in 2006, and a part of 2005 and 2004. He has resolved some of his delinquent debts, but despite repeated promises to pay his medical bills, he has not. He did not pay his parking fines until after they were sent to a collection agency. He has a history of problems at work that led to a reprimand and termination. He deliberately was misleading when he completed his SCA regarding his termination from a job. I considered the information Applicant provided regarding awards he received in the past; however, that information does not outweigh his pattern of misconduct and failure to resolve financial obligations. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under guideline F, financial considerations and guideline E, 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge