



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-04853
)
Applicant for Security Clearance)

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/21/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant presented sufficient information to mitigate financial considerations security concerns, but he did not mitigate personal conduct security concerns.

Statement of the Case

On March 9, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On January 7, 2015, a security investigator from the Office of Personnel Management (OPM) interviewed Applicant. After receiving the results of the OPM interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. The DOD issued to Applicant a Statement of Reasons (SOR), dated May 23, 2016, detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 29, 2016. He admitted three and denied five of the financial allegations of delinquent debt. He admitted the five allegations of personal conduct based on misconduct. Department Counsel was prepared to proceed on August 5, 2016. The case was first assigned to another administrative judge, and then to me on October 19, 2016. DOD issued a notice of hearing on November 14, 2016, for a hearing on January 24, 2017. Applicant was stationed overseas and he would be returning to the United States at that time. I convened the hearing as scheduled. The Government offered 15 exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 15. Applicant testified and submitted 20 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through T. I kept the record open for Applicant to submit additional documents. Applicant timely submitted three additional documents that I marked and admitted into the record as AX U, AX V, and AX W. I received the transcript of the hearing (Tr.) on February 2, 2017.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 35 years old. He received a general education diploma (GED) in 1997. He enlisted in the Army in 1999, and was discharged before completing his enlistment with a general discharge under honorable conditions in 2001. He retains eligibility for access to classified information that he received on active duty. Applicant married in 2014 and has two children. His wife and children live overseas with him. Applicant has worked in telecommunications support, mainly overseas, for the U.S. military on various contracts since 2004. (Tr. 7-9, 22-24; GX 1, e-QIP dated March 9, 2013; GX 2, Personal Security Interview, dated January 7, 2015)

The SOR alleges, and credit reports (GX 3, dated March 14, 2013; GX 4, dated December 10, 2014; GX 5, dated December 28, 2015; and GX 6, dated August 3, 2016) confirm the following delinquent debts for Applicant: an Internal Revenue Service (IRS) tax lien for tax year 2008 for \$6,164 (SOR 1.a); an IRS tax lien for tax year 2007 for \$34,450 (SOR 1.b); a state tax debt for tax years 2007 and 2008 for \$8,921 (SOR 1.c); aa telephone service debt in collection for \$814 (SOR 1.d); a debt on a mail order charged-off for \$425 (SOR 1.e); a mortgage past due for \$12,845 on a balance of \$159,345 (SOR 1.f); a department store account in collection for \$339 (SOR 1.g); and a loan in collection for \$11,080 (SOR 1.h).

Under personal conduct, the SOR alleges that in March 2014, Applicant was terminated by his employer for involvement in a verbal confrontation involving profanity (SOR 2.a); and that in July 2013 he resigned from a position before he could be investigated for improper work procedures (SOR 2.b). It is also alleged that in February 2008, he was transferred and suspended for a verbal altercation with his site leader; that in April 2009, he received a verbal warning for being late to work on multiple

occasions; and that in April 2011, he was terminated by his employer for violating the companies code of ethics by verbally assaulting another employee (SOR 2.c). The SOR further alleges that in October 2003, Applicant resigned following a disagreement with his supervisor (SOR 2.d). The SOR also alleges that in May 2001, Applicant received non-judicial punishment for disrespect to a noncommissioned officer. He was reduced in rank and lost pay. (GX 8, Article 15 Form dated May 1, 2001) He was then discharged from the Army based on a pattern of misconduct including multiple non-judicial punishments (SOR 2.e; GX 7, Counseling Form, undated; GX 15 Separation Form, dated September 17, 2001).

Applicant grew up in a large mid-Atlantic city. He was raised in a dysfunctional household because his parents lived apart. Applicant was closer to his father. When he was 14-years-old, his mother sent him to live with his father. However, his father did not want to care for him so he put him out of the house and Applicant lived on the streets. Most of the time he did not have clean clothes to wear or food to eat. He wandered the streets to pass the time. He spent time in homeless shelters, with friends, or wherever he could find shelter and food. He did not regularly attend school, and he fell behind in his education. Eventually, his father agreed to remove him from school. When he was approximately 15-years-old, an aunt took him in and provided him with clothes and regular meals. He signed up for the government Job Corps program, and was placed in two jobs. He met friends at work who mentored him and provided guidance. He received his high school diploma after completing the GED course in 1997. When he was almost 17 years old, he took the military's aptitude test and scored high. His mother signed a waiver for him to enlist as soon as he was eligible. (Tr. 22-29)

Applicant enlisted in the Army in 1999 as soon as he was 18 years old. He had difficulty adjusting to the structured environment of the Army. He was able to meet the requirements of being on time and doing his assigned duties. However, he had been on his own for so long and living as an adult on the streets that he did not react well to military authority. He received at least three non-judicial punishments. (GX 7, 8, and 9, Article 15, dated May 1, 2001, September 28, 1999, and July 13, 1999) He received an interim eligibility for access to classified information which was challenged but made permanent in 1999. (GX 11, 12, and 13, Intent to Deny Security clearance, dated December 9, 1999, February 16, 2000, and March 17, 2000; GX 14, Security Clearance Determination, dated May 17, 2000) After a number of infractions of misconduct, he received a general discharge under honorable conditions in 2001 after two years and five months of active duty. (SOR 2.e; GX 15, Separation from U.S. Army, dated September 17, 2001) Applicant returned to the mid-Atlantic city where he was raised after his discharge from the Army. He worked at various jobs and continued to have difficulty with authority. (Tr. 29-33)

In October 2003, Applicant resigned from his position with a defense contractor after a disagreement with his manager over pay. Applicant claims he was working over 80 hours a week and did not receive overtime pay. He claimed other employees working overtime received overtime pay. According to Applicant, his manager told him if he was not happy with the situation, he could resign. (Tr. 46-47) In February 2008,

Applicant had a disagreement with his site manager over procedures. His site manager tried to have him terminated, but Applicant was suspended for three days. A supervisor indicated that Applicant may have had a valid argument. (Tr. 44-46; AX W, Message, dated January 27, 2008) In April 2009, Applicant received warnings for being late to work. In April 2011, Applicant was terminated by his employer for vehemently arguing with another employee. (SOR 2.c)

Applicant admits that he resigned from a position with a defense contractor in July 2013. (SOR 2.b) Applicant deployed to Afghanistan and worked in combat situations. He was under enemy fire when he was wounded. He recovered and volunteered to go back to Afghanistan. When he returned to Afghanistan, he was under stress and time constraints to assist units with their communication needs. He inadvertently hooked a unit's communications to an unsecured rather than secured network. He cut some procedures in establishing communications for the unit and did not check with his supervisor. Applicant claims the wrong hookup was accidental and he had no intent to cause a security issue. (Tr. 43-44)

In March 2014, Applicant was preparing for deployment overseas to a combat zone for a civilian contractor employer. As he was completing a deployment readiness program, he had a confrontation with another individual and was not able to complete his deployment processing. The employer terminated him for not completing his deployment procedures. (SOR 2.a) From this incident, Applicant learned that he must have patience and allow others an opportunity to complete their processing. (Tr. 40-41)

Appellant acknowledged that he had a conviction for driving while intoxicated in 2015. This incident is not alleged as a security concern in the SOR. He was accompanied by a female that he met at a club. (Tr. 52-54)

Applicant noted that he has matured and grown professionally. He retains his original eligibility for access to classified information. He does not handle situations the same way he did in the past.

Applicant did not manage his personal financial affairs well when he deployed. He did not talk to his family regularly, and he did not timely receive his mail. He did not have training at that time in personal financial management. He had no guidance in managing finances. When he returned from deployment, he learned of his indebtedness, and he took steps to resolve his debts. He had a tax preparer to assist him in filing his tax returns. However, the tax preparer miscalculated the foreign income tax credit and he had to amend his tax returns for tax years 2009 to 2013. He has learned from financial counseling how to budget and not overspend. He learned to buy what he needed and not what he wanted. He lives within his means today and his finances are good. The other debts in the SOR were because he did not receive the bills while deployed. (Tr. 46-51)

The federal tax liens for tax years 2007 and 2008 in SOR 1.a and 1.b were paid and released in November 2012. (Tr. 33-34; AX C. Certificate of Release of Tax Lien,

dated December 28, 2012). A federal tax lien for tax year 2006 was paid and released in April 2013. (AX D, Release of Federal Tax Lien, dated April 24, 2013). Applicant had an agreement to pay his delinquent state taxes as noted at SOR 1.c. The state tax lien was paid and released in July 2016. (Tr. 35; AX B, Release, dated July 15, 2016) Applicant admits that he still has federal and state tax debts because of a miscalculation in the application of the foreign income tax credit. He is paying these tax assessments under agreed payment plans. (Tr. 73-74; AX E, Payment Agreement and receipts, dated November 21, 2016)

The mortgage arrears debt at SOR 1.f was paid when the house was foreclosed on October 28, 2009. (Tr. 37-38; AX F, Letter, dated December 23, 2016) The personal loan debt at SOR 1.g was paid in full as of June 25, 2013. (Tr. 39; AX H, Letter, dated November 21, 2016)

Applicant did not pay some consumer debts until after receiving the SOR in May 2016. (Tr. 55-61) The telephone service debt at SOR 1.d was paid in full in July 2016. (Tr. 36; AX G, Notice, dated November 21, 2016) The debt to a mail order merchant at SOR 1.e was also paid in July 2016. (Tr. 36-37; AX I, credit card transaction, dated June 24, 2016; AX U, Letter, dated June 28, 2016) The debt to a department store at SOR 1.g was paid in full on June 30, 2016. (Tr. 38, AX V, Check, dated June 30, 2016)

Applicant's personal financial statement shows a monthly net income of \$5,446.72, monthly expenses of \$4,333.82, leaving a monthly net remainder of \$1,053.54. (AX N, Personal Financial Statement, dated November 24, 2016) His income will vary depending on the contract he is working. Applicant also has other debts not listed in the SOR that he has paid or for which he has payment arrangements. (AX 50-51; AX J, Letter, dated October 31, 2016; AX K, Letter, dated November 18, 2016) He also stated his understanding and intent that if he fails to pay his federal or state taxes when due, his security clearance can be automatically revoked. (AX L, letter, dated December 20, 2016). Applicant provided documentation that he received financial counseling. (AX M, Certificate, dated November 18, 2016)

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 must be considered 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 the 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.

Analysis

Financial Considerations

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 a person’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Credit reports establish that the Applicant had delinquent tax debts, delinquent loans, and other debts placed for collection or charged off. Applicant’s delinquent debts are sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a

history of not meeting financial obligations). The evidence indicates both an inability and an unwillingness to satisfy debt.

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. Applicant presented evidence that he either paid or is paying his delinquent debts. Some of the debt payments were made after Applicant received the SOR expressing financial security concerns.

I considered the following Financial Considerations Mitigating Conditions under 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, and 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Mitigating condition AG ¶ 20(a) does not apply. Applicant incurred the delinquent debts because he deployed overseas and did not keep adequate track of his mail or his debts. Applicant is still deployed overseas so the circumstances causing the delinquent debts could recur.

The first prong of mitigating condition AG ¶ 20(b) does not apply. Applicant's delinquent debts were caused by a condition under his control. It was his own negligence that caused him not to adequately manage his financial accounts while deployed. Applicant displayed irresponsible behavior, poor judgment, unreliability, and lack of trustworthiness. The second prong of the mitigating condition does apply. Applicant acted reasonably with his debts under agreed payments plans. Mitigating condition AG ¶ 20(c) applies because Applicant presented sufficient documents to establish that he received financial counseling.

For a good-faith effort under AG ¶ 20(d), there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith

means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must evidence a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant presented documentary evidence of a good-faith effort to resolve his delinquent debts. He showed his reasonable plan to resolve the debts, and he established a meaningful track record of debt payment. Applicant's evidence shows that all of the debts listed in the SOR have or are being resolved. Even though he resolved most of his debts after receiving the SOR, Applicant established that he is now acting reasonably, prudently, and honestly towards his financial obligations. With documentation to support payment of his financial obligations, Applicant established that his financial problems are under control, and that he is now managing his personal financial obligations reasonably and responsibly. His financial problems appear to be behind him. Applicant's actions to resolve his financial issues is an indication that he may protect and safeguard classified information. Applicant presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information. (AG ¶ 15)

Applicant had a hard early home life causing him to have difficulty adhering to rules, regulations, and authority. He had personal conduct issues with authority starting with his enlistment in the Army in 1999 and continuing to his confrontation with his supervisors in 2014. The circumstances of Applicant's conduct from 1999 until 2014 raise Personal Conduct Disqualifying Condition under AG ¶ 1 (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, or other characteristics indicating that the person may not properly safeguard protected information).

17: I considered the following Personnel Conduct Mitigating Conditions under AG ¶

(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 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 no doubt that Applicant had a difficult upbringing that affected his ability to follow authority, interact reasonably with his co-workers, and caused personal conduct security concerns. He was disrespectful to his military supervisors resulting in non-judicial punishments and a general discharge under honorable conditions. He continued his pattern of employment misconduct as a civilian employee of defense contractors with a disagreement with his supervisor in 2003 resulting in his resignation; a three-day suspension in 2008; warnings in 2009 for being late for work on multiple occasions; violation of his employer's code of conduct in 2011; and his termination in 2014 for a verbal altercation in the work place.

Applicant claims that he is now matured and capable of controlling his personal conduct. However, Applicant's recent conduct does not show sufficient maturity to indicate that he will not engage in negative personal conduct of security concern in the future. His last negative encounter in the workplace was just three years ago. While not charged as a security concern, there is adequate evidence of a driving while intoxicated conviction in 2015 to show continued personal conduct security concerns. The 2015 driving while intoxicated offense shows continued untrustworthy or unreliable behavior. While Applicant has paid or is paying his delinquent debts, he did not commence paying some of the debts until he received the SOR in 2016. His delay in taking action to resolve the debts undercuts a determination of voluntary compliance with rules and regulations and the conduct expected of someone entrusted with government secrets. Applicant has not established sufficient facts to show that he has matured and will not engage in inappropriate personal conduct in the future affecting his ability to safeguard classified information. Applicant has not mitigated personal conduct security concerns.

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 and the facts and circumstances surrounding this case. I considered the letters of recommendation, training certificates, and evaluation reports. While Applicant mitigated financial security concerns, his recent and continued actions of improper personal conduct causes questions about his judgment and willingness to comply with rules and regulation and leads to concerns about his reliability, trustworthiness, and eligibility and suitability for access to classified information. I conclude Applicant did not mitigated personal conduct security concerns. Eligibility for access to classified information is denied.

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:	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.e:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge