



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



In the matter of:)	
)	
)	ISCR Case No. 15-05560
)	
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

The Government withdrew the alcohol consumption security concern and no disqualifying conditions applied under the personal conduct security concern. Applicant, however, did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 27, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline G, alcohol consumption. The action was taken under Executive Order (Exec. Or.) 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 February 24, 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 April 5, 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 May 3, 2016. Applicant did not respond to the Government's FORM. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection. Other than his Answer to the SOR, admitted in evidence as Item 1, Applicant failed to submit any additional documentation. The case was assigned to me on April 7, 2017.

Findings of Fact

The Government withdrew SOR allegation ¶ 3.a concerning Applicant's September 2015 arrest and charge of driving while intoxicated (DWI). Applicant admitted SOR allegations ¶¶ 1.a, 1.c, and 1.e, and denied SOR allegations ¶¶ 1.b, 1.d, and 2.a. His admissions in his answer are incorporated in my findings of fact.

Applicant is 54 years old. He obtained his high-school diploma in June 1980. He took online university courses in December 2011, and from December 2013 to at least April 2015, but has not earned a degree. He married in 1985, divorced in 1992, married again in 1997, divorced in 2002, and married again in 2002. He has two adult stepchildren and one child who is deceased.

Applicant served honorably in the U.S. military from August 1983 until his retirement in August 2003. He was unemployed from September 2003 to February 2004, and from March 2013 to June 2013. He was a part-time role player for a federal contractor from February 2004 to March 2013. He has worked his current job as a linguist for a federal contractor since June 2013, deployed overseas at a U.S. military base. He was first granted a DOD security clearance in August 1983 while he was in the U.S. military, and he was also granted a DOD security clearance in December 2013.

Applicant fell behind on his debts when he was unemployed in 2012. He stated, in his April 2015 interview with an Office of Personnel Management (OPM) investigator, that he believed he had resolved all of his outstanding obligations by 2013. When he completed his Questionnaire for National Security Positions (SF 86) in August 2014, Applicant did not believe he had, or was unsure whether he had, any delinquent accounts.¹

The SOR alleges five delinquent consumer accounts totaling \$22,066. It also alleges that Applicant falsified his SF 86 by failing to list his delinquent debts in response to two questions in section 26 concerning delinquencies involving routine accounts. The questions inquired about whether Applicant had, in the seven years prior to completing his SF 86, any bills or debts turned over to a collection agency, or any accounts or credit cards suspended, charged off, or cancelled for failing to pay as

¹ Items 2, 5.

agreed. Finally, the SOR alleges Applicant's September 2015 arrest and charge on a military base of DWI.²

Credit reports from August 2014 and January 2016 verify SOR debts ¶¶ 1.a, 1.b, 1.c, and 1.e. The August 2014 credit report lists SOR debt ¶ 1.d as a department and mail order account, carrying a zero balance, purchased by another lender, transferred, and closed. The January 2016 credit report does not list SOR debt ¶ 1.d. Both the August 2014 and January 2016 credit reports list SOR debt ¶ 1.a with the same creditor as SOR debt ¶ 1.d, but as a credit card account and with a different account number. In his April 2015 interview, Applicant acknowledged that he had two different accounts with the same creditor as SOR debts ¶¶ 1.a and 1.d. One was a charge account, and the other was a mail order account.³

Applicant has not received credit counseling. He indicated in his April 2015 interview that he would look into SOR debt ¶ 1.c, and acknowledged that he still has to pay SOR debt ¶ 1.e. He indicated in his response to the SOR that he was making monthly payments of \$300 towards SOR debt ¶ 1.a, and paid SOR debts ¶¶ 1.b and 1.d. Applicant has not provided corroborating evidence of actions he may have taken to resolve any of the SOR debts.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."

² Item 1.

³ Items 1-5.

⁴ Items 1-2, 5.

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 extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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’s history of delinquent debt is documented in his interview with an OPM investigator, credit reports, and SOR response. There is sufficient evidence in the record to support the application of the above 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.

I find in Applicant's favor on SOR debt ¶ 1.d, since the August 2014 credit report lists it as having a zero balance and it is no longer reported on the January 2016 credit report. Applicant's remaining debts, however, remain unresolved. Applicant has not provided corroborating evidence to show that he has been paying SOR debt ¶ 1.a, paid SOR debt ¶ 1.b, or took any action to resolve SOR debts ¶¶ 1.c and 1.e. There is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's periods of unemployment and part-time employment constitute conditions beyond his control that contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not received financial counseling. Moreover, Applicant has not provided evidence of any actions he has taken to resolve his delinquent debts. Applicant's financial problems are not under control. AG ¶ 20(b) partially applies, and AG ¶¶ 20(c) and 20(d) do not apply.

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 condition is 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.

The SOR alleges that Applicant deliberately failed to disclose his delinquent debts on his SCA. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.⁵

At the time he completed his SCA, Applicant believed he had resolved his debts that became delinquent in 2012. He did not believe he had, or was unsure whether he had, any delinquent accounts. Given these facts, I do not find any intent on the part of Applicant to omit, conceal, or falsify his SCA with respect to his delinquent debts. Therefore, AG ¶ 16(a) is not established. I find SOR ¶ 2.a in Applicant's favor.

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 Guideline F and Guideline E, and considered the factors in AG ¶ 2(a) in this whole-person analysis.

⁵ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant has financial delinquencies that remain unresolved. His finances remain a security concern. He 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 that while no disqualifying conditions applied under Guideline E, Applicant failed to mitigate the security concerns arising under Guideline F.

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.c and 1.e:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline G:	Withdrawn
Subparagraph 3.a:	Withdrawn

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge