



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 15-06990 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

October 16, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 25, 2012. (Item 3.) On April 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E. (Item 1.) The DOD CAF acted under Executive Order (EO) 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 answered the SOR (Answer) on May 17, 2016 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 22, 2016. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 8. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He responded to the FORM (Response) on or about October 19, 2016. Items 1 through 8, and Applicant's Response are admitted into evidence. The case was assigned to me on June 5, 2017.

On June 8, 2017, the DOD implemented new AG.¹ Accordingly, I have applied the June 2017 AG.² However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

Findings of Fact

Applicant, age 42, is married and has four children. (Item 3 at pages 5, 17~18, and 21~23.)

Guideline E – Personal Conduct

1.a. Applicant denies that he falsified his October 2012 Electronic Questionnaire for Investigations Processing (e-QIP) in response to Section 26 regarding “a lien,” when he failed to disclose an alleged, 2011 tax lien from State A. In his Answer, Applicant avers that he moved to State B in 2005; and as such, he was not subject to State A’s taxing authority. Furthermore, in his Response, he has submitted documentation from State A demonstrating that the tax lien was “WITHDRAWN” by State A. This allegation is found for Applicant.

1.b. Applicant denies that he falsified his October 2012 e-QIP in response to Section 26 regarding “bills or debts turned over to a collection agency,” when he failed to list seven past-due debts that are documented as past due by the Government’s November 2012 credit report. (Item 7 at pages 4, 5, and 7.) Applicant did, in fact, list three past-due debts; and avers that the largest, alleged unlisted debt, for \$1,060 (b.(2)), is a duplicate of one of those he did disclose. (Item 3 at pages 33~34.) He further avers, “I did my best to list everything I had knowledge of.” Even assuming his averment as to the duplicate past-due debt is correct, it is clear from his January 2013 Subject Interview, to which Applicant had no objection, he was aware of at least four of the six remaining past-due debts (b.(3), b.(4), b.(6), and b.(7)). Furthermore, without letters of support from those who know Applicant and who can testify as to his truthfulness and veracity, I cannot find that Applicant’s not listing six past-due debts, totaling in excess of \$1,100, was a simple oversight. This allegation is found against Applicant.

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a “single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.” (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his e-QIP, the following disqualifying condition applies:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying his e-QIP. When a falsification allegation is controverted, 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.³

In this instance, I am not convinced that Applicant was unaware of the six past-due debts totaling in excess of \$1,100. He should have disclosed these facts to the Government. I find substantial evidence of an intent by Applicant to omit, conceal, or falsify facts from and on his SCAs. Therefore, AG ¶ 16(a) is established.

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and
- (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.

After considering the mitigating conditions outlined above, none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsifications or concealments. While he discussed the past-due debts with an investigator in January of 2013 (Item 8 at pages 5~7), more than two months after executing his e-QIP, he failed to establish that his admissions were now prompt or in good-faith. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying information is a serious offense, and Applicant has shown that similar lapses in judgment are likely to occur. Further, he failed to take responsibility for his actions. He has not provided sufficient information in this record to demonstrate that he has met his burden of proof for his personal conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 Guideline E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant failed to mitigate the security concerns raised by the falsification of his e-QIP. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1 Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. Clearance is denied.

Richard A. Cefola
Administrative Judge