



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07061

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

08/14/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On April 29, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.¹

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM)

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017. My decision and Formal Findings under the revised Guideline F would not be different under the 2006 Guidelines.

dated August 23, 2016.² Applicant received the FORM on September 29, 2016. He did not submit an additional response to the FORM. The case was assigned to me on July 1, 2017. Based on a review of the case file, submissions, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the allegations in the SOR under Guideline F, with explanations for each item. He also denied the allegation under Guideline E. (Item 2)

Applicant is 75 years old. He graduated from high school in 1960. Applicant served on active duty in the U.S. Air Force from 1963 to 1985, when he retired and received an honorable discharge. Applicant held a security clearance when he was in the military. He is married and has three children. Since 2003, he has worked as a defense contractor. He completed his security clearance application (SCA) in 2014. (Item 3)

The SOR alleges that Applicant has five delinquent collection accounts and three charged-off accounts in the approximate amount of \$36,000. (Item 1)

Applicant denied all SOR allegations stating that the accounts were “covered” in his 1996 bankruptcy. He noted in his answer that since his bankruptcy, he has no credit card debt, paid his home loan, bought four used cars, and pays as agreed on a new car. He stated that he has lines of credit with various services and is working to improve his credit score. (Item 2)

During his March 2015, investigative interview, Applicant also denied that he had any current delinquent debt. (Item 4) He told the investigator that his wages were garnished in 2012 because he was the victim of identity theft. Applicant stated that he called the bank, but he did not call the police. He will only pay for accounts that he believes are his. He stated that all the SOR alleged delinquent accounts are not his accounts. Applicant emphasized that he lives within his means. (Item 4)

The credit report from 2004 confirmed his 1996 bankruptcy discharge in the amount of \$108,450. (Item 7) It also reflects that Applicant was in good standing with his creditors.

The SOR alleged debts were opened after the bankruptcy and show the collection status starting in 2009 and delinquent in 2012. (Items 5 and 6)

Applicant did not submit any documentation to support his denials to the SOR debts. He did not submit a response to the FORM. There is no information in the record to confirm any identity theft or that the SOR debts were tied to his bankruptcy or any

²The Government submitted seven items for the record.

plans to resolve the debts. Applicant did not meet his burden of proof in this case to mitigate the security concerns under the financial considerations guideline.

Personal Conduct

The SOR also alleges that Applicant falsified his 2014 SCA because he answered “No” to Section 26 concerning debts turned over to collection agencies or credit cards suspended. Applicant denied any intentional falsification because he has not had any credit card become delinquent or suspended since his bankruptcy. He acknowledged during his 2015 investigative interview that his wages were garnished in 2012 due to identity theft. He tried to pursue an action with the bank and a lawyer, but there was a default judgment ordered and he did not fight it. (Item 4) Subject stated that he does not owe the accounts listed in the SOR. Thus, he did not answer “Yes” to Section 26. He did not intentionally falsify his 2014 SCA. Omission alone does not establish an intentional falsification. Applicant’s credit bureau reports from 2014 reflect accounts as “pays as agrees”. (Items 6 and 7) None of the SOR alleged accounts are on those reports. The 2016 credit bureau report reflects the SOR delinquent accounts, but Applicant completed his SCA in 2014. I do not find that the Government established a case for falsification. I find for Applicant under the personal conduct guideline.

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(a), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or unwillingness to abide by rules and regulations, all of which can raise questions about an individuals’ reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus be a possible indicator of, other issues of personnel security concerns such as excessive gambling,

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government provided credible evidence that Applicant has delinquent debt in the amount of approximately \$36,000. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) and (c) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) 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, or good judgment) does not apply. Applicant provided no information that would allow this MC. There is an explanation from Applicant concerning the delinquent debt due to identity theft, but he produced no documentation to confirm his assertion. He did not believe he owed money on the SOR alleged accounts and he did not pay or resolve them. None of the other mitigating conditions apply in this case.

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 an applicant's conduct and all the circumstances. The 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 75 years old. He has worked for his current employer since 2003. He served in the military until he retired with an honorable discharge. He held a security

clearance when he was in the military. He has no history of criminal activity, alcohol abuse, or drug involvement.

Applicant filed for bankruptcy in 1996 and there were no derogatory accounts on his two 2014 credit bureau reports. However, the 2016 credit bureau report reflect the SOR alleged delinquent accounts. Applicant blames those on identity theft, but he did not provide any evidence to support this assertion. He has not met his burden of proof in this case under the financial considerations guideline. I do not find that there is sufficient evidence to prove an intentional falsification under the personal conduct guideline. He did not mitigate the security concerns under the financial considerations guideline.

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.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge