



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



In the matter of:)
)
) ISCR Case No. 15-08432
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2017

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (financial considerations) and E (personal conduct). Clearance is denied.

Statement of the Case

On October 20, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On March 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and E and detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred his case to

an administrative judge to determine whether his clearance should be granted or denied.

On April 7, 2016, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated May 9, 2016, was provided to him by letter dated May 12, 2016. Applicant received the FORM on May 16, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the 30-day period. On April 6, 2017, the case was assigned to me.

Findings of Fact

Applicant admitted all of the SOR allegations under Guideline F, except for SOR ¶ 1.aa with explanations, and neither admitted nor denied the falsification allegation under Guideline E with explanations. Accordingly, I have construed Applicant's response to the Guideline E allegation as a denial. His admissions are accepted as findings of fact.

Background Information¹

Applicant is a 43-year-old configuration manager employed by a defense contractor since October 2014. (Item 3) He graduated from high school in June 1992. (Item 7) Applicant married in June 2006 and listed his current marital status as being separated as of September 2013. He is unaware of his estranged wife's whereabouts. (Items 3, 7)

Financial Considerations

Applicant's SOR lists 29 separate allegations – one 2011 judgment, five bad check criminal charges filed against him, two allegations of checks issued for insufficient funds, and 21 delinquent debts in varying amounts ranging from a \$146 credit card collection account to a \$4,958 charged-off credit card account. These debts are substantiated by Applicant's admissions, court records, January 2015 Office of Personnel Management Personal Subject Interview (OPM PSI), and October 2014 and November 2015 credit reports. (SOR ¶¶ 1.a – 1.cc; Items 4 - 8)

Applicant attributes his financial difficulties to his estranged wife mismanaging their finances and forging his signature on checks that resulted in charges being filed against him. The five bad check charges occurred during the timeframe of 2006 to 2011. Applicant claimed that several of the debts alleged had been paid, but provided no documentation of same. In his June 2017 SOR answer, he further claimed that he had never considered bankruptcy and was looking into debt consolidation. (Items 2, 7)

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

Applicant was confronted with his delinquent debts during his January 2015 OPM PSI and claimed to be unaware of them adding that he would follow up on all accounts and try to pay them off. (Item 7)

The file lacks any evidence that Applicant paid, arranged to pay, settled, compromised, disputed, or otherwise resolved any of the delinquent SOR accounts. He did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM “in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM.

Personal Conduct

When Applicant completed his October 2014 SF-86, he failed to list any adverse financial information. (Item 2, 3) During his January 2015 OPM PSI, Applicant claimed that he answered no to financial information questions because he was not sure that he had delinquent bills because he had separated from his wife and she was in charge of the bills and never informed him of any late or delinquent accounts. (Item 7) In his June 2017 SOR answer, Applicant stated that he answered questions regarding his financial situation to the best of his ability on his SF-86. He claimed that he did not intentionally lie on his SF-86 nor was it his intent to be deceptive knowing any falsifications would be discovered during his background investigation. (Item 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations/Personal Conduct

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR or the FORM. Applicant did not show that he had paid or otherwise resolved any of his delinquent debt.

The Government also met its burden of production in support of the allegation under personal conduct. The facts established raise a security concern addressed in relevant part, at 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.

More specifically, available information requires application of the disqualifying condition at 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Applicant failed to list his debts as required on his SF-86. None of the mitigating conditions in AG ¶ 17 apply. Applicant's explanation that he was unaware about the state of his finances lacks credibility given the number of debts involved, the length of time over which the debts were incurred, and the fact that charges were filed against him five times for writing bad checks. His explanations for providing false information on his SF-86 are not enough to overcome his willful misrepresentation of his true financial situation or past personal conduct.² He knowingly and deliberately chose not to disclose complete and accurate information regarding his financial history.

²The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guidelines F and E, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the security concerns. With regard to financial considerations concerns, he failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to establish mitigation, security concerns remain.

Formal Findings

The formal findings on the SOR are as follows:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.cc: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge