



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-08337
)	
Applicant for Security Clearance)	

Appearances

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

07/17/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 8, 2015. On May 16, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 on July 8, 2016 (SOR Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 10, 2016. On August 12, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 18, 2016, and did not respond. Items 1 and 2 contain the

pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on May 18, 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 Fact³

Applicant, age 43, has never been married and does not have any children. He has taken community college courses part time since June 2001. He has worked as a mailroom clerk for the same defense contractor since May 2002 except for the period of June 2008 through February 2010 when he held the same position for a different contractor. Applicant has maintained a security clearance since approximately July 2002.⁴

In May 2005, the owner of the land on which Applicant's mobile home was occupied notified him that he needed to relocate his mobile home because the owner was selling the land. Because he was unable to afford the relocation costs, and after exhausting all other options, Applicant surrendered the mobile home and filed a Chapter 7 bankruptcy petition in October 2005 (SOR ¶ 1.a). Applicant claimed liabilities of \$221,878, including a \$170,000 home-mortgage loan and a \$36,000 balance due on the mobile home after it was repossessed.⁵ At that time, his monthly expenses exceeded his monthly net pay by \$43. The bankruptcy was discharged in January 2006.⁶

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).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from the SOR Answer (Item 2), his SCA (Item 3), and the summary of his September 2015 subject interview (Item 4). Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 4, I will consider only those facts in Item 4 that are not adverse to Applicant, unless they are contained in other evidence or based upon Applicant's admissions in the SOR Answer.

⁴ Tr. at 7, 8, 38, 41, 64, 91, and 96; GE 3 at 21 and 34.

⁵ I considered that Applicant's bankruptcy petition (Item 5) contradicts his eQIP statement wherein he claimed that he declined to include any debt in his bankruptcy petition besides his mobile home debt. Without a full record, I am unable to determine whether this was an intentional falsification. This issue is also not the subject of any SOR allegation. Therefore, I did not find the discrepancy to be of security significance.

In November 2007, Applicant cosigned an automobile loan with his niece, who agreed that she would be solely responsible for making the monthly payments. After receiving phone calls from the creditor between approximately May 2008 and November 2008, Applicant contacted his niece to pay the delinquent account. He made no other efforts to resolve the account because he did not have sufficient funds to pay it and assumed that his niece would pay it. In February 2010, a court granted a judgment against Applicant in favor of the loan creditor in the amount of \$12,979 (SOR ¶ 1.b). Applicant did not receive any notice of the February 2010 judgment prior to his 2015 subject interview. This debt remains unresolved.⁷

Applicant was involved in a motorcycle accident in approximately 2008 or 2009, from which he incurred medical bills totaling approximately \$1,000, including a \$400 or \$500 ambulance bill and a \$400 or \$500 hospital bill. At the time, he presented both bills to his insurance company which refused to pay them despite the fact that he also provided them a police report denoting that he was not at fault and the insurance information of the driver at fault. He never paid the bills because he considered that the issue would eventually be resolved by his insurance company. Applicant believed that the \$127 medical-collection account alleged in SOR ¶ 1.c could be one of these medical bills, but he was not certain. He did not similarly acknowledge that the \$389 medical-collection account alleged SOR ¶ 1.e could also be one of those bills, but rather, denied any knowledge of it at all. Applicant was not aware that either bill was sent to collections prior to his 2015 subject interview. Both debts remain unresolved.⁸

In May 2007, Applicant opened a credit-card account with a credit limit of \$2,000. As of June 2015, the creditor charged off the account in the amount of \$1,970. As of April 2016, the creditor had placed the account for collections in the amount of \$1,971 (SOR ¶ 1.d). Applicant was not aware that this account was delinquent prior to his 2015 subject interview. This debt remains unresolved. The record is silent as to whether Applicant has sought any financial counseling or assistance beyond that as can be presumed to have been required during his 2005 bankruptcy proceedings.⁹

On June 8, 2015, Applicant signed the SCA certifying that the statements he made therein were “true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith.” In September 2015, he was interviewed by an investigator in connection with his security-clearance investigation to discuss, among other things, the contents of the SCA.

Applicant answered “No” to each question in section 26 (Financial Record) of the SCA and did not otherwise report the facts alleged in SOR ¶¶ 1.b through 1.e. However,

⁶ See also Item 5.

⁷ See also Items 6 and 7.

⁸ See also Item 6.

⁹ See also Items 6 and 7.

in the “Additional Comments” section at the end of the SCA, Applicant did report his 2005 bankruptcy.

In the SOR Answer, Applicant admitted, without further explanation, each of the facts alleged in the SOR under Guidelines F and E by marking “I admit” next to each allegation. The falsification allegation in SOR ¶ 2.a included the fact that Applicant “deliberately” failed to disclose the information alleged in SOR ¶¶ 1.b through 1.e.

During his 2015 subject interview, Applicant did not admit any intent to falsify his SCA. To the contrary, he specifically denied knowledge of the facts alleged in SOR ¶¶ 1.b through 1.e. The Government did not provide any other evidence that Applicant intended to falsify his SCA.

Policies

“[N]o one has a ‘right’ to a security clearance.”¹⁰ 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.”¹¹ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹²

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”¹³ Thus, a

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ *Egan* at 527.

¹² EO 10865 § 2.

¹³ EO 10865 § 7.

decision to deny a security clearance 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.¹⁴ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁵ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁶ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁷ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁸

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁰

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

¹⁴ See *Egan*, 484 U.S. at 531.

¹⁵ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁶ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁷ Directive ¶ E3.1.15.

¹⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁰ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debt), AG ¶ 19 (b) (unwillingness to satisfy debts regardless of the ability to do so), and AG ¶ 19(c) (a history of not meeting financial obligations).

The security concerns raised in the SOR under this guideline may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's post-bankruptcy delinquent debts remain unresolved.

AG ¶ 20(b) is not established. Applicant acted responsibly by filing bankruptcy in 2005 to address debts caused by circumstances beyond his control. His motorcycle accident and his niece's failure to adhere to their verbal agreement were circumstances beyond his control. However, Applicant has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not respond to the FORM and the record does not otherwise demonstrate his efforts, if any, to ascertain information about the debts of which had been previously unaware or to otherwise resolve his delinquent debts in the 20 months since he met with the investigator and in

the year since he responded to the SOR. The record is silent as to his current ability to repay his delinquent debts, the reasons that they have persisted, or his plan to resolve them. Applicant presumably received financial counseling during his bankruptcy proceedings. However, I cannot conclude that his post-bankruptcy financial problems are under control.

For these reasons, I find that SOR ¶ 1.a has been mitigated, and that SOR ¶¶ 1.b through 1.e. have not been mitigated.

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 SCA, the following disqualifying condition under this guideline could apply:

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.

While Applicant did write "I admit" next to SOR ¶ 2.a in the SOR Answer, I do not find that it was a knowing and willful admission that he "deliberately" falsified his SCA in light of the record as a whole. He was not aware of the judgment or other SOR debts

until the investigator brought them to his attention during his 2015 interview, which took place after he certified his SOR. Thus, I find that the falsification allegation is controverted.

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.²¹ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.²²

Not only did Applicant provide credible reasons for failing to report the facts alleged in SOR ¶¶ 1.b through 1.e, but he self-reported derogatory information related to his 2005 bankruptcy on his SCA, despite the fact that it fell outside of the reportable seven-year window. Given these facts, I do not find substantial evidence of an intent on the part of Applicant to omit, conceal, or falsify facts from and on his SCA. Therefore, AG ¶ 16(a) is not established. Accordingly, I find SOR ¶ 2.a in favor of Applicant.

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 following 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 Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant did not deliberately falsify his SCA, but he has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is

²¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

²² ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

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 F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraphs 1.b – 1.e: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge