



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-01321
)
 Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns about his financial problems and falsification. Eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).¹ Applicant responded to the SOR on July 5, 2016, and he elected a decision on the written record in lieu of a hearing. On September 1, 2016, Department Counsel submitted her file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on September 12, 2016. He was afforded an opportunity to respond within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns.

¹ The action was taken 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 implemented by the DOD on September 1, 2006.

Applicant submitted a one-page response and one attachment, which was admitted as Applicant Exhibit (AE) A without objection. The case was assigned to me on June 2, 2017.

Procedural Issues

On September 7, 2017, I issued an order informing both parties that although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. Applicant did not initially receive my order due to an incorrect email address, so I re-issued the order on October 2, 2017. Department Counsel submitted an updated credit report, identified as Government Exhibit 8. Applicant did not provide any additional documents.²

In the FORM, Department Counsel references FORM Items 1-7.³ FORM Item 4 is an unauthenticated summary of an interview with a government investigator conducted on December 4, 2012. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 4 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could constitute waiver, and the evidence would be considered by me. Applicant responded to the FORM and noted no objections. Given Department Counsel's advisement and Applicant's work experience, I find his waiver to be knowing and intelligent.⁴ FORM Items 3-7 and Government Exhibit 8 are admitted into evidence as Government Exhibits (GE) 3-8, without objection.

Findings of Fact

The SOR alleges seven delinquent debts (SOR ¶¶ 1.a.-1.g.) and one falsification on a security questionnaire (SOR ¶ 2.a.). In his response to the SOR, Applicant admitted the debts in SOR ¶¶ 1.b.-1.f., and he denied the remaining debts and the falsification. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 37 years old. He attended high school from August 1995 to March 1998, but did not graduate. Since March 2002, he has been employed full time as a

² Hearing Exhibit I includes my order, the attachments, and the Government's email acknowledging receipt.

³ FORM Items 1 and 2 are the SOR and Applicant's answer, which are pleadings and are included in the administrative record.

⁴ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

carpenter for a DOD contractor. He has been married since October 2009, and he has three children – ages 5, 14, and 17.⁵

Applicant's admissions and the four credit reports establish the seven alleged debts, which became delinquent between February 2008 and April 2014. The two largest debts are a delinquent vehicle loan (SOR ¶ 1.a. -- \$6,190) and a defaulted time-share loan (SOR ¶ 1.f. -- \$19,642). In his response to the SOR, Applicant claimed that he was unfamiliar with the debt in SOR ¶ 1.a. and that he was making payments on SOR ¶ 1.b.; however, he did not provide any documentary evidence of any payments or debt-resolution efforts as to any of the alleged accounts. In his response to the FORM, Applicant provided documentary evidence showing that the debt in SOR ¶ 1.f had been charged off as of August 2012. He argued that this debt was charged off and the account was removed from his credit report.⁶

On his October 2012 SCA, Applicant responded "NO" to the following questions:

Section 26 – Financial Record

In the past seven (7) years, [have] you defaulted on any type of loan?

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency?

In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

In the past seven (7) years, [have] you been or are currently over 120 days delinquent on any debt not previously entered?⁷

At the time Applicant completed his October 2012 SCA, the debts alleged in SOR ¶¶ 1.c, 1.d., 1.f., and 1.g. had been delinquent for at least 10 months. The debts alleged in SOR ¶¶ 1.a., 1.b., and 1.e. became delinquent after September 2012.

During his December 2012 security interview, Applicant initially denied any delinquent debts. He then claimed that he did not list any delinquent debts on his SCA because they had been paid. He claimed the debt in SOR ¶ 1.d. had been paid in December 2011 and the debt in SOR ¶ 1.f. had been settled in December 2011 for \$5,000. In his response to the SOR, Applicant contradicted these claims, stating that he had been unable to settle the debt in SOR ¶ 1.f. Applicant attributed his delinquent debts

⁵ GE 3.

⁶ Response to FORM; AE A.

⁷ GE 3.

his wife's unemployment; however, he did not provide further information as to when she was unemployed and if she remains unemployed.⁸

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 national security eligibility will be resolved in favor of the national security."

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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

⁸ GE 4-8.

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 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 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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's seven delinquent debts total approximately \$29,052. These debts became delinquent between February 2008 and April 2014, and they all remain delinquent. Although Applicant claimed that the largest debt (SOR ¶ 1.f. -- \$19,642) was removed from his credit report, there is no evidence that this debt was paid or otherwise resolved.⁹ The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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, a death, divorce, or separation, clear

⁹ See ISCR Case No. 02-14950 at 4 (App. Bd. May 15, 2003) ("The removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's financial history doesn't turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years.").

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving 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

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

The alleged debts have remained delinquent for several years. Applicant has provided no documentary evidence of any debt-resolution efforts or about his wife's unemployment and whether she remains unemployed.¹⁰ Applicant's inactivity on these delinquent debts undercuts his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's wife's unemployment constitutes a circumstance beyond his control under AG ¶ 20(b). Notwithstanding his wife's unemployment, Applicant has not provided any documentary evidence to demonstrate that he has acted in a financially-responsible manner with respect to his delinquent debts. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has sought credit counseling. Nor is there evidence of his monthly income or expenses to establish that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. There is no documentary evidence of a meaningful track record of payments or other debt-resolution efforts with respect to the alleged debts. As noted above, the removal of debts from Applicant's credit report is not evidence of payments or debt-resolution efforts and does not preclude the consideration of these debts. AG ¶ 20(d) does not apply. Applicant bears the burden to demonstrate his financial responsibility. I find that Applicant did not mitigate the financial considerations security concerns.

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. . . .

¹⁰ Although Applicant provided no documentary evidence of any payments, the credit reports indicate that the delinquent balances for the accounts in SOR ¶¶ 1.a. and 1.b. have been reduced by approximately \$189.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying condition is potentially applicable in this case:

(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.

The SOR alleges that Applicant deliberately falsified his responses to Section 26 on his October 2012 SCA (SOR ¶ 2.a.). As of October 2012, the debts in SOR ¶¶ 1.c., 1.d., 1.f., and 1.g. were delinquent and required to be disclosed on the SCA. When questioned during his December 2012 security interview, Applicant initially denied any delinquent debts. He then claimed that he did not list these debts on his SCA because the debts in SOR ¶¶ 1.d and 1.f. had been paid in December 2011. He specifically claimed to have settled the debt in SOR ¶ 1.f. for \$5,000. In his response to the SOR, Applicant contradicted his previous statement and admitted that the debt in SOR ¶ 1.f. had not been resolved because the creditor would not accept settlement. The sizes of the delinquent debt and the purported settlement are simply too significant to attribute Applicant's conflicting statements to mistake or error. Therefore, I conclude that Applicant deliberately omitted his financial delinquencies. AG ¶ 16(a) applies.

The following mitigating condition under AG ¶ 17 is potentially relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Applicant's contradictory statements undercut any evidence that he made prompt, good-faith efforts to correct the omissions of his delinquent debts. AG ¶ 17(a) does not apply. Applicant has not mitigated the personal conduct security concerns arising from this falsification.

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(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. 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 Guidelines F and E and the factors in AG ¶ 2(d) in this whole-person analysis.

Notwithstanding his wife's unemployment, Applicant has failed to establish a track record of debt-resolution efforts with respect to the alleged debts. Furthermore, he has not been truthful about his delinquent debts in his disclosures to the Government. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, I conclude Applicant did not mitigate the financial considerations and personal conduct security concerns.

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.g.:	Against Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge