



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04158
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2017

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 April 22, 2013. On January 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 (2006 AG).

Applicant answered the SOR on February 23, 2016 and June 27, 2016, and requested a decision on the record without a hearing. On July 25, 2017, the Government submitted its written case and, on July 28, 2017, sent a complete copy of the file of relevant material (FORM) 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 9, 2016, and did not respond. Items 1 and 2 are the pleadings in the case. Items

3 through 6 are admitted into evidence. The case was assigned to me on October 2, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 87, was widowed from his wife of 51 years in 2011. He has three adult children. Applicant received his high school diploma in 1951. He was a civilian-federal-government employee from 1954 through 1984. He has been employed full time by a defense contractor since 2003. He was granted a DOD secret clearance in 1992.

The SOR alleges 14 delinquent debts totaling \$28,223 (SOR ¶¶ 1.a through 1.n) and that Applicant deliberately failed to disclose any of them on his SCA (SOR ¶ 2.a). Applicant's admitted debts (SOR ¶¶ 1.a through 1.c, 1.g, 1.i, and 1.j) total \$17,072. Claiming that they did not belong to him, he denied the following debts: SOR ¶¶ 1.d through 1.f, 1.h, 1.k, and 1.l through 1.n.⁴ The credit reports establish each of the denied debts.⁵

Applicant believes that the denied debts may belong to his son who shares his first and last name.⁶ During a period not specified in the record, Applicant incurred delinquent medical debt on behalf of his grandson to address an injury.⁷ However, there

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 Applicant's SOR answer (Item 1), his SCA (Item 3), and the summary of his May 2013 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 his admissions in the SOR answer.

⁴ I considered that Applicant wrote "admit" in response to SOR ¶1.k. However, because he included that debt among the handwritten debts that he listed as not belonging to him, I have construed his answer to SOR ¶ 1.k as a denial.

⁵ Items 5 and 6.

⁶ Item 4 at 2.

⁷ Item 4 at 2-3.

are no apparent medical debts alleged in the SOR.⁸ Among the debts alleged in the SOR are a \$9,830 federal tax lien (SOR ¶ 1.a) and a \$1,830 court judgment (SOR ¶ 1.b). On a date not specified in the record, Applicant negotiated an installment agreement with the IRS, and paid \$232 pursuant to that agreement. He made three payments, in January 2014, May 2014, and January 2015, totaling \$360 to the creditor that obtained the court judgment. Applicant did not provide any documentary evidence that he paid or otherwise resolved any other debts alleged in the SOR.

When confronted with his failure to disclose any delinquent debts on his SCA during his 2013 security clearance interview, Applicant denied any knowledge of them. He acknowledged that they could either be his son's debts or the medical debts he incurred on behalf of his grandson. He promised to research them and pay those that are deemed he owes.⁹ During that interview, he did not address why he did not disclose his grandson's medical debts on his SCA or whether he had any specific intent to falsify his SCA.

In his SOR Answer, Applicant wrote "I admit," without further explanation, next to the SCA falsification allegation in SOR ¶ 2.a, which included the fact that Applicant "deliberately" failed to disclose any of his delinquent debts. The Government did not provide any other evidence that Applicant intended to falsify his SCA. The record is silent as to whether Applicant has had any financial counseling.

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.

⁸ See also Items 5 and 6.

⁹ Item 4 at 2-3.

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

¹¹ *Egan* at 527.

¹² EO 10865 § 2.

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 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

¹³ EO 10865 § 7.

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

¹⁷ Directive ¶ E3.1.15.

¹⁸ 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).

Analysis

Guideline F (Financial Considerations)

The concern under Guideline F (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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds

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.²¹

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required").

The security concerns raised in the SOR 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;

²¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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;

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

AG ¶ 20 (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved. I cannot conclude that Applicant's financial indebtedness is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. While his grandson's injury was a circumstance beyond his control, there are no medical debts alleged in the SOR. The record is insufficient to establish that the alleged debts were largely attributable to either his grandson's injury or any other circumstance beyond his control. However, even if it was sufficient, Applicant did not meet his burden to establish that he has acted responsibly to address them.

AG ¶ 20(c) is not established. There is no evidence that Applicant has received any financial counseling.

AG ¶ 20(d) is not established. I credit Applicant with initiating action to resolve his IRS debt and with making payments towards the satisfaction of the court judgment. However, the record does not establish any efforts to resolve his other debt, especially those to which he admitted he owed. Because he did not respond to the FORM, the record is silent as to what, if any, progress he made in resolving his delinquent debts since his SOR answer, his plans for resolving those on which he has not made progress, and his current ability to repay his delinquent debts.

AG ¶ 20 (e) is not established. Applicant articulated a reasonable basis to dispute the debts alleged in SOR ¶¶ 1.d through 1.f, 1.h, 1.k, and 1.l through 1.n. However, he did not provide sufficient evidence to demonstrate any actions taken to resolve the issue.

AG ¶ 20(g) is not established. While Applicant negotiated an installment agreement with the IRS, one payment is insufficient to establish that he is in compliance with that agreement.

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 SOR debts until the investigator brought them to his attention during his 2013 interview, which took place after he certified his SCA. 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.²² An applicant's level of education and business

²² See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.²³

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.

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 failure to pay delinquent tax and other debts. 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 F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.n: Against Applicant

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

Subparagraph 2.a: For Applicant

²³ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Conclusion

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

Gina L. Marine
Administrative Judge