



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



In the matter of:)
)
) ISCR Case No. 15-04892
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2018

Decision

Gregg A. Cervi, Administrative Judge:

Applicant mitigated the personal conduct security concerns, but failed to mitigate the financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 15, 2015, seeking renewal of a Department of Defense (DOD) security clearance. On November 25, 2016, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant responded to the SOR on December 15, 2016, and requested a hearing before an administrative judge.¹

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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. These guidelines were revised on June 8, 2017, and are applicable to all decisions issued thereafter.

The case was assigned to me on August 9, 2017. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2017, scheduling the hearing for November 14, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, and a character witness testified on his behalf. The record was held open for Applicant to submit additional information. He submitted Applicant Exhibit's (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 22, 2017.

Findings of Fact

Applicant is a 45-year-old facility technician for a defense contractor, employed since 2006. He served in the Army National Guard. He was awarded an associate's degree in 1996, married, and has five children from ages 8 to 22. Three children live with Applicant. He currently holds a security clearance.

The SOR alleges under Guideline F, six delinquent debts totaling about \$48,743, and a Chapter 7 bankruptcy discharged in 2008. In addition, the SOR alleges under Guideline E, that Applicant falsified his 2015 SCA by failing to disclose debts listed in the SOR. Applicant admitted all of the SOR allegations, and noted that he misread the SCA question regarding delinquent debts when he answered "no," and did not understand the question.

Applicant testified that his delinquent accounts were incurred between 2013 and 2015. In September 2013, Applicant suffered from headaches and two seizures, and missed six months of work. During this time, he received worker's compensation which covered about 60-70% of his pay. He returned to work in March 2014, but with physical restrictions. In April 2014, Applicant notified his company security manager that during his short-term disability, three vehicles were repossessed because he could not maintain the monthly payments. He noted that the vehicles were sold, and the lender that financed all three vehicles was collecting the differences owed. Applicant could not pay the collection amounts. SOR ¶¶ 1.b-1.d.

Applicant spoke with the lender who affirmed the debts, but he disagreed with the amount owed. Applicant was unsure of the medical debt alleged in SOR ¶ 1.f, and has not addressed the credit card debt alleged in SOR ¶ 1.g. Applicant received financial counseling before he filed bankruptcy in 2008, but has not submitted evidence of financial counseling since then.

When Applicant completed his SCA, he had just finished the night shift, and testified that he was very tired and did not fully understand the financial delinquency questions at the time he completed the form. He listed his bankruptcy, but did not list any delinquent debts. He made other errors on the SCA, but he noted that he did not intentionally falsify the SCA. Applicant discussed what he knew of the delinquent accounts during his personal subject interview.

Applicant has a checking account balance of about \$600, a 401k retirement account balance of about \$8,000, and no savings account. Applicant's November 2017 credit report, submitted after the hearing,² shows that his other credit accounts are current, but confirms the vehicle and credit-card collection accounts alleged in the SOR. A small medical collection account is listed as paid. Applicant's friend testified about his reliability, good character, and family values.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

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.

² The November 2017 credit report was forwarded to Department Counsel in a post-hearing e-mail from a credit repair company. However, no other information confirming Applicant's use of this company for counseling or assistance with resolving his debts was submitted.

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).

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 greater risk of having to engage in illegal or otherwise questionable 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred multiple delinquent debts that remain unresolved. The evidence is sufficient to raise the above disqualifying conditions.

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

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

(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;

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

(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.

Applicant attributed his financial problems to a diminution of household income because of his short-term medical disability from 2013 to 2014. Although it invokes a condition beyond his control, he failed to show efforts to adequately address his financial issues once he returned to work, and since learning that the debts raised a security clearance issue. Applicant has done little to address the debts except to verify their continuation in a collection status. He has not made satisfactory efforts to dispute them, negotiate a settlement, pay installments, or otherwise resolve them. Although he is current on all other credit accounts, he has not resolved his collection accounts except for the small medical debt that was paid.

I am unable to find that Applicant acted responsibly under the circumstances or that he made good-faith efforts to pay his delinquent debts or negotiate good-faith solutions. Despite being on notice upon receipt of the SOR that his finances are a security concern, Applicant has allowed them to remain unresolved, and he has not shown that he enlisted a financial counselor or other assistance to aid him in resolving the debts. The unresolved SOR debts continue to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable but not conclusive. None of the other mitigating conditions apply, except as noted above.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. 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.³ 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.⁴

Applicant did not report his past delinquent financial accounts in his SCA, but reported his bankruptcy. He denied intentionally falsifying his SCA, and attributed the omission to his fatigue after working the night shift, and misunderstanding the financial delinquency question. I find that based on Applicant's answer and testimony, his failure to report delinquent debts on his SCA was not intentional. He provided a plausible explanation for his omissions, and intentional falsification is not supported by the evidence. AG ¶ 16(a) is not applicable to SOR ¶ 2.a. The personal conduct security concern is concluded for Appellant.

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(a):

(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.

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

⁴ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

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 in my whole-person analysis.

I considered Applicant's answer, his testimony, testimony of his witness, and the documentary evidence. Applicant faced a short-term financial hardship until he returned to work in 2014, however he has not shown financial responsibility with regard to the debts he incurred during that period. His past Chapter 7 bankruptcy raises a concern for his financial track record, and based on the evidence presented, there is insufficient evidence to show that he has the resources or intends to address his financial delinquencies in good faith. However, I am not convinced that he knowingly failed to submit truthful answers on his SCA, as noted above.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations, but mitigated the 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge