



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



In the matter of:

ISCR Case No. 15-06533

Applicant for Security Clearance

Appearances

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

12/01/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of delinquent debts. He did not disclose them or information about previous investigations in security clearance applications. He failed to mitigate the resulting financial and personal conduct security concerns. National security eligibility for access to classified information is denied.

History of Case

On March 12, 2015, Applicant submitted a security clearance application (SF 86). On June 17, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 (AG) effective within the DoD after September

1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR in writing on August 24, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 27, 2017. DOHA issued a Notice of Hearing on May 16, 2017, setting the hearing for June 26, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence. Applicant testified, and offered Exhibit (AE) A into evidence. All exhibits were admitted without objections.² DOHA received the hearing transcript (Tr.) on July 5, 2017.

Findings of Fact

Applicant is 52 years old and married for 30 years. He has four adult children. He enlisted in the U.S. Army in 1985 and was honorably discharged in 2011 as an E-7. He deployed to the Middle East twice, where he served for almost a year during each deployment. He received a Bronze Star in 2005 and a Purple Heart in 2004. After leaving the Army, he attended college fulltime and earned an associate's degree in 2013. In 2014, he began working for defense contractors. He has worked for them continually, except for six months when he was unemployed as a consequence of a work-related hand injury. His wife works for a school district. (Tr. 20-27, 33-34.)

Applicant initially filed a SF 86 in 1985 and was subsequently granted a security clearance. In 2002, he submitted another SF 86 for re-investigation for purposes of receiving a promotion. In 2003, the Army revoked his clearance on the basis that he failed to answer a Statement of Reasons that alleged delinquent debts. In 2008, he submitted another SF 86. The Army subsequently issued another SOR alleging delinquent debts. In 2009, Applicant's request for a security clearance was denied after he failed to respond to the second SOR. In 2015, he submitted another SF 86, which is the subject of this investigation. (GE 1, GE 5, GE 7, GE 8, and GE 9.)

Based on credit bureau reports (CBR) from June 2017, April 2015, and February 2008, the 2015 SOR alleged 15 delinquent debts that totaled \$37,035. Seven of those debts (SOR ¶¶ 1.a through 1.g) became delinquent between 2009 and 2014. Eight of them (SOR ¶¶ 1.h through 1.o) became delinquent between 2003 and 2006. (GE 3, GE 4, GE 6.) Applicant admitted owing the debts. (Answer). All of the debts remain unresolved except the following three:

(¶ 1.b) Applicant began making monthly payments of \$70 in June 2017. It will be paid in six months. (Tr. 29-30.)

¹I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

²Department Counsel offered Hearing Exhibit 1 as demonstrative evidence. It is a summary of the SOR-alleged debts. Applicant had no objection to this exhibit. (Tr. 19.)

(¶ 1.e) The \$455 debt owed to a satellite company was paid in May 2017. (Tr. 34-35; GE 4.)

(¶ 1.k) The \$680 debt owed for a returned check was paid by his wife. (Tr. 39.)

Applicant attributed his history of delinquent debts to earning insufficient income and mismanaging that income over the years. (Tr. 49-50.) He has not participated in credit counseling or financial budgeting. (Tr. 51.) Three new debts appeared on his 2015 CBR that are not alleged in the SOR: two telephone bills and one medical debt, totaling \$1,492.³ (GE 3.)

Applicant submitted a budget. His net total monthly income is about \$5,800, and includes his retirement and disability payments. After paying expenses, he has \$1,500 remaining at the end of the month. His wife earns \$1,300 a month, which is not included in his budget. (Tr. 46-48, 51; AE A.) He anticipated receiving a \$20,000 payment from the insurance company responsible for compensating him for his hand injury. He intended to use that money to resolve his delinquent debts. (Tr. 44-45, 46.)

The SOR also alleged that Applicant failed to disclose requested information in his 2008 and 2015 SF 86 (GE 3, GE 6.). Those allegations are as follows:

(SOR ¶¶ 2.a and 2.d) He did not disclose in his 2008 and 2015 SF 86 that he had been investigated by the U.S. Government for security clearance eligibility in 2002 and 2008;

(SOR ¶¶ 2.b and 2.e) He did not disclose in his 2008 and 2015 SF 86 that his clearance had been revoked in 2002;

(SOR ¶ 2.c) He did not disclose delinquent debts in his 2015 SF 86.

(SOR ¶ 2.f) He did not disclose in his 2008 SF 86 that he had a vehicle repossessed; and

(SOR ¶ 2.g) He did not disclose in his 2008 SF 86 the delinquent debts alleged in SOR ¶¶ 1.h through 1.o.

Applicant admitted these allegation in his Answer, but denied, while testifying, that he had intentionally falsified the information. (Tr. 53; Answer.) He said he knew he had delinquent debts, but did not know how old they were until he saw the SOR. He did not list the previous investigations because he thought they were too far in the past and not required to be disclosed. He said he was not paying close attention to the questions in the 2015 SF 86 while he was completing the form. He acknowledged that he made a

³These unalleged debts shall not be considered in an analysis of the disqualifying conditions; however, they may be considered in the analysis of mitigating conditions, the whole-person concept, and Applicant's credibility.

serious mistake by not disclosing the required information and accepted responsibility for it. (Tr. 54-58.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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 has a history of financial difficulties starting in 2002, as documented by CBRs and his admissions. He has been unwilling or unable to satisfy or resolve these debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or 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; and

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

Applicant acknowledged that his delinquent debts were attributable to insufficient income and financial mismanagement. The majority of the alleged debts remain unresolved. There is minimal evidence to conclude that similar problems will not recur. AG ¶ 20(a) does not apply.

Applicant's lack of income over the years may have been a circumstance beyond his control. However, financial mismanagement was within his control. There is insufficient evidence documenting that he acted responsibly under the circumstances and during the accumulation of the delinquent debts. AG ¶ 20(b) applies minimally.

Applicant did not provide evidence that he participated in credit or financial counseling and there is scant evidence that his debts and finances are under control. The evidence does not establish mitigation under AG ¶ 20(c). He made a good-faith effort to pay or resolve three debts. He established some mitigation under AG ¶ 20(d) as to those debts.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he failed to disclose requested information in his 2008 and 2015 SF-86s. While testifying, he denied that he intentionally falsified his security

clearance applications. He stated that he did not carefully read his 2015 SF 86 while completing it. He thought the information regarding delinquent debts, previous security clearance investigations, and the revocation of his clearance were facts too old to be included in either SF 86. He also appeared to be unfamiliar with some debts. Given the scope of the information left out on both SF 86s, his explanations for not disclosing the requested information alleged in the SOR are not credible. Additionally, he had been on notice that his delinquent debts created security concerns since 2002 or earlier. The evidence established the above disqualifying condition.

AG ¶ 17 includes two conditions that could mitigate security concerns arising from personal conduct:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not make a prompt or good-faith effort to correct the misrepresentations he made in his 2008 and 2015 SF 86s, prior to or during the investigations related to his security clearance. AG ¶ 17(a) does not provide mitigation. Failing to intentionally disclose information in a security clearance application is not a minor offense. AG ¶ 17(c) does not provide mitigation for the SOR allegations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult and is accountable for the decisions that lead to his history of delinquent debts and the resulting security concerns. A significant concern in this case is the fact that Applicant has encountered security clearance problems in 2002, 2008, and again in 2015, related to delinquent debts; and in 2008 and 2015 for delinquent debts and undisclosed information. While fully recognizing Applicant's impressive and commendable service and weighing that in his favor, at this time, he has not established a sufficient track record of managing debts or disclosing requested information to outweigh the negative factors in this case. Additionally, he has been on notice of the Government's repeated concerns about his financial situation for about 15 years. Overall, the evidence raises doubt as to Applicant's eligibility and suitability for a security clearance at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l through 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge