



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



In the matter of:)
)
) ISCR Case No. 15-07863
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2018

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guideline E (personal conduct), however, he was unable to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On July 1, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. On August 26, 2016, Applicant responded to the SOR, and requested a hearing before an administrative judge.

On March 20, 2018, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 2, 2018, DOHA issued a notice of hearing scheduling the hearing for May 7, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and Applicant Exhibits (AE) A through C were admitted in evidence without objection. I held the record open until June 8, 2018 to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE D through Q,

which were admitted in evidence without objection. On May 16, 2018, DOHA received the hearing transcript (Tr.).

Procedural Matters

Department Counsel moved to amend SOR ¶ 1.b to change the charged-off amount alleged from \$10,849 to \$20,259 to conform to the evidence. Without objection from Applicant, I granted Department Counsel's motion. (GE 2; Tr. 99-101)

Findings of Fact

Applicant is a 58-year-old field service representative employed by a defense contractor since February 2013. He seeks to retain his security clearance as a condition of his continued employment. Applicant stated that he has held a security clearance since 1979 when he was in the Army. (GE 1; Tr. 13-14, 21-22))

Applicant graduated from high school in 1978. He enlisted in the U.S. Army in 1979 and retired as a chief warrant officer 2 in 1999. He began working as a defense contractor "[p]robably three years" after retiring from the Army. (GE 1, GE 5; AE D; Tr. 15, 20-23) Since graduating from high school, Applicant has been awarded an associate's degree in general studies, and bachelor's and master's degrees in theology. Shortly after his hearing, he received a doctorate degree in religious education in May 2018. (GE 1, GE 5; AE L; Tr. 15-19) In addition to his defense contractor job, Applicant is a full-time pastor. (Tr. 19)

Applicant married in 1982 and has an 18-year-old daughter in college. His wife is employed full-time as a GS-8 secretary at an Army hospital. (GE 1; Tr. 23-26)

Financial Considerations

The SOR lists 12 allegations under this concern, 10 of which are debts totaling \$52,630, and 2 of which are charged-off accounts with unknown balances. These debts are substantiated in the Government's exhibits. (SOR ¶¶ 1.a – 1.l; GE 1 – 5)

Applicant claimed that his financial difficulties began shortly after his retirement from the Army in 1999. At that time, he had his Army pension, a 401k retirement account, and he had secured a \$64,000 a year job with a yacht company. After he retired, Applicant and a friend decided to open a Caribbean soul food restaurant near a military base. Two days after opening the restaurant, his friend abandoned the business leaving Applicant on his own to run and manage the business. Shortly after that, the "economy went bad" when "the troops left and went overseas" and Applicant lost his job with the yacht company. He used his 401k retirement account and credit cards to keep the restaurant financially afloat until he was forced to close it in 2001. (GE 1; Tr. 26-30, 35-36)

A review of Applicant's May 3, 2014 security clearance application indicates that he has had no significant periods of unemployment since retiring from the Army in 1999. (GE 1)

During his April 30, 2014 Office of Personnel Management Personal Subject Interview (OPM PSI), the investigator discussed Applicant's SOR credit report and debts in detail with him. During that interview, Applicant claimed that he had no problems meeting his financial obligations in a timely manner and disagreed with the majority of the debts, but as of the date of his July 1, 2016 SOR, he had done little if anything to address the debts listed on his credit report. (GE 5)

In Applicant's August 26, 2016 SOR Answer, he provided documentation addressing four of his smaller SOR debts - SOR ¶ 1.e (\$1,386 collection account paid in full on August 15, 2016); SOR ¶ 1.f (\$654 medical collection account settled for \$392 on August 15, 2016); SOR ¶ 1.h (\$121 collection account paid on July 26, 2016); and SOR ¶ 1.i (charged-off account for an unknown amount that was current as of August 11, 2016). In his SOR answer, Applicant stated he had retained the services of a credit repair company, but provided no documentation of same. Also, Applicant testified regarding the progress the credit repair company had made, but provided no documentation of same at his hearing or in his post-hearing submissions. (SOR Answer; AE Q; Tr. 91-95)

Applicant claimed that the debts in SOR ¶¶ 1.b (\$10,849 charged-off account) and 1.c (\$24,295 collection account) are the same debt for a repossessed automobile. However, the evidence does not support that assertion. In 2013, Applicant cosigned an automobile loan for a friend, the friend stopped making payments, and the automobile was repossessed and auctioned in 2015 leaving Applicant responsible as cosigner. The \$24,295 debt listed in SOR ¶ 1.c is the automobile loan. Applicant had not resolved this debt as of his hearing date and did not submit any post-hearing evidence indicating that this debt was resolved or being resolved. (GE 2; Tr. 29-30, 32-35, 41-46, 101)

Department Counsel questioned Applicant regarding each of the remaining SOR debts. Apart from the four debts that Applicant addressed in his SOR Answer and the debt in SOR ¶ 1.i (\$97 collection account), he was unable to provide clear and convincing evidence that the remaining seven debts were resolved or being resolved. After questioning Applicant about his debts, Department Counsel and I reviewed his debts a second time with him to ensure that he understood what post-hearing documentation was required. (SOR Answer; GE 2; Tr. 37-77) Post-hearing, Applicant submitted documentation addressing the debts in ¶¶ 1.a, 1.b, and 1.i (previously submitted in SOR Answer).

SOR ¶ 1.a is a \$957 judgment that was settled for \$1,200 documented by letter dated June 1, 2018. (AE J)

SOR ¶ 1.b is a \$10,849 charged-off account that has a zero balance as evidenced by letter dated June 1, 2018. (AE G). Applicant claims AE G addresses the debt in 1.j (a \$8,483 judgment in 2010 with a different creditor name than the debt in 1.b) It is unclear from the documentation Applicant submitted that 1.j is the same debt as 1.b given the different creditor names, different amounts involved, and that one account is a charged-off account and the other is a judgment.

SOR ¶ 1.I is a charged-off account for an unknown amount. This debt was addressed in the SOR Answer and again addressed in the post-hearing submissions by letter from the creditor dated June 5, 2018 showing the loan was paid in full. (AE N)

During his April 2014 OPM PSI, Applicant claimed that he pays all of his bills and has no problems meeting his financial obligations in a timely manner. He added there are no records or people who would contradict the information he provided. (GE 5) Post-hearing, Applicant provided pertinent portions from his 2017 federal income tax returns to demonstrate that he was making timely payments for taxes owed. His adjusted gross income for 2017 was \$147,221. (AE B)

Personal Conduct

The SOR alleged and Applicant denied that he deliberately falsified his May 2017 security clearance application when asked whether he ever had a judgment entered against him in the past seven years when in fact he had a \$957 judgment entered against him in March 2012 and a \$8,483 judgment entered against him in June 2010. Additionally, he was asked whether in the last seven years he had ever defaulted on any type of loan, ever had bills turned over to a collection agency, ever had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, or ever been over 120 days delinquent on any debt not previously entered or was currently over 120 days delinquent on any debt, which was not true as evidenced by the debts listed in SOR ¶¶ 1.a through 1.I. Applicant answered no to both questions.

Applicant testified that he never received any notices regarding judgments nor was he aware of his debts. He added that he was overseas and out of touch with his mail and credit situation. He also failed to check his credit report when he completed his security clearance application which would have alerted him to his negative credit history. Applicant acknowledged that his answers were incorrect or that he may have misinterpreted the questions, but asserted that he did not intentionally falsify his security clearance application. (SOR Answer; GE 1; Tr. 77-88) In reviewing Applicant's April 2014 OPM PSI, he made numerous other mistakes when completing his security clearance application relating to other areas such as past addresses, education, military record, and family members. (GE 5)

Character Evidence

Applicant submitted copies of his DD-214s reflecting his 20 years of service in the Army and a favorable reference letter from his program manager. (AE D, AE E, AE H)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.”

In ISCR Case No. 09-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s

obligations under [Directive] ¶ E.31.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;¹ 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.

¹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that 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." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions are fully applicable except for AG ¶ 20(d) to the debts in SOR ¶¶ 1.a – 1.b, 1.e – 1.f, 1.h, 1.i. Applicant did not provide sufficient documentation relating to the remaining SOR debts such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;² (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Lastly, Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

At a minimum, Applicant was put on notice that his financial history was a concern to the Government during his April 24, 2014 OPM PSI and again when he was issued his July 2016 SOR. It is troubling that Applicant did not make a more concerted effort to regain financial responsibility given his background, education, and resources. In short, there is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

Personal Conduct

AG ¶ 15 articulates 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 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 one 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied deliberately falsifying his May 2014 security clearance application. Given his experience completing security clearance applications, Applicant knew that lying about any aspect of his security clearance history would be discovered.

Based on the available information, it appears Applicant was confused or careless when completing his May 2014 security clearance application. His lack of attention to detail cannot be imputed as a willful and deliberate attempt to undermine the investigative process. Although the information he provided proved to be incorrect, I attribute this lapse to carelessness and am satisfied that he did not deliberately fail to disclose the required information.³

In summary, Applicant was able to mitigate personal conduct concerns stemming from allegedly falsifying his security clearance application, but he was unable to mitigate the financial considerations security concerns. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guidelines F and E, I have reviewed the record before me in the context of the whole-person

³ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

factors listed in AG ¶ 2(a). Applicant has been gainfully employed, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against the Applicant.

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.b:	For Applicant
Subparagraphs 1.c – 1.d:	Against Applicant
Subparagraphs 1.e – 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge