



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



In the matter of:)	
)	
)	ISCR Case No. 15-08828
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that he is financially responsible and that his financial problems have been resolved or are under control. Moreover, he deliberately falsified his 2015 security clearance application (SCA) to cover up his financial problems and felony charges. The financial considerations and personal conduct security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a SCA on June 25, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on September 2, 2016, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on September 29, 2016, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated January 3, 2017. Applicant received the FORM on January 17, 2017. He was allowed 30 days to submit any objections to the FORM and to provide material to refute,

extenuate, and mitigate the concerns. Applicant responded to the FORM with a one-page document (received by DOHA on February 2, 2017) that provided some corrections to it. The case was assigned to me on October 1, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from September 15, 2015. (FORM, Item 4) Applicant was informed he could object to the summary of his interview and it would not be admitted or considered by me, 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 be construed as a waiver and the proposed FORM evidence would be considered by me. Applicant responded to the FORM, submitted some corrections, and raised no objections. I admitted the FORM with its proffered evidence and considered it.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a through 1.e, 1.h, 1.o, and 2.c. He admitted SOR ¶¶ 1.f, 1.g, 1.i through 1.n, 2.a and 2.b. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 62-year-old heavy equipment mechanic employed by a federal contractor. He attended high school, but left before receiving a diploma. He married his wife in 1983, and they have a 34-year-old son.

Applicant's employment history indicates that he was employed by federal contractors between 2005 and May 2015. A federal contractor hired Applicant in September 2013, and he submitted his first SCA in June 25, 2015. During the following background investigation, Applicant was interviewed in September 2015 (PSI). Applicant told the investigator that he was laid off from his job because of medical problems in May 2015. Applicant stated he had been unemployed from May 2015 to the day of the interview in September 2015. He was supporting himself with his unemployment compensation benefits. (GE 4) On December 13, 2017, Department Counsel confirmed that Applicant's employer is still sponsoring Applicant for a clearance. (Hearing Exhibit (HE) 1)

Applicant's background investigation revealed that he was charged with sexual assault (a felony) and indecent assault (misdemeanor) in May 2006. He pleaded guilty to the indecent assault charge, and the sexual assault charge was *nolle prossed*-withdrawn. He was sentenced to prison for a period between 7 and 23 months. He was placed on probation from December 2006 to November 2008. (GE 7)

The investigation also revealed that in 1975, Applicant was charged with theft of a car, conspiracy to commit theft, operating a vehicle without the consent of the owner,

corruption of minors, and conspiracy to corrupt minors. He was convicted of the charge of corruption of minors. In January 1976, the court sentenced Applicant to imprisonment for 23 months. Applicant was placed on parole in August 1976. He failed to comply with the term of his parole, and his parole was revoked. He was remanded to serve the remainder of his January 1976 sentence, starting in October 1976. Applicant was paroled again in April 1977, and released from parole in October 1977.

The investigation further revealed that during the last seven years Applicant had accumulated numerous delinquent accounts, many of which were over 120 days delinquent, and had been turned over to collection agencies.

Section 22 (Police Record (Ever)) of Applicant's June 2015 SCA asked Applicant whether he had ever been charged with a felony offense. Applicant answered "No" and failed to disclose that in 1975 he was charged with automobile theft (third degree felony), and with conspiracy to commit theft (felony) and corruption of minors. He also failed to disclose that in 2006 he was charged with sexual assault (felony).

During his September 2015 interview, Applicant was confronted with the omitted 2006 sexual assault felony charge. Applicant acknowledged the charge and explained that he did not disclose the felony offense in his 2015 SCA because the charge was dismissed when he pleaded guilty to indecent assault. He offered no explanation for his omission of the 1975 felony offense.

In his response to Section 26 (Financial Record) of his June 2015 SCA, Applicant disclosed no delinquent accounts or debts in collection. During his September 2015 background interview, Applicant was confronted with 17 delinquent medical accounts reflected in his credit report. Applicant admitted to knowing that he had delinquent medical bills that had been turned over for collection, and delinquent accounts that were over 120 days delinquent. He told the investigator that he did not disclose the debts in his June 2015 SCA because he could not recall the details of each account.

Applicant acknowledged the delinquent debts and stated he was not disputing them. He explained that he acquired the delinquent medical debts within the last three years because of his cancer treatment. Applicant claimed that he had paid some accounts, made partial payments on some debts, and established payment plans with some creditors or collectors. He indicated his intent to establish payment plans and to pay the accounts in full. He averred he was currently capable of meeting his financial obligations. He considered his current financial status was good, except for the medical bills he owes. Applicant noted he had acquired no additional delinquent accounts. He believes the likelihood of recurrence is small, unless he received additional large medical bills he cannot afford. (2015 PSI)

Applicant submitted no documentary evidence to corroborate his claims of payment agreements, payments made, or of debts paid. He presented no documentary evidence of any efforts to remain in contact his creditors or to otherwise resolve his delinquent accounts. Applicant presented no evidence about his current financial

situation, including his income, outstanding debts, whether his income is sufficient to pay for his living expenses, and whether his financial problems are resolved or under control. He gave no indication that he had participated in financial counseling.

Policies

The SOR was issued under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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

Applicant’s history of financial problems is documented in the record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern 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.” The record established the above disqualifying conditions, 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.

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. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant's financial problems are recent and ongoing. Apparently, he acquired most of the medical bills because of his cancer treatments. As such, his financial problems may have resulted from circumstances beyond his control. Nevertheless, he presented no evidence of a

¹ The 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. Jun. 4, 2001)).

good-faith effort to pay his debts or that he has been financially responsible under his circumstances. There is no evidence he participated in financial counseling or that he is following a budget. There is no evidence of Applicant's current financial situation, including his income, and whether his income is sufficient to pay for his living expenses and debts. He presented no evidence to show that his financial problems are being resolved or are under control.

Guideline E, 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 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.

Applicant omitted relevant and material information from his 2015 SCA when he failed to disclose that he had financial problems that included numerous delinquent accounts past due over 120 days and in collection. Moreover, he failed to disclose that he was charged with felony offenses in 1975 and 2006. Applicant's omissions, if deliberate, would trigger the applicability the following disqualifying condition under 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. (ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)). Considering the evidence as a whole, including Applicant's age, education, work experience, his 2015 statement to a government investigator, and his SOR answer, I find that Applicant's omissions were deliberate or made with the intent to mislead the Government. AG ¶ 16(a) is applicable. Additional inquiry about the possible applicability of mitigating conditions is required.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Considering the evidence as a whole, I find that Applicant's evidence is insufficient to mitigate the Guideline E security concerns. Applicant was charged with felony offenses in 1976 and 2006. He went to court in both instances, pled guilty to misdemeanor offenses, and the felonies were dismissed. He served time in jail, and was on parole for significant periods. Under such circumstances, it is not credible he forgot about the felony charges and the circumstances surrounding them. His claims of honest mistake or lack of recollection are not credible.

Most of the debts alleged in the SOR were delinquent within the preceding seven years. Applicant acknowledged his delinquent debts and explained he did not disclose them because he did not have all the information for each account. Instead, he elected to mislead the government about his financial situation and indicated he had no financial problems or any delinquent debts. A statement in his SCA indicating he had financial problems, but did not recall specific debts would have sufficed to place the Government on notice. Considering the evidence as a whole, I find Applicant deliberately falsified his 2015 SCA.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person

concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 62, has been employed with federal contractors since 2005. He failed to demonstrate financial responsibility and that his financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Moreover, he deliberately falsified his 2015 SCA to cover his financial problems and omitted relevant and material information concerning past felony charges.

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.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge