



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



In the matter of:)
)
) ISCR Case No. 16-01763
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoain, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. He mitigated the personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On November 16, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) January 4, 2016. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On November 24, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on December 16, 2016, admitting all of the allegations, which include consumer accounts and medical accounts under Guideline F totaling approximately \$22,745. Applicant admitted the one allegation of falsification of information in his e-QIP under Guideline E. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on January 30, 2017. Applicant received a complete file of relevant material (FORM) on February 3, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on October 1, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 55 years old. He attended college after high school until 2002, but he did not receive a degree. Applicant married in 1996, and has two children. (Item 3) He has never held a security clearance. He has been employed with his current employer since 2015

The SOR alleges, and credit reports (Items 4 and 5) confirm the following delinquent debts for Applicant: a charged off account in the amount of \$8,188 (SOR 1.a); a past-due credit card balance for \$912 (SOR 1.b); a charged-off account in the amount of \$2,160 (SOR 1.c); a charged-off account in the amount of \$2,099 (SOR 1.d); a collection account for \$1,852 (SOR 1.e); five collection accounts totaling \$5,1220 (SOR 1.f-l); and a medical account in the amount of \$214 (SOR 1.m). The amount of the delinquent debt is approximately \$122,745.

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

The SOR alleges one personal conduct security concern for failing to provide full, accurate, and complete information on his November 16, 2015 e-QIP. Applicant allegedly did not list all his delinquent accounts in response to question 26 of the e-QIP. Applicant responded “yes” to the question involving routine delinquent accounts and listed two accounts. He elaborated that he was on a payment plan in response to financial question in Section 26 of the e-QIP. He listed one account from 2001 and one from 2012. He admitted to the personal conduct allegation, but said that he thought by responding “yes,” it would cover all of his current and past debts. (Answer to SOR).

In the PSI, Applicant reported that the numerous accounts became delinquent due to his unemployment on various occasions. From January 2008 to June 2008, from August 2013 to May 2014, and from July 2015 to September 2015, Applicant was unemployed and seeking employment. He received unemployment benefits in the amount of \$155 weekly. When questioned about the delinquent debts, he stated that in 2013, he contacted the creditors and tried to arrange payment plans. (Item 2 and 6) He noted that he had some temporary employment but could not satisfy the debts. He was aware of the accounts but only listed the ones on which he was making payments. During the interview he noted that he had not contacted all the creditors, but in his answer to the SOR, he stated that he had either paid the accounts in full or that he was in a payment plan. (Item 2) Applicant noted that he intends to pay all the delinquent debts as soon as he has the money to do so. He stated that he has never sought financial counseling and at present his financial status is not good, but he intends to change that in the future. He hopes that all debts will be paid in one to two years. (Item 6)

Applicant provided no information as to his current salary or savings. He did not mention that he was using a budget. He was not more specific in his answer or provide receipts for the accounts that he stated he paid in full, and he did not respond to the FORM.

Applicant did not provide any documents to verify his SOR response. He did not present any documents to verify that he contacted creditors to make payment or settlement arrangements. He did not provide any evidence of his efforts to pay, settle, compromise, dispute, or otherwise resolve any of the delinquent debts.

Applicant failed to list all his delinquent accounts on his security clearance application, but he did respond affirmatively to the section regarding delinquent debts and listed two accounts. He admitted the allegation but he appears to say that it was inadvertent due to the fact that he responded “yes” to the section 26 –financial record.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which must be considered 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, these guidelines are applied 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(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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 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 and sensitive information)

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal and Applicant admitted that he has multiple delinquent debts dating to as early as 2003. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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 information raises issues about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 person has received or is receiving 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 has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. Applicant's debts are numerous and, recent, and although they were incurred under circumstances beyond his control, such as unemployment, he did not present any information to support a conclusion that he acted responsibly. He did not provide any evidentiary documentation to support any good-faith efforts that he has made to resolve the financial issues. He intends to pay his debts, but promises in the future are not sufficient to mitigate security concerns under the financial considerations guideline. Applicant did not provide information concerning financial counseling. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts. Accordingly, he has not established a good-faith effort to pay his debts.

Due to insufficient information in this record, there is no opportunity to gauge his actions to pay his debts. Applicant did not provide any references or performance reviews to support a whole-person assessment. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. Overall, he has not proven that he acted with reason and responsibility towards his finances. Applicant did not present sufficient information to mitigate financial security concerns.

Personal Conduct

Personal conduct is a security concern because 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning his delinquent accounts. Applicant's failure to list all the delinquent debts is not intentional given his affirmative response to section 26 and the

fact that he listed accounts that he was paying. This appears to be his first clearance application. 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 eligibility or trustworthiness, or award fiduciary responsibilities) does not apply.

Applicant admitted that he responded “yes” to the personal conduct allegation, but I find that he did not intentionally fail to provide full, complete, and accurate information on his security clearance application. Omission alone is not sufficient in this case to find a falsification. Applicant listed two delinquent accounts and put the government on notice of his financial issues.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for access to classified information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense 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 considered Applicant’s unemployment and his intentions to pay his debts.

Applicant failed to show that he had a plan to pay his delinquent debts. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, to adequately articulate his positions, and provide facts to mitigate the financial security concerns. In short, the file lacks sufficient evidence to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantial documents and details to explain his finances. He omitted listing all delinquent debts, but he responded “yes” to financial issues and addressed two

accounts that he was making payments. He did not deliberately fail to report his debts on his SCA. Any doubts must be resolved in favor of the government. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial situation. He did not falsify his security clearance application. I find for Applicant under personal conduct.

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.m:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 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 access to classified information. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge