



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



In the matter of:)
)
) ISCR Case No. 16-02841
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

06/08/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On October 15, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on May 10, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

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

12, 2018, scheduling the hearing for February 13, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on his own behalf. He did not present any documents. I held the record open until March 6, 2018. Applicant presented a packet of documents, which I marked Applicant's Exhibit (AE) A . DOHA received the transcript of the hearing (Tr.) on February 21, 2018.

Findings of Fact

Applicant, age 46, is married and has a daughter. He obtained his undergraduate degree in 1994 and his graduate degree in 2002. He has been employed with his current employer since March 2012. Applicant completed his security clearance application on December 11, 2014. He has held a security clearance since 1997. (GE 1)

The SOR alleges that Applicant has significant delinquent debt in the amount of \$129,000. The debts include student loans, a state tax lien, and four judgments. Applicant admitted all the allegations, with the exception of 1.g and 1.h, under financial concerns. He admitted both allegations 2.a and 2.b under personal conduct concerns. He provided explanations for each allegation.

Applicant acknowledged his financial hardship. He takes responsibility, but attributes it to helping various family members and unemployment. Applicant cared for his 95-year-old grandmother before she entered a facility and he also cared for his mother. He is an only child and the financial costs for their care exacerbated any financial problems he already had. He was unemployed from 2011 until 2012. (Tr. 26). In 2014, he defaulted on a rental property due to a tenant's nonpayment. (Tr. 22) He tried to refinance his mortgages but was not successful. Eventually they went to foreclosure.

As to SOR 1.a, a mortgage account past due in the amount of \$7,286, with a balance of \$201,565, this was a rental property. Applicant stopped paying the mortgage in 2016. He stated that a tenant ruined the property and Applicant spent about \$20,000 to repair the damages. In the end, the bank assumed the property. (Tr. 35) Applicant claimed that he does not owe any deficiency. He did not provide a 1099-C as a post-hearing submission.

As to SOR 1.c., an amount past due in the amount of \$13,693 with a balance of \$31,744, this is a home equity loan on Applicant's primary residence. He stated that this second mortgage was discharged and that he would provide a 1099-C. However, he provided a form 1098 – mortgage interest statement for his primary residence from 2016.

As to SOR 1.b, 1.d, 1.e, and 1.f, these are student loan accounts which total about \$47,000. Applicant had a deferment according to an older credit report. He stated that he has consolidated the student loans. (Tr. 44) When he completed his graduate degree, he did not earn the salary that he thought he would. He believes he has made about \$8,000 in payments. However, he provided no post-hearing documentation. He noted that he did make a few monthly payments of \$250, but he stopped in 2017. There is no other information in the record. (Tr. 45)

Applicant denied SOR 1.g and 1.h in his answer. However, he presented no information that the accounts were paid or disputed.

SOR 1.i is a 2015 state tax lien in the amount of \$2,122. There is no documentation that the lien has been satisfied. Applicant stated that his tax refunds have gone to pay the lien, but that he still owes some money (about \$900) and that he intends to pay the remainder. He did not provide any documentation to support his assertion.

SOR 1.j, 1.k, 1.l, and 1.m are judgments from delinquent Home Owner Association fees (HOA). Applicant produced documentation that he paid all accounts and the judgments appear as satisfied on his credit report. He also presented post-hearing documentation to prove payments. (AE A)

Applicant earns about \$130,000 a year. His wife is a nurse who earns about \$60,000 a year. Their daughter attends private school, which is about \$1,400 a month. Applicant's car note is paid. He states that he has no credit card debt, but his wife does. He stated that he lives paycheck to paycheck. He did not provide a written budget nor did he report any financial counseling. (Tr. 67)

When Applicant completed his 2014 SCA, he answered "No" to Section 26 concerning judgments or liens in the past seven years. He also answered "No" to Section 26 concerning bills or debts turned over to collection accounts.

Applicant admitted that he falsified his 2014 SCA, in his answer, but in his testimony at the hearing, he was adamant that he was not trying to defraud the Government. He stated that he copied and pasted from an old SCA. He stated during his summary interview that he was not aware of the judgments and that his student loans were consolidated and had been deferred. At the time, it appears that was true. He also denied knowing anything about the status of the mortgages.

Policies

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 (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, “Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 EO 10865, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are long-standing and his student loans are from years ago. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved.

AG ¶ 20(b) is not established. While Applicant's unemployment was a condition beyond his control, he has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that his financial situation is under control. He made intermittent payments and claimed that his first and second mortgages have no deficiency, he provided no documentation to support the claim. He has not provided information that he is paying his student loans. His judgments are satisfied. His current ability to pay his delinquent debts is in doubt as he stated that he lives paycheck to paycheck. His financial problems are not under control.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.d. against Applicant.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition could apply:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he falsified his 2014 SCA, in his answer, but in his remarks at the hearing, he was adamant that he was not trying to defraud the Government. He stated that he copied and pasted from an old SCA. He stated during his summary interview that he was not aware of the judgments and stated that his student loans were consolidated. At the time it appears that was true. He also denied knowing anything about the mortgages. 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.² An applicant's level of education

² See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.³

In this instance, it is clear from Applicant's comments that he was not aware of some of his delinquent debts, and was relying on the deferment or consolidation of student loans. He should have disclosed the delinquent debts he had knowledge of on his SCA. However, I find insubstantial evidence of an intent by Applicant to intentionally omit, conceal, or falsify facts from and on his SCA. Therefore, AG ¶ 16(a) is not established.

Applicant made prompt or good-faith efforts to correct his falsification or concealment. He provided information that indicates he copied from an old SCA in completing his 2014 SCA. Applicant was credible and has shown that similar lapses in judgment are unlikely to recur. He provided sufficient information in this record to demonstrate that he has met his burden of proof for his personal conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including his years of holding a security clearance, I conclude that Applicant did not deliberately falsify his SCA, but he has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

³ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.i: Against Applicant

Subparagraphs 1.j – 1.m: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a - 2.b: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge