



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



In the matter of:)
)
) ISCR Case No. 16-02982
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2018

Decision

MURPHY, Braden M., Administrative Judge:

Although the personal conduct security concerns are resolved for Applicant, he did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent debts. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On August 14, 2015, Applicant submitted a security clearance application (SCA) in connection with his employment in the defense industry. On November 17, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.¹

¹ The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on February 2, 2017, and elected a decision on the written record in lieu of a hearing. On August 15, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. Applicant received the FORM on August 24, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and did not object to the Government's evidence. The SOR and the answer (Items 1 and 3) are the pleadings in the case. Item 2 is a procedural document. Items 4 through 8 are admitted into evidence without objection. The case was assigned to me on December 18, 2017.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs became effective June 8, 2017 for all decisions after that date, and they supersede the AGs that Applicant received with the SOR.² Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.c, and 1.l through 1.n. He denied SOR ¶¶ 1.d and 1.o. He "admitted" SOR ¶ 2.a, but gave an explanation which I construe as a denial. I have incorporated his admissions and other comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 42 years old. He has been married twice, from 1995 to 1999, and again from 2000 to 2004. He has two grown children from his first marriage, ages 21 and 25. He honorably served in the United States Army for two-and-a-half years (1997-1999). He has a high school diploma and has taken some on-line courses. (Item 4)

Since August 2015, Applicant has worked as a driver for a defense contractor on a military installation. Before then, Applicant had sporadic periods of employment. He was laid off from his job as a laborer in January 2007, and was then unemployed until April 2007. He then worked in a convenience store until May 2008, when he took a new job. He was laid off when that contract ended, in March 2009. He was then unemployed for 18 months, until September 2010. He spent most of the next year working in customer service. He changed jobs in mid-2011 but was laid off at the end of the contract, in January 2012. (Item 4)

Applicant worked in retail from March 2012 to September 2013, when he was laid off.³ He was then unemployed again until February 2014. He then worked for a security company for a year. He changed jobs in February 2015, but was terminated two months

² The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

³ Applicant reported on his SCA that he was terminated from this position for performance issues, but clarified in his November 2015 background interview that he was laid off. (Item 4, Item 8 at 3)

later due to performance issues. He was then unemployed until beginning his current job, in August 2015. (Item 4)

Applicant's background investigation included an October 2015 credit report. (Item 5) The Government's evidence also includes more recent credit reports, from August 2016 and August 2017. (Items 5, 6, 7) He also had several personal subject interviews. (Item 8)

Applicant's credit reports detail the 14 delinquent debts alleged in the SOR, most of which Applicant admitted. They total about \$28,000. These include: four federal student loans in collection (SOR ¶¶ 1.a, for \$10,818; 1.b, for \$7,972; 1.c, for \$1,415; and 1.k, for \$3,998); several phone or cable bills in collection (SOR ¶¶ 1.d, for \$1,095; 1.e, for \$868, 1.g, for \$443; 1.i, for \$226; and 1.m, for \$100); two past-due insurance bills (SOR ¶¶ 1.f, for \$560; and 1.n, for \$115); as well as other accounts in collection (SOR ¶¶ 1.h, for \$280; 1.j, for \$120; and 1.l, a \$30 debt owed to a local government).⁴

Applicant denied SOR ¶ 1.d, asserting it was his ex-wife's account. It is nonetheless listed on his credit reports. He said he was attempting to pay other debts, such as SOR ¶¶ 1.i, 1.j, 1.l and 1.m, but he provided no corroborating documentation.

Applicant disclosed on his SCA that he learned in 2014 that he owed about \$100 in past-due state income taxes from tax year 2012. He also stated he paid the debt in August 2015. He did not indicate on his SCA that he had failed to file the return, only that he owed money. (Item 4 at 40) The summary of Applicant's background interview, if accurate, reflects that he did not file his 2012 state income tax return because he thought whatever he might have owed had been deducted by his employer. (Item 8 at 4)

SOR ¶ 1.o alleged that Applicant failed to file his 2012 state income tax return as required. Applicant denied the allegation, and stated that the return had been filed and any tax debt satisfied. He provided a typed but unsigned 2012 state tax return for his state of residence. If accurate, it reflects that he was due a \$242 refund. There is no indication of when, or if, the return had in fact been filed. (Item 3)

Applicant did not offer an explanation for his debts with his answer. The only source of information on this point is his interview summary (Item 4), in which he discussed his debts at length. Applicant attributed his overall financial difficulties to his unstable employment. (Item 8 at 12)

Applicant's interview summary did not address his monthly income, expenses or his assets. Even if it had, that information would now be more than two years old.

⁴ Item 5 lists SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, 1.g, 1.i, 1.j, 1.k, 1.l, 1.m, and 1.n. Item 6 lists SOR ¶¶ 1.a through 1.j. Item 7 lists SOR ¶¶ 1.a through 1.k, and 1.m, as well as a new past due phone bill for \$194.

Applicant did not provide any information or documents about his finances in his answer, and he did not answer the Government's FORM.

On his August 2015 SCA, Applicant disclosed his \$100 tax debt for tax year 2012 (discussed above). He did not disclose any other financial delinquencies on his SCA, as required, in answer to questions about his financial record. (Item 4).

In his interview, Applicant was asked if he had delinquent accounts, and he answered in the affirmative. He was then confronted with his various delinquent accounts, as reflected on his October 2015 credit report. (Item 5, Item 8 at 5-12)

In SOR ¶ 2.a, the Government alleged that Applicant deliberately failed to disclose any of his delinquent debts on his SCA in answer to questions about his financial record. In his Answer to the SOR, Applicant stated, "I admit, was a misinterpretation of the question on my behalf." (Item 3). Though he did not elaborate, I construe that answer as sufficient to deny the allegation of deliberate falsification.

Policies

It is well established that no one has a right to a security clearance.⁵ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁶

The adjudicative 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(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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁶ 484 U.S. at 531.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁷

AG ¶ 19 provides conditions that could rise security concerns. Disqualifying conditions AG ¶¶ 19(a): "inability to satisfy debts"; and 19(c): "a history of not meeting financial obligations" are applicable, given the record evidence of Applicant's delinquent debts.

With respect to SOR ¶ 1.o, the Government did not prove that Applicant failed to file his 2012 state income tax return as required. Applicant disclosed on his SCA that he learned in 2014 that he owed about \$100 in state taxes, and that he paid that debt. He did not indicate on his SCA that he failed to file his 2012 state income tax return, only that

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

he owed money. The only such evidence is a reference in Item 8, the summary of Applicant's background interview. Further, he provided a 2012 state income tax return reflecting that he had been due a small refund.

Given the record evidence, AG ¶ 19(f) (failure to file annual Federal state or local income tax returns as required) is not established. It is also an isolated incident that does not suggest that Applicant has an ongoing problem filing his tax returns.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Applicant's delinquencies are ongoing and are not isolated. He provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's unstable employment in the years before he began his current job (August 2015) likely contributed to his financial issues and his numerous delinquent debts. The first prong of AG ¶ 20(b) therefore has some application. However, Applicant provided insufficient information to establish that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

The only document Applicant provided with his answer concerned SOR ¶ 1.o. He provided no updated information, and no documents, in response to the FORM. Applicant did not establish that he "initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts" as required. AG ¶ 20(d) does not apply.

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 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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

On his SCA, though Applicant disclosed a small tax debt in answer to another question, he failed to disclose that he had any other delinquent debts, such as his past-due federal student loans, phone or cable bills in collection, and other debts. Applicant denied the SOR allegation that he deliberately failed to disclose those debts on his SCA, and said he misinterpreted the question. He also acknowledged in his background interview that he knew he should have answered "YES" to questions on the SCA about his financial record.

The Government has established that Applicant should have disclosed his delinquencies on his SCA. But they have not established that Applicant's omissions were deliberate. I therefore cannot find that AG ¶ 16(a) applies.

Even if it did, Applicant acknowledged his error in his background interview before being confronted about his specific delinquencies. In this case, that is sufficient to satisfy AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts). I therefore resolve SOR ¶ 2.a for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. While the personal conduct security concerns are resolved, Applicant did not provide sufficient documented information that he is resolving his debts in a good-faith, responsible manner, and security concerns about his financial situation remain unresolved. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.n:	Against Applicant
Subparagraph 1.o:	For 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 interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge