



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



In the matter of:)
)
) ISCR Case No. 16-03114
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

March 21, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On November 19, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD 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 replied to the SOR on January 11, 2017, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on April 3, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

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.

April 20, 2017, setting the hearing for June 8, 2017. The hearing was convened as scheduled on that date.

At the hearing, the Government offered Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and presented documents, which were identified and entered into evidence without objection as Exhibits A through C. The record was left open until June 23, 2017, for receipt of additional documentation. Additional documents that were timely received have been identified and entered into evidence without objection as Exhibits D through I. DOHA received the transcript of the hearing (Tr) on June 16, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 32 years old. He is married to his second wife and they have two sons. He graduated high school and completed some college courses. Applicant served in the United States Navy from 2005 to 2013, and he received an Honorable Discharge. He is currently employed as a Senior Marine Technical Analyst Electrician by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 22-25, 31.)

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. SOR allegations 1.a. through 1.h. were admitted by Applicant on his RSOR; he did not address 1.i. on his RSOR.

At the hearing, Applicant testified that he and his wife filed for a Chapter 13 Bankruptcy in January 2017. At the time of the hearing, Applicant and his wife had begun paying a trustee of the bankruptcy \$1,001 for the months of February through May 2017, for a total of \$4,004. Applicant testified that all of the debts were listed on the bankruptcy with the exception of 1.e. and 1.h., both of which Applicant contended had already been paid. (Tr at 20-22, 25-27.) The debts will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a delinquent mortgage account in the amount of \$7,798 with a total loan balance of approximately \$333,689. Applicant testified that this debt is for the home in which he still lives. It has not yet been determined if this debt will be resolved in the bankruptcy. (Tr at 39-43.) This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$27,002. This debt was for a timeshare, which Applicant purchased in 2013, and he surrendered after he could no longer make payments. (Tr at 43-46.) This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,123. This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$2,345. This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account. The amount was not identified in the SOR. As discussed above, Applicant contended that this debt, which Applicant stated was in the amount of \$2,000, was paid through a garnishment out of his tax return around April 2015. (Tr at 25-26.) Applicant had not documentation at the hearing to establish this debt had been resolved. Applicant's submitted post-hearing Exhibit I, to show that part of his tax return for 2014 was used to pay this debt. While the document does establish that some of his tax return was used to satisfy a debt, it does not show that it was used to pay this debt. No evidence has been submitted to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account. The amount was not identified in the SOR. This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account. The amount was not identified in the SOR. Applicant testified that this creditor, a car company, was not willing to be part of the bankruptcy because the debt was for the purchase of a relatively new vehicle. (Tr at 55-56.) No evidence has been submitted to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account. The amount was not identified in the SOR. As discussed above, Applicant contended that this debt, was paid around August 2011, in the amount of approximately \$700 through his checking account. (Tr at 26-27.) Applicant had no documentation at the hearing to establish this debt had been resolved, nor was any post-hearing evidence submitted to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,751. Applicant testified that this was to the same creditor as that listed on 1.b. above, but he was not certain if it was a duplicate or another bill from this creditor. (Tr at

54-55.) This debt was listed on Exhibit G. However, since the status of the bankruptcy is not known, it has not been established that that this debt has been resolved or reduced.

At the hearing, Applicant testified that he and his wife were able to meet their financial responsibilities while they were both on active duty. It was in 2012 that they purchased a house. Unfortunately, in 2013, Applicant was injured, which resulted in him being medically discharged from the Navy. As a result of the reduced income, he found himself having to juggle the different debts each month, not being able to pay them all, especially the mortgage and car payments. In 2016, Applicant's wife also was medically discharged from the military and this further reduction in their income was the final condition that convinced them to file for bankruptcy. Applicant's wife is currently unemployed, but she plans to begin receiving her education to become a dental assistant under the GI Bill, during which she will also begin also earning \$2,300 a month. (Tr at 29-32, 41.)

Guideline E, Personal Conduct

The SOR lists one allegation (2.a.) regarding Personal Conduct, under Adjudicative Guideline E.

2.a. The SOR alleges that Applicant deliberately falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that he executed on May 28, 2015. He was asked questions about his finances, including: In the last seven years, had any of his bills been turned over to a collection agency; had any account been suspended, charged off or cancelled for failing to pay as agreed, had he been over 120 days delinquent on any debt; and whether he was currently over 120 delinquent on any debt. Applicant answered "No," and the SOR alleged that he deliberately failed to list the all of the delinquent debts, as set forth under subparagraph 1.a through 1.i., above. Applicant did not address this allegation in his RSOR.

At the hearing, Applicant testified that he could not explain why he answered "no" to the series of questions about his finances. While his financial situation was not as bad at the time he completed the e-QIP as it later became, he did understand that he was behind on some of his debts. Applicant did concede that he should have answered "yes" to these questions, but he denied that he failed to include these debts because he thought it could potentially hurt his opportunity to receive a security clearance. (Tr at 32-33.) Upon further examination, Applicant did indicate that he thought some of these bill were not overdue, and some he did not recall. He also testified that his wife was using a credit service to help pay the bills, but he did not have any information or documents about the name of the company. (Tr at 63-67.) However, no evidence was introduced to establish that Applicant made a good-faith effort to ascertain the status of these debts that he knew had been pending for several years before he completed his e-QIP.

Mitigation

Applicant offered into evidence several mitigating documents. They included two laudatory letters of recommendation (Exhibits A and H.); two Certificates of Counseling

confirming that Applicant and his wife took a credit counseling course pursuant to their filing bankruptcy (Exhibit D); Applicant's DD Form 214, confirming Applicant served in the United States Navy from 2005 to 2013 and received two Good Conduct Medal, a National Defense Service Medal, a Global War on Terrorism Service Medal and a Navy Marine Corps Overseas Service Medal, and finally that he received an Honorable Discharge. (Exhibit E.) Applicant also submitted two years of Evaluation Reports and Counseling Records, including the one for 2015 and 2016, for which he was "Ranked Number 1 of 25 highly competitive Third Class Petty Officers" and "someone who excelled in his demanding role." (Exhibit F.) Finally, Applicant submitted Schedule D of his bankruptcy with a list of unsecured creditors. (Exhibit G.)

While Applicant did submit several documents in mitigation, a request had been made at the hearing for Applicant to submit a post-hearing letter from his bankruptcy attorney explaining the status of the bankruptcy, any documents his wife had received from the company that she hired to help resolve their debts, and a personal financial statement to furnish more information about Applicant's current financial status. None of these documents were offered into evidence, nor was any explanation given as to why they were not submitted. Applicant also did not furnish any documentation to show that SOR allegation 1.h. had been paid.

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 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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 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 information.

Section 7 of Executive Order (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

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

Applicant. Applicant has incurred several debts over several years. While there is evidence that most of the debts are now being addressed in bankruptcy, no evidence has been introduced to establish the status of the bankruptcy. The guideline notes several conditions that could raise security concerns under AG ¶ 19:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so;

- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

The evidence is sufficient to raise disqualifying conditions AG ¶ 19 (a) and (b) as applicable in this case.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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;
- (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;

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

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

As reviewed above, evidence was introduced to establish that Applicant's financial problem were largely beyond the person's control, specifically the loss of employment of him and his wife. And using the legal remedy of bankruptcy can be considered a responsible way of resolving the financial problems. Therefore, AG ¶ 20(b) could be applicable. However, no evidence was introduced to establish the status of the bankruptcy, specifically whether the bankruptcy will be accepted and the debts will be discharged. Also, Applicant testified that one of the creditors, a car company listed as 1.d., above, has rejected having its debt resolved in bankruptcy, and his mortgage, listed as 1.a., above, also may not be resolved in bankruptcy. These are Applicant's two largest delinquent debts and it is not clear even if the bankruptcy is accepted that these two debts can be resolved. Finally, since no evidence has been introduced to establish that any of the SOR debts have been resolved, I find that no other mitigating factors under AG ¶ 20 are applicable in this case, and I find against Applicant under Guideline F.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 guideline notes several conditions that could raise security concerns 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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity

Because Applicant failed to include any information on his e-QIP about his significant delinquent debts, and he failed to provide a reasonable explanation at the hearing for this omission, I find that the evidence is sufficient to raise disqualifying condition AG ¶ 16(a) in this case.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 listed below:

(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;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

I do not find that any mitigating factors under AG ¶ 17 are applicable in this case, and I find against Applicant under Guideline E.

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 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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against r Applicant

Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a.:	Against Applicant
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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 a national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge