



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



In the matter of:)
)
) ISCR Case No: 16-03434
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/10/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Based upon a review of the case file, including pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On December 27, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken 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* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD for SORs issued after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

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

Applicant answered the SOR on January 11, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). On February 23, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him on March 14, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not timely submit a response to the FORM or object to the Government's evidence. Items 1 through 5 are admitted into evidence without objection. On or about June 1, 2017, he submitted a Supplemental Answer to the SOR, to which Department Counsel had no objections (S-Answer). It is admitted.

The Defense Office of Hearings and Appeals (DOHA) assigned this case to another administrative judge on May 14, 2018, and re-assigned it to me on August 23, 2018.

Procedural Issue-Motion to Amend SOR

Department Counsel moved to amend SOR Paragraph 2.a, to correct the date on which Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), from February 24, 2015, to November 23, 2015. Applicant did not file an objection to this motion. Department Counsel's motion is granted.

Findings of Fact

Applicant admitted all allegations raised under Guidelines F and E with explanations. (Item 1)

Applicant is 50 years old and has been divorced since May 2016. He served on active duty in the Army from 1988 to 1997. He reenlisted in 2001 and served on active duty until May 2015. He was honorably discharged after each enlistment. He held a security clearance while serving. After being discharged from the Army, he began employment with a defense contractor in 2015. (Items 1, 2)

Financial Considerations

Applicant attributed his financial problems to his previous marriage and three stepchildren. He also stated that he was the victim of bank fraud as a consequence of an account his former wife established between December 2015 and January 2016.

Based on a credit bureau report (CBR) from January 2016, the SOR alleged seven debts that became delinquent between 2011 and 2015, and totaled about \$73,964. They included a mortgage, credit cards, and miscellaneous debts. (Item 3) The SOR also

alleged that Applicant misused his government credit card from about 2013 to 2014 while in the Army. The status of these debts is as follows:

SOR ¶ 1.a: Applicant submitted proof that he is no longer indebted to a financial institution for the formerly delinquent \$71,008 mortgage account. The bank foreclosed on the real estate in May 2016. In November 2016, the bank notified Applicant that it had forgiven the deficiency balance of \$4,777. (Item 1: S-Answer (C)) This allegation is resolved.

SOR ¶ 1.b: Applicant paid this \$64 credit card debt in January 2017. He said he was unaware of the debt. (Item 1: S-Answer (C)) This allegation is resolved.

SOR ¶ 1.c: Applicant paid this \$502 credit card debt in April 2017. He said he was unaware of the debt. (Item 1: S-Answer (D)) This allegation is resolved.

SOR ¶ 1.d: Applicant stated that he disputed this \$98 debt owed to a cell phone company. He said he continues to have service with the company. (Item 1: S-Answer) This allegation is resolved.

SOR ¶ 1.e: Applicant stated that he has been unable to resolve this \$1,754 debt owed to a university. He contacted the university to resolve the debt but was told the debt was written-off as a loss, and the university representative did not know how to reconcile a closed account. (Item 1: S-Answer) This allegation is found in his favor.

SOR ¶ 1.f: Applicant paid this \$140 debt owed to an insurance company in August 2016. (Item 1: S-Answer (C)) This allegation is resolved.

SOR ¶ 1.g: Applicant paid this \$398 credit card debt in July 2016. (Item 1: S-Answer (B)) This allegation is resolved.

SOR ¶ 1.h: Applicant stated that he made a poor decision when he allowed his former wife to use his government credit card from 2013 to 2014. (Item 1: S-Answer) During a telephone interview with Applicant in July 2016, an investigator confronted Applicant about this allegation, asserted that the amount in question was \$3,000, and indicated that it was possibly related to Applicant's misconduct. (Item 7) Applicant said he promptly resolved this debt, but provided no proof of its resolution. He received a reprimand from the Army for this misuse of his government credit card. (Item 6) This allegation is unresolved.

Applicant stated he participated in financial or credit counseling, but did not have documentary proof available. He said he was working part-time in order to address all of the financial problems related to the divorce. He admitted that he experienced personal and legal problems during the last six years of active duty, but believed he was resolving those issues. He emphasized that he served with distinction for many years. (Item 1: S-

Answer) He did not provide a budget or other information related to his financial obligations from which to determine current financial circumstances.

Personal Conduct

The SOR alleged the following three criminal charges: On March 1, 2003, Applicant was arrested for driving while impaired (DUI). The case was dismissed. On June 26, 2010, Applicant was arrested for domestic violence, assault in 3rd degree. The case was dismissed. On January 1, 2014, he was arrested for domestic violence, assault in 4th degree. The charge was dismissed in 2015. (Item 7) He completed a substance abuse course after the 2010 incident, and then again after the 2014 incident, along with anger management, as required by the Army. (Item 1: S-Answer) Applicant disclosed the 2010 and 2014 incidents in his e-QIP. He discussed all incidents during a July 2016 investigative interview.

The SOR alleged that Applicant failed to disclose the following information in his November 2015 e-QIP, as requested: In August 2011, the Army issued Applicant a letter of intent (LOI) to revoke his security clearance and access to sensitive compartmented information (SCI), based on the 2010 domestic assault charge and his failure to participate in a psychological evaluation. His clearance was suspended during this process. In September 2011, he responded to the LOI. His clearance and SCI access were reinstated in October 2011, two months later.² (Item 6)

In his S-Answer, Applicant denied the allegation that he intentionally attempted to falsify his e-QIP. He stated he was removed from his previous responsibilities after the domestic assault incident and did not recall the administrative action that suspended his security clearance. He said he was under extreme stress during that time, and subsequently when he completed his e-QIP he did not carefully review background records.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines 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

² After his clearance and SCI access were suspended in 2011, Applicant's commander wrote a letter recommending that it be re-instated. He indicated that Applicant had received a Bronze Star and was a top performer in the commander's battalion in the Middle East. (Item 6)

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 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. 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, an “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 applying for national security eligibility 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 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.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (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; and
- (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.

Applicant had a history of being unable or unwilling to meet financial obligations, which began in 2010 and continued into 2015. Between 2013 and 2014, he used a government credit card for personal expenses. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. The following are potentially applicable:

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

Applicant attributed his financial problems to past marital issues and bank fraud. Those may have been circumstances beyond his control. However, he did not provide sufficient evidence that he attempted to responsibly manage his financial obligations under those circumstance; thus, AG ¶ 20(b) provides limited mitigation. There is no documentary evidence that he participated in credit or financial counseling; however there is evidence that he resolved six of the seven alleged debts: SOR ¶ 1.a was resolved in 2016 through a foreclosure; and the debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, and 1.g. are paid and under control. He unsuccessfully attempted, in good faith, to pay or resolve the debt in SOR ¶ 1.e. He established mitigation under AG ¶¶ 20(c) and (d) for those debts. There is insufficient information to mitigate the allegation in SOR ¶ 1.h, pertaining to the unauthorized use of his government credit card between 2013 and 2014.

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to 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. Two may be potentially disqualifying:

(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; and

(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:

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

Applicant admitted that he was arrested in 2003, 2010, and 2014 for criminal conduct involving violent, inappropriate, or disruptive behaviors. Those arrests are insufficient to allege under the criminal conduct guideline, but are sufficient to raise security concerns when combined with all record evidence that calls into question Applicant's judgment. The evidence establishes a disqualifying condition under AG ¶ 16(d)(2).

Applicant denied that he deliberately failed to disclose requested information pertinent to the suspension of his security clearance for two months. He provided insufficient amplifying information to explain or justify his non-disclosure of this adverse clearance action, given the fact that he received a LOI informing him of the Government's intent to revoke his clearance and filed a response to it. The evidence established disqualifying security concerns under AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate the above security concerns. The following are potentially applicable:

(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; and

(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.

Applicant acknowledged his misconduct. The last criminal offense occurred in 2014, almost four years ago. Two of the incidents involved his former wife. After each offense he completed mandated treatment and counseling to change his behavior. The likelihood that similar behavior will recur is diminished. The evidence mitigated the allegations in SOR ¶¶ 2.b, 2.c, and 2.d. The record does not contain sufficient evidence to establish any mitigating condition under AG ¶ 17 as to SOR ¶ 2.a. Applicant's defense that he was unaware of the suspension during 2011 is not credible.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the

factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature individual who served in the military for about 24 years. He received strong support from his command for some years of his service. However, during the last few years, he began accumulating debt and engaging in questionable conduct. He provided sufficient evidence to mitigate the SOR-alleged delinquent debts, including the educational debt that he attempted to resolve. He did not mitigate the allegation involving the misuse of his government credit card. He also mitigated old criminal conduct, but not his failure to disclose information in his 2015 e-QIP relating to the Government's intent to revoke and concomitant suspension of his security clearance for two months. The absence of mitigating evidence on these allegations compels a finding that he failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b through 2.d:	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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge