



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



In the matter of:)
)
) ISCR Case No. 16-03457
)
)
Applicant for Security Clearance)

Appearances

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

06/15/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the personal conduct security concerns or the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On February 7, 2017, 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.

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.

Applicant answered the SOR on March 10, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 22, 2017, scheduling the hearing for May 11, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted after Applicant offered clarifications on those documents, and called one witness via the telephone. Applicant testified on his own behalf and presented two documents, which I marked Applicant's Exhibits (AE) A and B, and admitted into the record. DOHA received the transcript of the hearing (Tr.) on May 22, 2018.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a and 1.b. He also denied SOR allegation ¶ 2a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. In 2006, he obtained an associate's degree from a technical college. In 2012, he obtained his undergraduate degree. He has been employed with the defense contractor since May 2015. He has never held a security clearance. He married on January 3, 2015 in Ghana. (GX 1) He has one son. (Tr.30)

The SOR alleges that Applicant was charged in or about January 2015, with credit card fraud: Use Card > \$200, a felony, and credit card larceny, a felony.(SOR 1.a); Applicant was terminated from his employment in February 2015 for violating Standards of Business Ethics and Conduct after a search of his computer found pornographic materials, as well as unauthorized programs/software that can be used for hacking. (SOR 1.b) Finally, the SOR alleges that Applicant is indebted on a charged-off account in the amount of \$14,445. (SOR 2.a)

In December 2014, Applicant traveled to Ghana for his wedding. He returned sometime in February 2015. When he returned to the United States, he was arrested in the airport for credit card fraud (six counts). (GX 3). A police investigation report had been made regarding identity theft and fraudulent purchases in the amount of \$3,700 for Apple phones, among other items by several persons.

Applicant disclosed on his 2015 SCA that a friend from Ghana asked him to bring a phone when Applicant went to Ghana for his marriage. The friend asked Applicant to pick up the phone at UPS and put Applicant's name on the box. Applicant went to UPS and picked up the box. When Applicant returned from Ghana, he told the police, he had no knowledge of any credit card theft. At the same time, he stated that he picked up six phones and watches from Macy's to take to Ghana.

The investigation report, authored by a police officer, who was assigned a credit card fraud case stated the phones were picked up by Applicant on December 14, 2014. The UPS customer service associate stated that he completed the transaction and provided the full name of Applicant as the person who picked up the package. He has

seen Applicant in the UPS several times picking up packages. (GX 6) Other police records were checked and after a search warrant, several computers were seized and receipts and torn-up receipts were found in Applicant's trash can. (GX 6) The receipts were from Macys for in-store pick up online orders. The orders were placed by other persons with Applicant as an alternative pickup person. There were approximately 12 orders.

During his subject interview, Applicant told the interviewer that a friend asked him to pick up three phones and two chargers to take to Ghana. (GX 5) The items were delivered to UPS and the friend provided Applicant's name as the person authorized to pick up the package. Applicant hired a lawyer and the charges were nolle prose (dismissed) as no one appeared at the hearing. (GX 6)

Applicant claimed that he tried to do the friend a favor and had no knowledge of any credit card forgery. He also stated at the hearing that since the charges were dropped, this allegation cannot be found against him. (AX A)

As to SOR 1.b, Applicant was terminated in February 2015 from his employment. The reason for termination was a violation of company policy. He is not eligible for rehire. After the employer learned of Applicant's charge and arrest with identity theft, a review was made of the internet traffic on Applicant's work station. The review uncovered the presence of several unauthorized programs and files present on the workstation; several of which were used for hacking. The review also uncovered several internet artifacts that showed orders placed online, as well as packages, being redirected. The investigation also found pornographic material. When asked, Applicant stated those files were accidentally introduced into the software system and that he shared a computer with a co-worker. The internet history shows active web searching and downloading of cell phone un lockers.(GX 4)

As to the pornographic material found, Applicant stated this he was on a news site (MYJOYONLINE) to see what was new with the minister in Ghana. Something popped up. It was EMPRESS_LEAK. (GX 7) Applicant replied it was not a pornographic site, but an adult only site. He also said that the site might have changed from a news station and now is a pornographic station. (Tr. 80)

Financial

Applicant's credit report reveals a defaulted educational loan assigned to an FA-PEAKS in the amount of \$14,445, which was opened in 2010. The first major delinquency was noted in 2012. Applicant stated that he had no idea who this agency was and he did not owe them any money. He stated that he is now taking more undergraduate courses and his student loans are consolidated and current. His credit report confirms that. However, he called them and learned that it was for a student loan to his technical institution. He believes since there was a lawsuit against them for fraudulent loans that he does not owe them any money. (AX B) He denies that he took out a loan for his education at ITT. He stated that he sent in a dispute form. He also called the collection agency. Nothing has been resolved.

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 useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. These are potentially applicable in this case:

- (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.

Applicant obtained a degree from a technical college in 2011. The college had some trouble and a lawsuit was filed for fraudulent loans. The collection company states that Applicant owes \$14,445. Applicant contacted them after he received the SOR, as he claims to have had no knowledge of the delinquent account. He has new student loans from a later date that are consolidated and current. He called the collection agency and learned they were from ITT. He first stated that he did not owe them, due to the lawsuit that claims fraudulent loans. He did receive a degree. When he called the collection agency, he disputed the amount, but then stated he would try to pay it. The evidence is sufficient to raise these disqualifying conditions.

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; and

(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.

Applicant's only delinquent debt is the student loan. He has new student loans and has them consolidated and current. It is not clear if he took out a loan and for how much money. The collection agency holding the loan would settle for a smaller amount. Applicant has disputed the loan. He is seeking counsel. Nothing has been resolved. He has not demonstrated that future financial problems are unlikely. No mitigating conditions have been established.

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

The guideline notes several conditions that could raise security concerns under AG ¶ 16. These are potentially applicable in this case:

(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;

Applicant was charged and arrested for six counts of credit card fraud. Although the charges were dismissed as no one appeared at the hearing and he denied the charges. I find sufficient evidence in the record to state that Applicant was involved with the criminal incidents. He was clearly identified by UPS for picking up various packages on several occasions. He also stated that it was only one phone, then it was three. There were watches with receipts found in his home for the various watches that he ordered online and picked up at the store. Applicant was terminated in February 2015 based on what was found on his computer, including pornography. He told several versions of why he was not the one culpable. The evidence is sufficient to raise these disqualifying conditions.

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

(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.

After reviewing the information and the mitigating conditions in this case, I do not find that any of them apply.

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

Applicant did not present clear information at the hearing concerning any of the alleged events. I did not find his testimony credible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns as well as the Personal Conduct security concerns.

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 E:	AGAINST APPLICANT
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Subparagraphs 1.a-1b:	Against Applicant
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Paragraph 2, Guideline F:	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 security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge