



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 16-03669
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on March 2, 2015. On January 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E and F. The DOD CAF acted 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 (AG) implemented by the DOD on September 1, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on February 12, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 21, 2017, and the case was assigned to an administrative judge on August 3, 2017. On October 26, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for November 16, 2017. On November 8, 2017, Applicant requested that the hearing be postponed, because his supervisor had scheduled him for temporary duty at a distant location until December 23, 2017. His request for postponement was granted. The case was reassigned to me on February 1, 2018.

On February 6, 2018, DOHA notified Applicant that the hearing was rescheduled for February 27, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until March 28, 2018, to enable him to submit additional documentary evidence. He timely submitted AX K and L, which were admitted without objection. DOHA received the transcript (Tr.) on March 6, 2018.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a(1) and 2.b-2.e. He denied the allegations in SOR ¶ 1.a(2), 2.f, and 2.g. He did not expressly admit or deny SOR ¶ 2.a, which cross-alleges the allegations in SOR ¶¶ 1.a(1) and 1.a(2). His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year-old electronics technician employed by a defense contractor since April 2014. He earned an associate's degree in December 2000 and a professional certification in December 2009. He was self-employed and worked for non-federal employers from March 2003 to November 2009. He was previously employed by other defense contractors from November 2009 to March 2014, when he was fired for misusing a company credit card. He was furloughed and unemployed for about one month in mid-2012. He first received a security clearance in February 2010. He has never married and has no children.

The SOR alleges misuse of a company credit card and fraudulent travel claims under Guideline E, and multiple delinquent debts under Guideline F. The evidence concerning the allegations in the SOR is summarized below:

SOR ¶¶ 1.a(1) and 2.a: misuse of a company credit card. The SOR alleges that Applicant misused his company credit card between March 2013 and February 2014 by obtaining cash advances and incurring charges for personal items such as his cell phone and storage fees, thereby accumulating an unpaid balance of \$2,209. It also alleges that he had previously been counseled in May 2012 about misuse of the credit card and that

²Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

he signed a cardholder agreement indicating that he understood the policies regarding use of the company credit card. The record does not reflect the details of his previous misuse. At the hearing, Applicant admitted that he used the company credit card for personal purchases. He testified that it was common practice among his co-workers, but that it became an issue only if the balance on the account was not paid on time. (Tr. 31.) He testified that he was in financial distress at the time because a previous girlfriend had made unauthorized purchases using his personal credit card, such as the delinquent debt alleged in SOR ¶ 2. (Tr. 31-32.) In February 2018, shortly before the hearing, he contacted the bank administering the company credit-card account, who agreed to accept \$430 as settlement in full on the account. (AX D.) He paid the agreed amount on March 8, 2018, after the hearing but while the record was open. (AX K.)

SOR ¶¶ 1.a(2) and 2.a: double billing for travel expenses. The SOR alleges that Applicant falsely claimed travel expenses totaling \$1,481. In his response to the SOR, Applicant denied this allegation, stating that the vouchers were approved by his supervisor. At the hearing, he admitted that his expense reports sometimes overlapped, but that he counted on his supervisor to verify the dates and prevent overlapping reimbursement claims. (Tr. 37.) He submitted seven or eight expense reports during the time period at issue and did not keep copies of the payment vouchers. (Tr. 41.) The record includes only the conclusions of the person who audited Applicant's travel claims; it does not include the vouchers on which this allegation was based.

Applicant testified that the company asked him if he wanted to settle the overpayments, and he asked about a payment agreement. He was able to pay the entire amount of the overpayment, but was unwilling to pay it, knowing that he was likely to be fired. He testified that he would have been willing to repay the overpayments if he had been assured that he would not be terminated. He was never sent a bill for the overpayments. (Tr. 42-44.) The overpayments were not resolved, but they are not reflected on the November 2016 credit report submitted by Department Counsel or the February 2018 credit report submitted by Applicant at the hearing. (GX 5; AX J.)

SOR ¶ 2.b: delinquent department-store account referred for collection of \$525. Applicant attributed this debt to an unauthorized purchase by an ex-girlfriend. He resolved this debt in January 2017. (AX E.)

SOR ¶¶ 2.c-2.g: medical debts for \$331, \$264, \$202, \$38, and \$26, referred for collection. The SOR identifies these debts as "medical" and alleges an amount for each, but it provides no account numbers, identification of the medical providers, descriptions of the services provided, or identification of the collection agencies. It states that the medical debts are listed in the November 2016 credit report (GX 5). The credit report identifies each debt as "medical," the account type as "09," and lists the date reviewed, date opened, date of last activity, high credit amount and balance due. It lists the type of "loan" as "collection/attorney fees." Each debt is followed by a comment, "Outstanding balance, medical." The credit report does not list any account numbers, original creditors, collection agencies, or contact information.

Applicant testified that he was unable to identify any of the medical debts alleged in the SOR. He relied on his credit report for information, with limited success. (Tr. 35-36, 50.) In February 2017, he was contacted by a person representing himself as a collection agent, and he sent that person payments of \$150, \$30, and \$20. (AX F, G, and H; Tr. 45-47.) These amounts do not match any medical debts alleged in the SOR.

Applicant now believes that he was the victim of a scam. He was a victim of several scams while assigned overseas, and he sent them \$500 (AX I at 6), \$600 (AX I at 7), and \$878 (AX I at 1.) Shortly before the hearing, another medical bill appeared on his credit February 2018 credit report (AX J), and he paid the collection agency listed on the credit report. (Tr. 49; AX L.)

In December 2017, Applicant's supervisor promoted him to a team lead position and gave him an 8% pay raise. In the letter to Applicant informing him of the promotion, his supervisor commended him for his knowledge, experience, and dedication. (AX A.) Applicant testified that his facility security officer (FSO) was aware of the reasons for his termination from his previous job, but he did not believe his supervisor was aware of them. (Tr. 58-59.)

Applicant's fiancée testified as a character witness at the hearing. She was unfamiliar with the circumstances of the credit-card misuse and the delinquent debts alleged in the SOR, but she has assisted Applicant with identifying the creditors alleged in the SOR, and advised him on how to resolve the debts. She regards him as a responsible person. (Tr. 23-29.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the

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

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline E, Personal Conduct

The SOR alleges misuse of the company credit card (SOR ¶ 1.a(1)) and submission of duplicate travel vouchers (SOR ¶ 1.a(2)). The concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. . . .” Applicant’s admissions and the documentary evidence submitted at the hearing establish the following potentially disqualifying conditions under this guideline:

- (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; 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 . . . a pattern of dishonesty or rule violations.”

The relevant mitigating condition is AG ¶ 17(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.” Applicant’s misuse of the company credit card was not minor, because it was deliberate and involved a substantial amount of money. It was frequent and did not happen under unique circumstances. Although it occurred more than four years ago and has not recurred, Applicant did not resolve the unauthorized expenditures until he received the SOR and his hearing was imminent. He has established an outstanding reputation with his new supervisor, but he has not disclosed his conduct to him. I conclude that AG ¶ 17(c) is not established for the misuse of a credit card alleged in SOR ¶ 1.a(1).

Applicant’s double billing of travel expenses was due to carelessness. It was frequent, was not minor, and did not occur under unique circumstances. Although it happened more than three years ago and has not recurred, Applicant has not accepted responsibility for the double billing. Instead, he blamed it on his supervisor.

Applicant initially offered to reimburse his employer by installment payments, but was unwilling to pay the amount claimed in full. He has taken no further action to resolve the debt. I conclude that AG ¶ 17(c) is not established for the double billing.

Guideline F, Financial Considerations

The SOR cross-alleges the Guideline E conduct (SOR ¶ 2.a), and it alleges one consumer debt (SOR ¶ 2.b) and five medical debts (SOR ¶¶ 2.c-2.g). The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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

Applicant admitted the credit-card debt cross-alleged in SOR ¶ 2.a and the consumer debt alleged in SOR ¶ 2.b, and he has resolved both debts. He admitted three of the five medical debts alleged in SOR ¶¶ 2.c-2.e, but his testimony reflects that he admitted owing some medical debts but not necessarily the debts alleged in the SOR. He admitted the three debts because he thought they were paid, although he does not know whether the purported collection agency was a scam or a legitimate medical collection agency.

The allegations in SOR ¶¶ 2.c-2.g do not comply with the requirement in Directive ¶ E3.1.3 that the SOR "shall be as detailed and comprehensive as the national security permits." The five allegations identify the debts only as "medical," allege an amount, and state that the debts are listed in the November 2016 credit report. However, the combined information in the SOR and the credit report does not provide any account numbers, descriptions of services provided, dates of services provided, the names of the original creditors or collection agencies, or contact information for the original creditors or collection agencies. I have resolved SOR ¶¶ 2.c-2.g for Applicant because the SOR did not provide adequate notice to enable him to respond.

Notwithstanding the defective SOR allegations regarding the medical debts, Applicant's admissions and the documentary evidence submitted at the hearing are sufficient to raise four disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(d): deceptive or illegal financial practices such as . . . expense account fraud . . . and other intentional financial breaches of trust.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

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

AG ¶ 20(a) is not established for the conduct alleged in SOR ¶¶ 1.a(1) and 1.a(2) across-alleged in SOR ¶ 2.a, for the reasons set out above in the discussion of Guideline E. AG ¶ 20(d) is established for the consumer debt alleged in SOR ¶ 2.b, but it is not established for the debts alleged in SOR ¶¶ 1.a(1) and 1.a(2), cross-alleged in SOR ¶ 2.a.

Applicant has focused on resolving debts reflected in his credit report, but he has taken no action to resolve the debt for double billing alleged in SOR ¶ 1.a(2) which is not reflected in his credit report. His choice of which debts to resolve suggests that he was motivated more by his desire to improve his credit rating than a sense of obligation to return an erroneous payment.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).³

I have considered Applicant's long service as an employee of defense contractors, and his years of holding a security clearance, apparently without incident, but those factors do not outweigh his serious breaches of trust, double billing, lack of remorse, and lack of a sense of obligation to return an overpayment. After weighing the disqualifying and mitigating conditions under Guidelines E and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his intentional misuse of a company credit card and failure to resolve overpayments for travel expenses.

³ The factors are: (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.

Formal Findings

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

Paragraph 1, Guideline E (Personal Conduct): AGAINST APPLICANT

 Subparagraph 1.a(1): Against Applicant

 Subparagraph 1.a(2): Against Applicant

Paragraph 2, Guideline F (Financial Considerations): AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

 Subparagraphs 2.b-2.g: For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge