



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 16-03762

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/09/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations, or Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On June 23, 2017, 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. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on September 1, 2017. Applicant received the FORM on October 10, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided a two-page response to the FORM on November 24, 2017. The Government's evidence, identified as Items 1 through 11, are admitted into evidence without objection. The case was assigned to me on March 20, 2018.

Findings of Fact¹

Applicant is 48 years old. He graduated from high school in 1987, and took college courses for four years but did not obtain a degree. Applicant has been employed by a federal contractor since September 2015. He reports no military service and no previous security clearance. Applicant was married in 1993 and divorced in 1995; married again in 1996 and divorced in 1998; and he has been married a third time since 1999. Applicant reports periods of unemployment from July 2009 to March 2011; June 2011 to May 2012; March 2014 to August 2014; and February 2015 to August 2015. Applicant was terminated by his employer in June 2009, and he was terminated by another employer in February 2015, before his latest period of unemployment. Applicant reported a few of his alleged delinquent debts in section 26 of his 2015 Security Clearance Application (SCA).²

In his Answer to the SOR, Applicant denied all of the delinquent debts alleged in the SOR, including the student loans, a few medical debts, and a cell phone debt at SOR ¶ 1.c. The delinquencies alleged in the SOR are all supported by credit bureau reports.³ He also denied the allegation in SOR ¶ 2.a stating “I did not falsify the answer. I was unsure how to answer the DUI question and I took the advice of a colleague when completing the SF-86.”⁴ Applicant did disclose the DUI arrest alleged at SOR ¶ 2.a to the Office of Personnel Management (OPM) investigator who conducted Applicant’s clearance interview on December 10, 2015, after he was asked if he had ever been arrested for an alcohol related offense. It was later reduced to a misdemeanor. He then described it in detail, and stated that he paid the \$300 fine the same day at court.⁵

The specific question in section 22 of the SCA, asked Applicant if “you have EVER been charged with an offense involving alcohol or drugs?” In his clearance interview in September 2016, Applicant was confronted with an outstanding bench warrant issued on September 21, 1998, in the amount of \$15,000. He claimed to be unaware of the warrant and stated he “would look into this.”⁶ Applicant attached extracts from court records to his Answer. The extracts show that the warrant was issued by the court following his DUI offense that was reduced to a misdemeanor. It reflects that on September 11, 1998, neither Applicant nor his attorney appeared in court to provide the court with “proof of a miscellaneous item” as mandated by the court. Although Applicant

¹ Unless stated otherwise, the source of the information in this section is Applicant’s October 26, 2015 security clearance application (SCA) (Item 3) and personal subject interviews (PSI) of December 10, 2015, and September 16, 2016. (Item 5).

² Item 3.

³ Items 4, 6, and 12.

⁴ Item 2, and attachments including extracts from court records, and a letter to the court in California.

⁵ Item 5.

⁶ Item 5.

wrote to the court seeking information, the advice he received was to have his attorney come into the court, or come in himself and speak to the judge.⁷ These options were not viable to Applicant. The warrant is still outstanding and the matter unresolved.

SOR ¶¶ 1.a, and 1.e through 1.h, concern delinquent student loans totaling \$12,918. In his clearance interview in December 2015, Applicant indicated that the student loans went into collections in June 2015, and he “is working on a payment plan.”⁸ Yet, he has produced no evidence that he followed through. He attached a portion of a recent credit report to his Answer showing that he has no debts in collections presently.⁹ He produced no evidence of a payment plan or continuous stream of payments for the student loans. SOR ¶¶ 1.b and 1.d were delinquent medical debts that Applicant claimed were incurred by his ex-wife(s). SOR ¶ 1.c is a delinquent cell phone debt in collections that Applicant claimed to be unaware of. Again, he produced no documentation to show that he contacted the creditors, disputed, or made payments on this debt, or the aforementioned medical debts. Applicant provided no evidence of financial counseling or a budget.

Policies

This action was taken under Executive Order (EO) 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

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, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative

⁷ Item 2, see attached letter to Mr. Benoit.

⁸ Item 5.

⁹ There is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an Applicant’s credit report does not extenuate or mitigate and overall history of financial difficulties or constitute evidence of financial reform or rehabilitation. See, e.g., ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) and ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004).

determination that the individual is an acceptable security risk. This is 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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's delinquent debts alleged in the SOR are confirmed by his credit reports and his clearance interview of December 2015. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹⁰ Applicant has not met that burden. None of the delinquent debts have been sufficiently resolved.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control ... , and the individual acted responsibly under the circumstances;

¹⁰ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as 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 endured divorces and periods of unemployment or underemployment. Arguably, these conditions were beyond his control. He has produced inadequate documentation showing efforts to address his delinquencies, either with his Answer to the SOR or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above do not apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes....

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Since Applicant denied any intent to provide false information as alleged at SOR ¶ 2.a, his intent is an issue. Under ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. The question in section 22 of the SCA clearly asked if Applicant was EVER arrested for an offense involving alcohol or drugs. It is unambiguous. Applicant discussed his answer with a colleague in his company before responding, and answered it negatively. Although the arrest occurred 20 years ago, and it was pled down to a misdemeanor, a bench warrant is still outstanding from that arrest and subsequent conviction. Applicant did not disclose this. He claims to have fully disclosed it to the OPM investigator prior to being confronted with it. However, the PSI indicates that he was specifically asked about alcohol-related offenses, by the OPM investigator, before discussing it. He was not forthcoming. I conclude that he had the specific intent to deceive when he provided this wrong answer in section 22, and he deliberately falsified the SCA. SOR ¶ 2.a has not been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He was not forthcoming

about his DUI arrest, and he still has not resolved the bench warrant issue. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations, or Guideline E, personal conduct.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge