



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00696

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant resolved all of the statement of reasons allegations. His financial problems have been resolved and are under control. The financial considerations security concerns are mitigated. His evidence is insufficient to mitigate his deliberate falsification of his 2015 security clearance application (SCA) wherein he denied his past financial problems. Personal conduct security concerns are not mitigated. Clearance denied.

Statement of the Case

Applicant submitted an SCA on November 4, 2015. He was interviewed by a government investigator on November 10, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued an Statement of Reasons (SOR) on April 10, 2017, alleging security concerns under Guideline F (financial considerations), and Guideline E (personal conduct). Applicant answered the SOR on May 11, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on June 13, 2017. The DOHA issued a notice of hearing on June 26, 2017, scheduling a hearing for July 12, 2017. At the hearing, the

Government offered five exhibits (GE 1 through 5). Applicant testified and submitted four exhibits (AE) 1 through 4. All exhibits were admitted as evidence without objection. DOHA received the hearing transcript (Tr.) on July 20, 2017.

Findings of Fact

Applicant admitted all of the SOR financial considerations allegations (§§ 1.a through 1.i) He denied the personal conduct allegation. (SOR § 2.a) His admissions to the SOR allegations and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, and having considered Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 48-year-old employee of a federal contractor. He graduated from high school in 1987 and completed an associate's degree in 1990. He received his bachelor's degree in 1993, and earned his master's degree in 2000. He received his doctorate's degree in February 2011. Applicant married in 1993, separated in September 2014, and divorced in March 2016. He has three children, ages 22, 20, and 16. He had custody of his children after the divorce, and continues to provide support for them.

Applicant worked as a welder for a federal contractor between August 2006 and June 2015. He attended college during the day and worked as a welder at night. Additionally, he has held part-time jobs as a college professor in two colleges, served as pastor at a church, and held another part-time job. His current employer, a federal contractor, hired him for a full-time position in October 2015. He has been working for the same employer and clearance sponsor thereafter. This is his first SCA.

Section 26 (Financial Record) of Applicant's 2015 SCA asked him to disclose whether: he was currently delinquent on any federal debt (including financial obligations); during the preceding seven years he had defaulted in any type of loan; had bills or debts been turned over to collection agencies; had any account or credit card been suspended, charged off or cancelled for failing to pay as agreed; was he over 120 days delinquent on any debts; and was he currently 120 days delinquent on any debt. Applicant answered "No" to all of the above questions.

Applicant was interviewed by a government background investigator in November 2016. When confronted about his financial situation, Applicant told the investigator that he opened the student loans between 1987 and 2011. He did not recall when the student loans became delinquent, but that they became delinquent due to money being tight. Applicant explained he failed to list the delinquent student loans due to oversight. (GE 2)

Applicant's student loans went in repayment status about six months after graduation in the 1990s, and then again after his doctorate degree graduation. At hearing, Applicant averred he made payments whenever he was able to do so, and he took advantage of forbearance and deferments to remain current. (Tr. 29) Applicant

claimed he could not recall whether the student loans were delinquent between 2011 and 2015. He explained that it was a challenge to pay his financial obligations because he was the family's sole provider. He recalled several conversations with the student loan creditors about modifying his payments because his monthly payments were too high, and he could not afford them.

In early 2016, a debt-collection company contacted Applicant with an offer to rehabilitate his student loans. (Tr. 32) Applicant set up an income-driven repayment plan in February 2016, and paid \$5 monthly until February 2017. After a year, all of his delinquent student loans were consolidated under one account. He owes about \$191,000 total for his student loans, and is scheduled to make \$247 monthly payments. He was late on his first monthly payment, but promised to make timely payments in the future. (GE 2)

The investigator confronted Applicant with the medical debt for \$627 alleged in SOR ¶ 1.I. Applicant admitted the debt and explained he underwent surgery in 2013. He did not recall when the debt became delinquent, but stated the bill was not paid because money was tight. He promised to pay the debt as soon as possible. He paid the debt in June 2017. (AE 4, Tr. 22, 24-25)

The November 2015 credit report in evidence shows that at the time of the report, Applicant had 10 past-due accounts, 10 additional accounts in collection, and he had settled five delinquent accounts. (GE 3) The three 2017 credit reports in evidence show Applicant's student loans were consolidated and are currently in good standing.

Applicant told the investigator, and testified, that his financial situation was becoming stable after his 2014 divorce and he was now organizing his budget. His financial situation was tight because he was the primary provider for his family. Notwithstanding, he bought a new car in 2017, and was considering purchasing a home. He noted he did not have much money left over at the end of the month after paying his bills and living expenses. Applicant's yearly income is about \$60,000, plus some additional income he makes from his part-time jobs.

Applicant repeatedly explained that he did not disclose in his 2015 SCA any of the delinquent accounts alleged in the SOR because he did not recall the accounts being delinquent. He claimed he could not recall when the accounts went into repayment status in the 1990s, or after his 2011 graduation. He could not recall when his student loans became delinquent, or whether he made any payments. He acknowledged that between 2011 and 2016 he received collection notices, but he could not recall the specifics of the notices. Applicant also claimed he was not aware that he had settled at least five accounts that were in collection as reflected in his 2015 credit report.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are

merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 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.

Applicant's history of financial problems is documented in the record. Between 1990 and 2011, Applicant opened numerous student loans, totaling about \$191,000, that became delinquent. He also had numerous other delinquent accounts and in collection. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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 (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 person has received or is receiving 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 established a student loan repayment plan in 2015. He consolidated and rehabilitated his student loans in 2016-2017. As of his hearing, his student loans were current, and he had resolved all of the SOR debts. Applicant's presented some evidence to show that his financial problems were caused by, or were aggravated by, circumstances beyond his control – low paying jobs, his separation and divorce, and he became the sole family provider.

Applicant still owes a substantial student debt, and he has limited income. The credit reports in evidence show Applicant was paying other debts, and settled five delinquent accounts after they went into collection. He demonstrated financial responsibility under the circumstances by paying those debts he could afford to pay.

Applicant's current financial situation is stable, he is paying his bills, and he participated in financial counseling. Considering the evidence as a whole, his past financial problems do not reflect adversely on his ability and willingness to follow rules and regulations for safeguarding classified information. Moreover, Applicant has learned from the clearance process. He is fully aware that he is required to demonstrate financial responsibility to be eligible for a clearance.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern for 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant omitted relevant and material information from his 2015 SCA when he failed to disclose that he had financial problems that included defaulted student loans, bills or debts turned over to collection agencies, accounts charged off, he had been over 120 days delinquent on some debts, and he was currently 120 days or more delinquent on some debts. Applicant's omissions, if deliberate, would trigger the applicability the following disqualifying condition 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. (ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)). Considering the evidence as a whole, including Applicant's age, education, work experience, and his testimony and demeanor while testifying, I find that Applicant's omissions were deliberate or made with the intent to mislead the Government. AG ¶ 16(a) is applicable. Additional inquiry about the possible applicability of mitigating conditions is required.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(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; and

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

Applicant's evidence is insufficient to mitigate the Guideline E security concerns. The financial questions in Section 26 of the 2015 SCA are straight forward and easy to understand, particularly for a person with a doctorate degree. Applicant's excuse – that he could not recall when the student loans went into repayment, whether he made payments, and whether the student loans and other accounts were delinquent - lacks credibility. Applicant's excuses also contradict his prior statements to the investigator in 2016. The 2015 credit report and Applicant's 2016 statement establish that he had numerous delinquent and in collection debts during the seven years preceding his 2015 SCA. Applicant provided no logical or reasonable explanation for his failure to disclose negative financial information in his 2015 SCA.

Applicant failed to disclose his delinquent or in collection accounts even though the 2015 SCA questions specifically asked about them. Applicant elected to mislead the government about his financial situation and indicated he had no financial problems or any delinquent debts. Considering the evidence as a whole, I find Applicant deliberately falsified his 2015 SCA.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under those guidelines, but some warrant additional comment.

Applicant demonstrated financial responsibility and that his financial problems are being resolved and are under control. The financial considerations security concerns are mitigated. Nevertheless, he deliberately falsified his 2015 SCA to conceal his past financial problems. Personal conduct security concerns are not mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge