



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



In the matter of:)
)
) ISCR Case No. 17-01175
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/26/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F and personal conduct under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on April 5, 2016. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On May 17, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on June 8, 2017, admitting 17 and denying two allegations of the 19 allegations of delinquent debt under Guideline F. Applicant denied one of the four allegations of falsification of information in his e-QIP under Guideline E. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on July 10, 2017. (Item 6) Applicant received a complete file of relevant material (FORM) on July 13, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on December 1, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 39 years old. He graduated from high school, and has taken college courses, but did not receive a degree. Applicant was married but divorced in 2006. There was one child from the marriage and Applicant provides support in the amount of \$1,200 a month to the child. Applicant was terminated from his employment in 2014 due to general behavior and inability to meet expectations. (Item 6) He has been employed by his current employer since 2015.

The SOR alleges, and credit reports (Items 9 and 10) confirm the following delinquent debts for Applicant: federal income taxes for tax years 2004 and 2012 for \$14,000 (SOR 1.a) a 2008 state tax lien for \$1,696 (SOR 1.b); a 2013 state tax lien for \$1,196 (SOR 1.c); a past-due auto account for \$331 (SOR 1.d); credit card accounts charged off or in collection for \$800 (SOR 1.e), \$705 (SOR 1.f), and \$675 (child support) (SOR 1.g); a debt in collection for \$649 (SOR 1.h); a medical debt in collection

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

for \$640 (SOR 1.i); and a credit card debt in collection for \$509 (SOR 1. j). Also listed is a debt in collection to a store for \$503 (SOR 1.k); a charged-off account for \$425 (SOR 1.l); a past due account for \$151 (SOR 1.m); an account charged off for \$296 (SOR 1.n); and a collection account for \$311 (SOR 1.o). The final four collection or charged off accounts are \$253 (SOR 1.p); a medical account for \$59 (SOR 1q.); a collections account for \$4,457 (SOR 1.r); and a medical account for \$35 in collection. (SOR 1.s) The amount of the delinquent debt is approximately \$27,800. (Items 8 through 10)

The SOR alleges four personal conduct security concerns due to Applicant failing to provide full, accurate, and complete information on his 2016 e-QIP. (Items 2, 4, 5 through 7) Applicant allegedly did not list a firing from employment in 2014 for unfavorable employment or conduct; a felony offense in 2007 for vehicle theft and a 2009 arrest for contempt of court, etc; and a 2011 arrest for unauthorized use of identification and driving on a suspended license. The SOR also alleged failure to disclose that Applicant was waiting for trial based on a 2009 felony arrest for identity theft and burglary. Finally, the SOR alleged falsification due to failure to list any delinquent debts or failure to pay or file income taxes on his SCA. Applicant did not note any delinquent debts, income taxes owed or late child support in response to financial question in Section 26 of the e-QIP. (Item 2, 5)

In the PSI, Applicant reported that he told the security investigator about the criminal conduct in SOR 2.b and 2.c during his 2013 investigation and security clearance process. He provided this information after being confronted. In his 2016 PSI, he stated that he had no illegal activity that needed to be reported. (Item 4) When asked about the various criminal incidents, he could not recall them or denied them or stated that it was an oversight. As to financial matters, he reported no liens or judgments. When confronted with the numerous delinquent accounts, his answers varied from, it was an oversight or was in a payment plan, or was not aware of the collection account. As to the issue of being fired, he stated that was an oversight. (Item 4) However, he elaborated in his 2013 PSI that he did not report the incident because he needed a job to support his family. He also omitted this information on his 2016, security clearance application. (Item 2)

In his response to the SOR, Applicant stated that he had payment plans in place for most of the delinquent debts or is in the process of setting up payment plans. He also noted that he would research some of them as soon as possible. He also stated that he made some payments on accounts but had to stop. Applicant provided no evidence or documentation for his assertions. He did provide evidence for SOR 1.b that in May 2017 an automatic debit of \$114 was transferred from his account for the one state tax lien. He also provided information from his bank summary that he is current on his car loan (SOR 1.d). As to SOR 1.j, some payments have been made, but it is not clear how many or the exact account. Applicant presented evidence that SOR 1.m is paid and has a zero balance. Applicant claims to be working with credit card companies and collection accounts to make payments or resolve his delinquent debts. He states that he has made arrangements to file with the IRS. (Response to SOR)

Applicant did not provide any documents to verify the majority of his SOR responses. He did not present any documents to verify that he contacted creditors to make payment or settlement arrangements. He did not provide any evidence of his efforts to pay, settle, compromise, dispute, or otherwise resolve any of the delinquent debts. As noted above, he did provide documentation for four allegations: 1.b, 1.d, 1.j., and 1.m.

Applicant 's criminal record as described in the SOR Guideline E allegations are confirmed by the FBI records described in Items 4, 5, 7, and 8. Applicant admitted that he omitted the criminal record and financial or credit issues on the SCA due to a need for a job and that this job opportunity was just what he needed.

As to his failure to provide negative financial information on the e-QIP, Applicant noted at the bottom of his 2016 SCA that he is trying to better himself and pay his debts. He did not report any delinquent debts on his 2013 or 2016 e-QIP. (Item 2) He listed that he was seeking counseling to reduce his debts.

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 must be considered 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 and sensitive information)

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal, and Applicant admitted, that he has multiple delinquent debts dating to as early as 2011. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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

(f) failure to pay annual Federal, state, or local income tax as required.

The information raises issues about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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 sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

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

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant divorced in 2006 and was fired from employment in 2014. He did not establish that the divorce and the unemployment were conditions that prohibited him from attempting to resolve his financial problems. The conditions causing Applicant's financial problems were within his control. He stated that he did not resolve some of his financial issues because of his own negligence. Applicant did not provide information concerning financial counseling. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts, including child support. Accordingly, he has not established a good-faith effort to pay his debts. He stated that he was in payment plans and had contacted the IRS, but he provided no documentation to support his assertions, with the exception of SOR 1.b, 1.d, 1.j. and 1.m.

Applicant has been gainfully employed since at least June 2015 and seems to have the ability to resolve his delinquent debts. He has not acted responsibly because he has not developed plans to pay his delinquent debts. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. Overall, he has not acted with reason and responsibility towards his finances. His actions are a

strong indication that he will not protect and safeguard classified information. Applicant did not present sufficient information to mitigate financial security concerns.

Personal Conduct

Personal conduct is a security concern because 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning his firing from employment for unfavorable conduct,; 2007 felony arrest for vehicle theft, 2009 arrest for contempt of court, etc., and 2011 driving on a suspended license, and awaiting trial. The SOR also alleges that Applicant did not report on his e-QIP that he has delinquent debts. Applicant's failure to list the various criminal incidents and his delinquent debts on his e-QIP raises a security concern under Personal Conduct Disqualifying Condition 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant admitted that he intentionally did not provide full, complete, and accurate information on his security clearance application. Applicant knew the adverse criminal and financial information would affect his application. Although, he offered that he did outline in his 2013 PSI the criminal incidents. However, that was after being confronted by the investigator. He deliberately omitted relevant information and he falsified his application.

Applicant did not list any delinquent debts on his e-QIP. Applicant must have known that he had loans and credit cards that he had not paid. He did not know all of the details of his financial situation, but he knew he had delinquent debts and taxes not

paid. Because Applicant should have known of his the delinquent loans and credit cards, his failure to list any delinquent debt on the e-QIP was deliberate with an intent not to present a true picture of his financial situation. His failure to provide the correct information obscured the full extent of his financial situation from adjudicators. I find Applicant deliberately failed to provide correct and accurate information concerning his debts, firing, and criminal record on his SCA.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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. Applicant has numerous delinquent debts and unpaid tax liens. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, to adequately articulate his positions, and provide facts to mitigate the financial security concerns. In short, the file lacks sufficient evidence provided by Applicant to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantial documentation and details to explain his finances. In addition, he deliberately failed to report his debts and criminal record on his SCA. Applicant's failure to appropriately manage his finances, and his lack of action to resolve financial issues, are firm indications that he may not adequately safeguard classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial situation and 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 – 1.s: Against Applicant
Subparagraphs 1:b, 1.d, 1.j, 1.m For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a-2d: Against

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 access to classified information. Eligibility for access to classified information is denied.

NOREEN A LYNCH
Administrative Judge