



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



In the matter of:)
)
) ISCR Case No. 17-01892
)
Applicant for Security Clearance)

Appearances

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

06/12/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his ongoing failure to take responsible action to resolve significant unpaid child support. He mitigated personal conduct security concerns arising from his alleged falsification of a security clearance application by disclosing the related information during his interview. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 29, 2015. On June 28, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken 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 Security Executive Agent

Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on July 26, 2017, and requested a hearing. The case was assigned to me on February 16, 2018. On March 20, 2018, a Notice of Hearing was issued scheduling the hearing for April 18, 2018. The hearing convened as scheduled.

At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were all admitted without objection. Applicant testified. The three documents he submitted with his Answer were marked as Applicant's Exhibits (AE) A, AE B, and AE C, and were admitted without objection. I held the record open to afford Applicant the opportunity to submit additional documentation. Applicant timely submitted five documents, which were marked as AE D through AE H and admitted. AE H was admitted over the Government's objection. The record closed on April 30, 2018. DOHA received the transcript on May 1, 2018.

Findings of Fact

Applicant denied SOR ¶ 1.a and denied SOR ¶ 2.a, with explanations. His admission and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 58 years old. He has a high school education. He is employed full-time as a pilot for a defense contractor. He earns a \$70,000 annual salary. He was married from 1979 to 1999. He and his former wife have three children. All of them were minors at the time of the divorce. (Tr. 30-33, 56-57, 96; GE 1)

When Applicant and his wife divorced, he was ordered to pay alimony, as well as about \$1,500 in monthly child support. (Tr. 32-33) He testified that he initially paid the child support regularly, but his former wife took him to court every six months to increase the child support payments. (Tr. 32-33; 38) He later said he was to pay \$1,600 every two weeks, or \$3,200 a month. (Tr. 67)

Applicant testified that he and his former wife differed significantly regarding the increased amount of child support he was to pay. They first went to a mediator, but were several thousand dollars apart and unable to reach agreement. They then went to court. (Tr. 35, 38-40)

As a result of the resulting child support hearing before a family court judge in State 1, where he lived at the time, Applicant was ordered to pay \$130,000 in child support in 2004. He testified that this was far more than the \$35,000 his former wife had requested in mediation. He was also ordered to pay the \$130,000 all at once, instead of in installments. (Tr. 40) He said the amount owed was for \$70,000 in legal fees and the rest was for past-due child support. (Tr. 65-66)

Applicant appealed the judgment. His attorney advised him that the child support amount would likely be reduced on appeal, but not without significant legal fees. Applicant testified that his attorney advised him not to pay the judgment and to move out of the state instead. Applicant moved out of the state in 2007. He did so because he had no means to pay the child support as ordered. (Tr. 40-42)

In about 2008, Applicant's wages were garnished for the child support debt. He paid about \$5,000 to \$6,000 in garnishment. He has made no other payments towards the debt. (Tr. 67, 72)

Applicant disclosed the child support debt on his SCA. (GE 1) (SOR ¶ 1.a, for \$133,622) It is listed on credit reports in the record, including one submitted by Applicant, listing the debt has charged off and in collection for over \$138,000. (GE 2; GE 3; AE C)

Applicant testified that he believed that the child support amount he was ordered to pay was based on a significant misunderstanding of the financial data from his small business that he owned at the time. (Tr. 39-40; Answer) He also believes that the child support order was unjust and that the judge was biased against him because of his gender. (Tr. 43, 68-71; AE A) He submitted a letter from his accountant challenging the validity of the child support judgment. (AE H)

Applicant acknowledged that he "made wrong decisions in moving away," after the judgment, and in retrospect would not have done it. (Tr. 43) He acknowledged that the debt remains outstanding in the state where the child support judgment was issued. He last contacted court authorities concerning the debt several years ago and said they were "very rigid." (Tr. 42-43) Applicant's children are now grown. His youngest child aged out of child support in 2011. At this point he regards the matter closed. Applicant does not intend to pay or resolve the debt, which remains outstanding.

When Applicant moved away from State 1 after the judgment, he became a pilot. His SCA reflects that he has held numerous jobs in aviation in various locations, both in the United States and overseas, in recent years. He has also had periods of unemployment between such jobs. (Tr. 73-77, 80-82; GE 1)

In early 2015, Applicant began working for an aviation company in State 2. He was required to attend a training program. Under the terms of Applicant's employment contract, Applicant's employer was to pay the full cost of the program (about \$7,000) if he worked there for one year. If Applicant left the company before then, he would have to reimburse his employer a prorated portion of the training costs. (Tr. 44-46, 77-80)

In spring 2015, Applicant gave two weeks' notice to his employer that he was leaving. He was not satisfied with the upkeep and safety of the company's aircraft. Shortly thereafter, the company sued Applicant for breach of contract and for reimbursement of a portion of the cost of the training program. The company filed suit

in a neighboring state (State 3) in May 2015 for damages of about \$15,000. (Tr. 47-53; AE B; GE 5)

The company's owner served Applicant a copy of the complaint at the airport where he worked. Applicant filed his answer to the complaint at the courthouse in June 2015 before he moved out of town. (He briefly moved back to State 1, the jurisdiction where the child support judgment remained pending.) Applicant did not provide the State 3 court authorities with a forwarding address, though he did provide them a cell phone number. He heard nothing further about the lawsuit from either the court or his former employer. He did not retain legal counsel for the lawsuit. (Tr. 47-53; 93-96)

Applicant's December 2015 SCA included a question asking if, in the last 10 years, he had been "a party to any public record civil court action" not listed elsewhere on the application. (GE 1 at 43) Applicant did not disclose the lawsuit filed by his employer earlier that year. The Government alleged that Applicant's failure to disclose the lawsuit was deliberate. (SOR ¶ 2.a)

Applicant denied SOR ¶ 2.a, essentially on two related grounds. (Answer; Tr. 54-55) First, he stated that he did not believe the lawsuit constituted a "court action," Second, he also believed that the lawsuit was no longer pending, since he had not heard anything about it after he filed his answer to the complaint. He testified, "I figured since we didn't have to go to court, him filing his initial [complaint] and my response [meant] that it was not a court action." (Tr. 54)

Applicant testified that he disclosed the lawsuit to the interviewing agent during his background investigation in 2016. (Tr. 54) According the summary of Applicant's interview, Applicant told the agent that he left the job prior to the end of the contract, and that if he did so, the contract stated he had to reimburse the company \$6,000. He also stated that the company owner "threatened to sue [Applicant] for \$15,000, however the case was dropped and never went to court." (GE 2 at 3; Tr. 62-63)

When he received the SOR in July 2017, Applicant contacted the court clerk's office to ascertain the status of the lawsuit. The clerk's office noted that no action had been taken by the plaintiff employer for more than a year, and they filed a motion to dismiss the case for want of prosecution in June 2017. That motion was granted in July 2017, and the case was dismissed without prejudice. (Tr. 84-86; AE B)

Applicant acknowledged at hearing that because he left the company's employment early, he owed them about \$3,525 (about half of the tuition for the flight training). He has not reimbursed the company what he owes. He also contends that the company did not pay him for his last two or three weeks of work. (Answer; Tr. 57-60) Since the lawsuit against him has now been dismissed, Applicant does not believe it is his responsibility to pursue his former employer to resolve any further issues between them, if any. (Tr. 59-60)

Applicant submitted several letters of recommendation from personal and professional references. (AE D – AE G) This included a letter from his company's facility security officer, who attested to Applicant's professionalism, reliability and work ethic. He also had knowledge of Applicant's family and financial situation and sees no issues as to his clearance suitability. (AE E) Applicant is professionally knowledgeable, well-mannered and customer-oriented. (AE F)

Policies

It is well established that no one has a right to a security clearance. As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."¹

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, 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 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 not drawn 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 to obtain 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

¹ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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.

Analysis

Guideline F, Financial Considerations

The security concern 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. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following 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 had a large child support judgment issued against him in 2004 due to his failure to comply with his child support obligations in the years after his divorce in 1999. Applicant acknowledged that he has long believed that the child support award was unjust. On his attorney's advice, he moved out of state rather than pursue an appeal. He has taken no action to pay, settle, or otherwise resolve the debt in the 14 years since the child support order was issued. The child support debt remains outstanding. AG ¶¶19 (a), 19(b), and 19(c) apply.

Conditions that could mitigate financial considerations security concerns are set forth under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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.

No mitigating conditions apply. Even though the child support debt was incurred years ago, when his children were minors, the debt is ongoing. It is also increasing, as he now owes more than \$138,000 on the debt, as shown by Applicant's most recent credit report, which he provided. The debt continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

The fact that Applicant owed child support in the first place was related to his divorce. Initially, this may have been a condition beyond his control. However, his divorce was almost 20 years ago, and Applicant provided insufficient record evidence from which to conclude that he made any good-faith efforts to challenge, pay or resolve the debt in the years since. He acknowledged at hearing that he was wrong to move out of the state rather than to take steps to contest or pay the debt, but he took little to no action with the child support authorities to pay the debt in a timely manner, either before or after the judgment was issued in family court. The time for such action is long past, since Applicant's children are now grown. AG ¶¶ 20(b), (d) and (e) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses 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 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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

When he prepared his SCA in December 2015, Applicant should have listed the lawsuit filed by his employer earlier that year. He was served a copy of the complaint, and knew enough to file an answer at the courthouse. However, since he heard nothing further about the matter, I believe Applicant may not have realized that he should have disclosed the suit in answering a question on his SCA about a “civil action.” In addition, Applicant did disclose his significant child support debt and provide an explanation about it elsewhere on his SCA. The chances are slim that he would disclose that large debt (of at least \$125,000) yet deliberately fail to disclose a \$15,000 lawsuit against him. Under the circumstances, I cannot conclude that AG ¶ 16(a) applies to SOR ¶ 2.a.

Further, Applicant disclosed the lawsuit to the interviewing agent, who would not have known about it otherwise (as the lawsuit was filed in a state where Applicant had no obvious connection). AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) also applies to mitigate Guideline E security concerns.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Applicant took little to no responsible action to pay child support in the early 2000’s after his divorce. His former

wife took him to court, and he was ordered to pay well over \$100,000 in past-due child support and attorney's fees. Rather than to contest the matter in state court, Applicant moved out of state and never looked back. He took no responsible action to resolve the debt in the years since. Even though his children have aged out of child support, his failure to act responsibly in those years carries forward to the present day (like the debt, which remains ongoing). With this large debt on his record – a debt which goes to the heart of fiduciary responsibility -- Applicant has not established that he is a suitable candidate for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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
Subparagraph 1.a:	Against Applicant
Paragraph 2: Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge