



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-02145
)	
Applicant for Security Clearance)	

Appearances

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

06/22/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 13, 2016. On July 28, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on August 18, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 20, 2017,

and the case was assigned to me on April 13, 2018. On April 19, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 16, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 31, 2018, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection.¹ DOHA received the transcript (Tr.) on June 5, 2018.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a. He did not expressly admit or deny the allegations in SOR ¶¶ 1.b and 1c, but he stated that the debts had been paid. Regarding the allegations in SOR ¶¶ 2.a and 2.b that he falsified his SCA, he admitted that his answers in the SCA were incorrect, but he denied intentional falsification. He admitted the security violation alleged in SOR ¶ 2.c. His admissions in his SOR answer and at the hearing are incorporated in my findings of fact.

Applicant is a 53-year-old information assurance analyst employed by a defense contractor since February 2015. He served on active duty in the U.S. Navy from June 1983 to November 1989 and received an honorable discharge. He served in the U.S. Coast Guard from May 1991 to March 2006, received an honorable discharge, and receives retired pay based on 20 years of military service. He has worked for various defense contractors since August 2007, and he has held a security clearance since at least 1994. (Tr. 23.)

Applicant married in February 1991 and divorced in July 2012. He has lived with a cohabitant since May 2013. He received an associate's degree in computer building in July 2003; a bachelor's degree in December 2004 and a master's degree in June 2006 security, both in computer security; and an associate's degree in culinary arts in December 2014. (Tr. 23-24.)

During a personal subject interview (PSI in December 2016, Applicant was questioned about several delinquent debts, some of which were the result of his divorce. Several were resolved before the SOR was issued, but two of the three debts alleged in the SOR were not resolved. (GX 3 at 12-13.)

¹ AX D, consisting of two pages is illegible. I contacted Applicant, who informed me that he would try to send more legible documents, but he did not submit anything further. In AX A, he stated that AX D reflected his current credit score of 676 on the TransUnion credit report and 693 on the Experian credit report, and I have accepted this statement as factually accurate. AX C, an Experian credit report, is missing pages 23-26. The missing pages are part of an explanation for Applicant's credit score but do not contain any information about Applicant's debts.

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

Applicant co-signed the automobile loan alleged in SOR ¶ 1.a for his daughter in 2010. After his daughter divorced, she was unable to make the payments. The loan was charged off for \$12,894 in March 2014. (GX 3 at 3.) Applicant first discovered that the loan was delinquent in 2012, when he applied to continue his security clearance. He did not consider the debt to be his personal responsibility because his daughter had agreed to make the payments. (Tr. 25-26.) During a personal subject interview (PSI) in December 2016, he told an investigator that he recognized his legal responsibility as a co-signer, but that he had no intention of paying the debt. (GX 2 at 13.) At the hearing, he denied telling the investigator that he was unwilling to pay the debt. (Tr. 28.) In Applicant's post-hearing submissions, Applicant stated that his daughter and her ex-husband had reached agreement on the automobile, and her ex-husband agreed to refinance the automobile in his own name. Applicant provided no documentation of the agreement and no evidence that the loan had been refinanced.

Applicant was unaware of the \$675 medical debt alleged in SOR ¶ 1.b until he reviewed his credit report in October 2016. (GX 2 at 13.) He believed that his insurance company should have paid the debt. He paid it in February 2017. (AX B.)

Applicant claimed that he paid the \$128 debt to a book club, alleged in SOR ¶ 1.c. In the December 2016 PSI, he stated that the debt arose when he attempted to cancel his membership, and that he was not aware of it until confronted with the evidence during the PSI. (GX 2 at 13.) At the hearing, he testified that the debt had been paid in full, but he was unable to provide documentation of payment. (Tr. 30; AX A.)

In January 2016, Applicant he plugged a personal activity tracker into his work computer. He testified that his personal computer and work computer were virtually identical and were alongside each other, and he accidentally plugged the activity tracker into the wrong computer. His computer automatically locked up and sent an electronic message to security officials. No classified or sensitive information was compromised. Applicant's access to classified systems was suspended pending completion of an investigation. He was counseled and required to complete cyber security awareness refresher training. The government client supported by Applicant's employer asked that he be removed from the contract, because he could not perform any work while his clearance was suspended. Accordingly, Applicant's employer terminated him. After the investigation of the security violation was completed, Appellant's employer offered to rehire him, but by that time Applicant had already accepted a position with his current employer. (GX 2 at 7; Answer to SOR.)

When Applicant submitted his SCA in February 2016, he answered "No" to the questions in Section 26 asking if, in the past seven years, he had defaulted on any type of loan, had bills or debts turned over to a collection agency, or had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He did not disclose the delinquent automobile loan alleged in SOR ¶ 1.a, the medical debt in SOR ¶ 1.b, or the debt to the book club alleged in SOR ¶ 1.c. In his answer to the SOR, he admitted that he answered the questions incorrectly but attributed the error to haste in completing the SCA.

In the same SCA he answered “No” to a question asking if, in the last seven years, he had been fired, quit after being told he would be fired, or left by mutual agreement following charges or allegations of misconduct or following notice of unsatisfactory performance. In his SCA, Applicant stated that he left his job in September 2013 because it was a temporary position. (GX 1 at 15.) However, in his answer to the SOR and at the hearing, he admitted that he quit by mutual agreement because he could not keep pace with the workload due to an injury in a motorcycle accident. (Tr. 48-50.)

Applicant’s current annual income from all sources, including his military retired pay and some income as a culinary chef instructor, is about \$145,000 to \$147,000. He has about \$10,000 in savings and about \$40,000 in his retirement account. (Tr. 34-35.)

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 F, Financial Considerations

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 is financially secure and able to resolve the delinquent debts alleged in the SOR. He has chosen to not pay the debt alleged in SOR ¶ 1.a and has not submitted documentary evidence that it is resolved. The debts alleged in SOR ¶¶ 1.b and 1.c arose because of Applicant’s inattention, and the debt alleged in SOR ¶ 1.c is not resolved. His admissions and the documentary evidence submitted at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(b) (“unwillingness to satisfy debts

regardless of the ability to do so”) and AG ¶ 19(c) (“a history of not meeting financial obligation”). The following mitigating conditions are potentially relevant:

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;

AG ¶ 20(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; and

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

None of the above mitigating conditions are fully established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur. The delinquent automobile loan alleged in SOR ¶ 1.a was due to his daughter's divorce and her inability to pay it, but Applicant has not acted responsibly. He acknowledged his legal responsibility as a co-signer on the loan, but he denied that he has a personal responsibility to resolve it. He claimed that it was resolved by a property settlement between his daughter and her ex-husband, but he provided no documentary evidence to support his claim. He claimed that the debt to the book club alleged in SOR ¶ 1.c had been paid, but he provided no documentary evidence to support his claim. When an applicant claims that a debt is resolved, he or she is expected to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.b, which has been resolved.

Guideline E, Personal Conduct

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

While Applicant may not have been aware of the debts alleged in SOR ¶¶ 1.b and 1.c when he submitted his SCA, he was clearly aware of his daughter's failure to pay the debt alleged in SOR ¶ 1.a. He made it clear throughout the security investigation that he felt no personal responsibility to resolve the debt in SOR ¶ 1.a. I found his explanation

that he omitted this debt his due to haste in completing his SCA unconvincing. He is well educated and has been through the security-clearance process enough times to understand the importance of accuracy and candor. Thus, I conclude that SOR ¶ 2.a is established.

At the hearing, Applicant admitted that he quit his job by mutual agreement when he was unable to meet performance standards due to an injury, and that he falsely reported in his SCA that he left the job because it was a temporary position. Thus, I conclude that SOR ¶ 2.b is established. The conduct alleged in SOR ¶¶ 2.a and 2.b and substantiated by the evidence is sufficient to raise the disqualifying condition in AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire”

The relevant disqualifying conditions for the security violation alleged in SOR ¶ 2.c are:

AG ¶ 16(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

AG ¶ 16(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 : . . (3) a pattern of dishonesty or rule violations

Neither disqualifying condition is established. Applicant’s violation was accidental and isolated one-time event, and he has had no further violations. After the security investigation was completed and Applicant completed remedial training, his former employer offered to rehire him.

The following mitigating conditions are relevant to Applicant’s falsification of his SCA:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

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.

AG ¶ 17(a) is not established. Applicant did not admit the debt alleged in SOR ¶ 1.a until he was confronted with the evidence during the December 2016 PSI. Applicant was interviewed in a follow-up PSI in March 2017 about his termination of employment in September 2013, and he adhered to his statement in the SCA that he left his job because it was a temporary position. When he responded to DOHA interrogatories in July 2017, he admitted that he “misspoke” in his SCA and he admitted that he was terminated, but he did not consider it an “adverse” termination. (GX 2 at 3.) At the hearing, he admitted that he quit the job by mutual agreement because he was unable to keep up with the workload due to his injury.

AG ¶ 17(c) is not established. Applicant's falsifications were arguably infrequent, but they were not minor and did not occur under unusual circumstances. A security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions, based on complete and accurate information, about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).

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 incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

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.

Applicant has worked for multiple employers and held a security clearance for many years. He served honorably in the U.S. Navy and the U.S. Coast Guard. However, his lack of candor in his SCA, his unwillingness to accept responsibility for the automobile loan he co-signed, and his quibbling about the circumstances of his termination of employment in September 2013 raise unmitigated concerns about his reliability and trustworthiness. After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and lack of candor in his SCA.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a and 2.b: Against Applicant

Subparagraph 2.c: 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