



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 17-02204 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

02/23/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant refuted the allegation under Guideline E, but he did not mitigate the security concerns under Guideline F. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on November 30, 2015. On August 4, 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 28, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 17, 2017, and the case was assigned to me on October 23, 2017. On November 13, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on December 15, 2017.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations under Guideline F. He did not expressly admit or deny the allegation of falsifying his SCA under Guideline E. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old quality analyst employed by a defense contractor since April 1990. He attended a naval shipyard apprentice school from November 1990 to November 1994. He has been married since March 2002 and has no children. He testified that he has held a security clearance since 1990. (Tr. 6.)

The SOR alleges 13 delinquent debts, totaling about \$22,000, which are reflected in credit reports from December 2015 and May 2017 (GX 2 and GX 3). The evidence concerning these delinquent debts is summarized below.

SOR ¶ 1.a: Unsecured loan charged off for \$9,492. (GX 3 at 2.) Applicant testified that this was an open-ended loan that he used from time to time for home improvements or other expenses. He has not made any payments on the loan for about a year. (Tr. 27-28.) He submitted no documents showing payments, payment agreements, or other resolution of the debt.

SOR ¶ 1.b: Unsecured loan charged off for \$6,368. The December 2015 credit report reflects that this debt was charged off for \$5,463 in September 2015. (GX 2 at 3.) When Applicant was interviewed by a security investigator in April 2017, he told the investigator that he had negotiated an agreement to pay \$150 per month on this debt. He testified he had fallen behind on making payments but made oral "side agreements" to make payments. He admitted that he had made no payments since the beginning of 2017. (Tr. 28-29.) He submitted no documentation of payments, payment agreements, or other resolution of the debt.

SOR ¶ 1.c: Cellphone account placed for collection of \$2,110. (GX 3 at 2.) Applicant testified that his wife had made some payments on this debt, but he had done nothing to resolve it. (Tr.29-30.) He submitted no documentation of any payments.

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

SOR ¶¶ 1.d, 1.f-1.i, and 1.l: Delinquent medical bills of varying amounts (one for \$1,542 and others for amounts from \$97 to \$500). (GX 3 at 2.) At the hearing, Applicant testified that he made payments on some medical bills, but he could not provide specific information showing that any of medical bills alleged in the SOR were being resolved. (Tr. 30-31.)

SOR ¶ 1.e: Credit-card account placed for collection of \$794. (GX 2 at 15; GX 3 at 2.) At the hearing, Applicant was unable to provide any information about this debt, but he admitted that he had done nothing about it. (Tr. 31.)

SOR ¶ 1.j: Cellphone bill placed for collection of \$151. (GX 2 at 15; GX 3 at 2.) Applicant testified that he was aware of this debt but had not taken any steps to resolve it. (Tr. 33.)

SOR ¶ 1.k: Collection account for \$137. (GX 2 at 15; GX 3 at 2.) Applicant testified that he had been making payments on this debt and it was almost completely paid. He submitted no documentation to support his testimony. (Tr. 33.)

SOR ¶ 1.m: Satellite television service bill placed for collection of \$248. (GX 2 at 15.) Applicant testified that he had not taken any action to resolve this debt. (Tr. 34.)

In June 2017, Applicant prepared a personal financial statement. It reflects that his family's net monthly income is \$3,743 and their monthly living expenses are \$3,446, leaving \$297 per month for debt payments and a shortfall of \$314. (AX E.) He testified that he prepared the financial statement with the assistance of a credit union employee who provided him with budgeting advice. (Tr. 43-44.) He has medical insurance through his employer, and the medical bills listed in the SOR probably are co-payments. (Tr. 50-51.) He testified that he was unaware that delinquent debts would affect his ability to hold a security clearance, and he "never signed a piece of paper saying that you shouldn't have any debt." (Tr. 16, 41.)

When Applicant submitted his SCA, he answered "No" to all the questions regarding delinquent debts. In his answer to the SOR, he stated: "I overturn my answer to Section 26 Financial Record to Yes. Yes, in the past seven years I had bills and debt turned over to a collection agency. Yes, in the past seven years I've been over 120 days delinquent on any debt not previously entered. Yes, I am currently over 120 delinquent on debt."

At the hearing, Applicant testified that he was in a rush to complete his SCA, and he thought about answering "Yes" to the financial questions, but knew that the investigator would obtain his financial records. He believes that he exercised bad judgment by leaving it to the Government to find the information and not disclosing it in his SCA. (Tr. 20-21.)

Applicant had difficulty accurately completing other parts of his SCA. For example, he neglected to list his two children, and he answered “No” when asked if he had ever received a security clearance. (Tr. 45-46; GX 1 at 14-20, 25.)

Applicant’s performance evaluations are based on a 4-point scale: 1 (below expectations), 2 (meets expectations), 3 (exceeds expectations), and 4 (far exceeds expectations). For 2016, his overall rating was a 3; for 2015 it was a 2; and for 2014 it was a 3. (AX A, B, and C.)

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. 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. . . .

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's admissions and the documentary evidence submitted at the hearing establish the following disqualifying conditions under this Guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(c): the individual has received or is receiving financial 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;

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

AG ¶ 20(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.

None of the above mitigating conditions are established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. He submitted no evidence of conditions beyond his control. He submitted no evidence about the circumstances in which the medical debts in the SOR were incurred. He received some assistance from a credit union employee in preparing a financial statement, but there is no evidence of the qualifications of that employee, no evidence that the assistance went beyond a tabulation of current income and expenses, and no "clear indications" that Applicant's financial problems are under control. Applicant present no documentary evidence of efforts to resolve his debts, and he did not articulate any basis for disputing them.

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. . . .

The relevant disqualifying condition is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to . . . determine national security eligibility or trustworthiness” When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant demonstrated during the hearing that he has little appreciation for the significance of delinquent debts in determining eligibility for a clearance. He also demonstrated little appreciation for the importance of the SCA in the adjudication process. He demonstrated his lack of attention to his SCA by omitting any mention of his two children or his previous security clearances. Last, he credibly testified that he was not concerned about the accuracy of his answers to the financial questions, because he knew that the Government would obtain his financial information. I conclude that his omissions were due to misunderstanding and carelessness and not an intent to deceive security investigators. AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

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).²

I have incorporated my comments under Guideline F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the

² 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.

allegation that he intentionally falsified his SCA, but he has not mitigated the security concerns raised by delinquent debts.

Formal Findings

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

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

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| Subparagraphs 1.a-1.m: | Against Applicant |
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| Paragraph 2, Guideline E (Personal Conduct): | FOR APPLICANT |
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| Subparagraph 2.a: | For Applicant |
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Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge