



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



In the matter of:)
)
) ISCR Case No. 17-04258
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

August 1, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On January 17, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on February 12, 2018, and on March 6, 2018, and requested a hearing before an administrative judge. (Answers.) The case was assigned to me on May 17, 2018. As this case was originally assigned to another judge, the Defense Office of Hearings and Appeals (DOHA) had already issued a notice of hearing on April 5, 2018, scheduling the hearing for May 24, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 6, which were admitted without objection. Applicant testified on his own behalf. The record was left open until July 25, 2018, for receipt of additional documentation. Applicant presented one set of documents, which I marked Applicant's Exhibit (AppX) A. DOHA received the transcript of the hearing (TR) on June 5, 2018.

Findings of Fact

Applicant is 39 years old, and has one child. (GX 1 at pages 5 and 24.) Applicant attributes many of his alleged past-due debts to his father, who has the same name, and who committed identity fraud vis-a-vis Applicant. (TR at page 12 line 24 to page 13 line 9, and at page 14 line 21 to page 19 line 9.) His averment is supported by a statement from Applicant's mother. (AppX A at page 1.)

Guideline F – Financial Considerations

1.a., 1.b., 1.t., and 1.w. Allegations 1.a. and 1.t. are one and the same debt, and allegations 1.b. and 1.w. are also one and the same debt. Applicant admits past-due medical debts totaling about \$315. (TR at page 37 line 25 to page 39 line 7.) He testified credibly that he has made a good-faith effort to address these two debts. (TR at page 39 line 8 to page 40 line 1, and at page 52 lines 1~19.) These allegations are found for Applicant.

1.c.~1.f., 1.i., 1.k.~1.q., 1.s., and 1.u. These alleged past-due debts are all attributed to Applicant's dishonest father. (TR at page 30 line 20 to page 36 line 21, and AppX A at page 1.) These allegations are found for Applicant.

1.g. Applicant admits that he is indebted to Creditor G, as the result of the repossession of an automobile, in the amount of about \$11,376. Despite giving Applicant two months to address this rather significant past-due debt, he has offered no further evidence in this regard. (TR at page 40 line 2 to page 41 line 7, and at page 52 line 19 to page 54 line 4.) This allegation is found against Applicant.

1.h. Applicant admits that he is indebted to Creditor H, as the result of a medical debt, in the amount of about \$9,676. Despite giving Applicant two months to also address this rather significant past-due debt, he has offered no further evidence in this regard. (TR at page 41 line 8 to page 42 line 8, and at page 52 line 19 to page 54 line 4.) This allegation is found against Applicant.

1.j. Applicant admits that he is indebted to Creditor J, as the result of an insurance debt, in the amount of about \$16,060. Despite giving Applicant two months to address this very significant past-due debt, he has offered no further evidence in this regard. (TR at page 42 line 9 to page 46 line 14, and at page 52 line 19 to page 54 line 4.) This allegation is found against Applicant.

1.r. Applicant admits that he was indebted to Creditor R in the amount of about \$985. He avers, credibly, that as Creditor R is no longer in business, there is no way to contact Creditor R. (TR at page 54 lines 4~21.) Furthermore, there is no successor creditor holding this debt. This allegation is found for Applicant.

1.v. Applicant admits that he was indebted to Creditor V in the amount of about \$103. He avers, credibly, that he went to Creditor V's office to pay this debt, but was told the past-due "phone bill" no longer existed. (TR at page 54 line 22 to page 55 line 15.) I

find that Applicant has made a good-faith effort to address this small debt; and as such, this allegation is found for Applicant.

Guideline E – Personal Conduct

2.a. Applicant admits that he answered “No” to “**Section 26. Financial Record Delinquency Involving Routine Accounts**” when he executed his April 2016 Security Clearance Applicant (SCA). He avers, credibly, the following:

I had just had my credit report [examined] when I purchased the home [in September of 2015]. I had seen a lot of the stuff that I had been disputing online, stuff that I had taken care of that were my debts that I had just paid off, like credit cards and stuff like that in order to purchase my home. So I wasn’t aware. (TR at page 20 lines 17~22.)

As Applicant testified credibly in this regard throughout his hearing (TR at page 19 line 19 to page 22 line 18, at page 25 line 2 to page 26 line 9, and at page 28 line 14 to page 30 line 19), I find no willful falsification here; and as such, this allegation is found for Applicant.

Policies

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 or sensitive information.)

Analysis

Guideline F - Financial Considerations

The 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, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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.

Although Applicant can attribute much of his alleged past-due indebtedness to identity theft, three of his significant debts totaling in excess of \$37,000 remain outstanding. His financial problems are not under control.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.g., 1.h., and 1.j. against Applicant.

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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition could apply:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying his SCA. When a falsification allegation is controverted, 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.¹

In this instance, it is clear from Applicant's comments that he was unaware of his delinquent debts at the time he completed his SCA. In fact, he purchased a house six months prior to executing his SCA. Therefore, deliberate omission, concealment, or falsification under AG ¶ 16(a) has not been established. This allegation is found for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including letters from those who know Applicant in the workplace (AppX A at pages 4 and 5), I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not

¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

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

Subparagraphs 1.a. – 1.f.:	For Applicant
Subparagraphs 1.g.and 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraphs 1.k. – 1.w.:	For Applicant

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

Subparagraph 2.a:	For Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility. Clearance is denied.

Richard A. Cefola
Administrative Judge