



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-01227

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on January 1, 2015. On May 12, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant answered the SOR on June 7, 2018 (Answer), and requested a decision on the record without a hearing.

On June 28, 2018, a complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant. In the FORM, Department Counsel (DC) made a motion to amend the SOR.¹ The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM on August

¹ The Directive's provisions for amending the SOR are permissive. See ISCR Case NO. 08-02404 at 5 (App. Bd. Jun. 5, 2009) and Additional Procedural Guidance E.3.1.17.

11, 2018 (Response). Items 1 through 8 are admitted into evidence and the SOR is amended without objection. The case was assigned to me on October 16, 2018.

Findings of Fact

Applicant is 45 years old and has been married since 1997. He and his wife have twelve-year-old twins. Applicant received a bachelor's degree in 2000 and a juris doctor degree in 2003. He has held a security clearance since approximately 2010, and has worked for his employer as a supply chain advisor since October 2011.

Applicant claimed his financial issues started after his 2008 cancer diagnosis. In approximately 2015, his wife took time off from work to care for her father, which also contributed to his family's inability to pay their financial obligations. (Item 3; Item 4; Item 5)

The SOR, as amended, alleged five delinquent debts, totaling over \$180,000. Additionally, the SOR alleged Applicant failed to disclose delinquent debts in his January 2015 SCA. In Applicant's Answer, he claimed his home mortgage and student loans were in the process of being rehabilitated. He also denied the two Guideline E allegations. (Item 1) In his January 2015 SCA, Applicant disclosed one unalleged delinquent debt, a credit card account. This account became delinquent in 2008 due to Applicant's health-related issues. He disclosed no other debts. (Item 4)

SOR ¶ 1.a. Applicant opened this home mortgage account in 2010 and it became delinquent in approximately 2013. (Item 6 at 1; Item 7 at 6; Item 8 at 4-5) During his September 2015 personal subject interview (PSI), Applicant told the government investigator that in approximately 2010, he defaulted on his home mortgage. To qualify for a loan modification program, Applicant did not make three monthly mortgage payments. Applicant claimed he was able to make the mortgage payments; however, he discontinued payments per the lender's recommendation.

During his September 2015 PSI, Applicant also admitted that the mortgage became delinquent again in approximately 2015, after he completed the SCA, due to his father-in-law's health issues. Applicant claimed he did not disclose this debt in his SCA because the account was in good standing after 2010, and his financial issues did not recur until after he completed the SCA. (Item 3; Item 5)

Applicant provided documentation in his Answer and Response, demonstrating that the mortgage account alleged in SOR ¶ 1.a. is currently in good standing. He did not provide documentation to show that the mortgage was current when he completed his 2015 SCA. (Item 3; Response)

SOR ¶ 1.b. The credit bureau reports (CBRs) in the record show that Applicant was not making payments toward this student loan in 2012, and again in 2014. (Item 6 at 2; Item 7 at 6) During his September 2015 PSI, he claimed this loan was being rehabilitated and was current; therefore, he did not disclose the delinquency in his

January 2015 SCA. Applicant did not provide documentation to support this claim. In his Answer, he provided documentation that he entered into a rehabilitation agreement in March 2018. He did not provide proof of payments in his Answer or Response; however, the most recent CBR in the record shows that he made a \$50 payment in May 2018. (Item 8 at 3)

SOR ¶ 1.c. This federal student loan became delinquent in approximately October 2013. (Item 6 at 2; Item 7 at 10; Item 8 at 3) During his September 2015 PSI, Applicant claimed he was unable to make payments toward this student loan in 2008, after he was diagnosed with cancer. He also claimed that this student loan was in a loan rehabilitation program, and he was making \$1,100 monthly payments toward it, which is why he did not disclose it in his SCA. In his June 2018 Answer, Applicant claimed he was unaware of this student loan when he completed his SCA, and he thought it was a duplicate of SOR ¶ 1.b. He also admitted that he was not making payments toward this student loan.

SOR ¶ 1.d. This credit card debt became delinquent in August 2014. (Item 6 at 2; Item 7 at 6; Item 8 at 2) During his interview, Applicant claimed he did not recognize this debt, which is why he did not disclose it in his SCA. In his Answer, he claimed he was disputing the amount alleged and believed he owed \$90 rather than \$240. He did not provide proof of resolution.

SOR ¶ 1.e. This federal student loan became delinquent October 2013. (Item 8 at 2) Applicant did not address this allegation in his Response.

Applicant did not disclose any of his delinquent student loans in his SCA, nor did he disclose them to the investigator in September 2015 before being confronted. During his September 2015 PSI, he claimed he did not disclose these debts because they were all in a rehabilitation program and in good standing at the time that he completed his January 2015 SCA. (Item 4 at 4) In his Answer, Applicant claimed he was unaware that the debt alleged in SOR ¶ 1.c was delinquent.

Applicant also claimed during his PSI that he was making monthly payments of \$1,100 toward at least one of his student loans. In his Response, he claimed he had been making monthly payments of \$600 for several years. Additionally, in his Response, Applicant claimed he failed to disclose all of these debts in his SCA because he used his 2010 SCA as the basis for completing his 2015 SCA. Applicant did not provide proof of a 2015 loan rehabilitation program, nor did he provide proof of the various student loan payments he claimed he made over the years.

Policies

“[N]o one has a ‘right’ to a security clearance.”² 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

² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

information.”³ 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.”⁴

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.

Adverse 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.”⁵ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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.⁶ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁷ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁸ Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

³ *Egan* at 527.

⁴ Executive Order (EO) 10865 § 2.

⁵ EO 10865 § 7.

⁶ Directive ¶ E3.1.14.

⁷ *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁸ *See, e.g.* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

facts.⁹ An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.¹⁰

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹¹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹²

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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 record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

AG ¶ 20 describes conditions that could mitigate security concerns. 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

⁹ Directive ¶ E3.1.15.

¹⁰ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹¹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531; see also AG ¶ 2(b).

individual acted responsibly under the circumstances; and

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

Applicant experienced personal issues that contributed to his financial delinquencies; however, he did not meet his burden to establish that he acted responsibly to address the alleged unpaid debts. Although it appears that the debt alleged in SOR ¶ 1.a is currently in good standing, Applicant's remaining debts remain unresolved and they are significant.

The loan rehabilitation paperwork Applicant provided is insufficient to mitigate the debt alleged in SOR ¶ 1.b. Applicant owes over \$170,000 in delinquent student loans. The CBRs in the record demonstrate that his payment history has been spotty at best, and for significant periods, nonexistent. The documentation reflects a single \$50 payment in May 2018 toward the debt alleged in SOR ¶ 1.b, which does not reflect a good-faith effort to repay or resolve his debts.

Applicant did not provide proof of any payments in his Answer and Response, despite various claims that he has paid significant amounts of money toward his student loans in the past. Nor did he provide documentation to reflect that the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e have been resolved or are in the process of being resolved. Applicant's debts remain a recent and ongoing issue, nor did they become and remain delinquent under such circumstances that they are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, or good judgment. Mitigation under AG ¶ 20(a), 20(b), and 20(d) was not established.

Guideline E: Personal Conduct

The security concern under Guideline E 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.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable under the established facts in this case:

(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 failed to disclose adverse financial information in his SCA. At the time that he completed the SCA, all of the debts alleged in the SOR were outstanding. AG ¶ 16 (a) is established.

AG ¶ 17 describes conditions that could mitigate the security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant denied the Guideline E allegations and stated that he did not intentionally falsify his January 2015 SCA. During his September 2015 PSI, he failed to disclose his delinquent debts until he was confronted by the Government investigator. At that time, he claimed he failed to disclose his delinquent debts because they were rehabilitated and in good standing. He also claimed that his mortgage became delinquent after he completed his January 2015 SCA, but he provided no documentation to support these claims.

In his Answer, Applicant claimed he was unaware of at least one of his student loans, which is why he did not report its delinquency in his 2015 SCA. In his Response, for the first time, Applicant claimed he used his 2010 SCA to fill out his 2015 SCA, which is why he failed to include various delinquent debts. Applicant admitted that in 2008, he had difficulty paying his student loans due to his illness; therefore, this information should have been included in his 2010 SCA.

Applicant is an educated and experienced individual. This was not his first security clearance application. The evidence as a whole reflects that he was aware of his various delinquent debts before he completed his most recent SCA. Applicant's inconsistent explanations for failing to disclose his delinquent debts lack credibility and do not alleviate concerns as to his trustworthiness, questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations. Mitigation under AG ¶¶ 17(a) and 17 (c) was not established.

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 following 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 the guidelines at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the financial and personal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraphs 1.a – 1.b:	Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge