



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



In the matter of:)
)
) ISCR Case No. 17-03813
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2018

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 3, 2017. On December 6, 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.¹

¹ 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 8, 2018.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and submitted documents in response. The Government's exhibits included in the FORM (Items 1 to 3, 5 and 6), and Applicant's exhibit (AE) marked as AE A, are admitted into evidence. Applicant objected to the accuracy of GE 4 (Personal Subject Interview). As GE 4 is a portion of a report of investigation (ROI) and has not been authenticated, it will not be admitted into evidence or considered in this case.² The case was assigned to me on May 10, 2018.

Findings of Fact

Applicant is a 30-year-old prospective employee of a defense contractor. He received a bachelor's degree in 2010. He is unmarried and has one child (seven years old). He has never held a DOD security clearance.

The SOR alleges three delinquent debts totaling over \$15,000, including a credit-card debt, a child-support arrearage, and a small collection account. Additionally, the SOR alleges Applicant falsified his SCA by failing to disclose his child support and other delinquent debts. In his answer to the SOR, Applicant admitted the delinquent credit card but disputed charges as fraudulent, admitted the child-support arrearage, and denied the small collection account. He also admitted that he did not report his child-support arrearage by mistake, and denied falsifying the other debts because they were being disputed. Applicant did not provide supporting documentation with his answer, but included some documentation and a narrative explanation in his response to the FORM. All of the SOR allegations are supported by sufficient evidence provided by the Government.

Applicant opened a credit-card account in 2011. According to a credit report of October 2017, the account became delinquent in February 2015, has a high credit limit of \$10,125, and has a balance of \$10,069. (SOR ¶ 1.a) The account was charged off and closed by the creditor in 2015. Applicant noted in his response to the FORM that the credit card has a credit limit of \$7,500, and he alleges fraudulent charges were placed on the card, including out-of-state transactions. He disputed fraudulent charges with a credit reporting agency through an online service in early 2018, but did not specify which charges were fraudulent. As of March 2018, he had not received a response regarding the disputed account. He did not submit a statement or other documentation into evidence showing the fraudulent charges or account balance.

² Directive, E3.1.20.

Applicant disputed a \$574 account originally charged by a pest-management company, but now listed by a collection agent (SOR ¶ 1.c). Applicant noted in his response to the FORM that his January 2018 credit report does not show the account, and asserted that the debt may be from an apartment dispute that was resolved in his favor.

Applicant has a child-support arrearage of \$4,760, reported delinquent on a credit report in February 2015. (SOR ¶ 1.b) Applicant's mother passed away in 2013, and he became responsible for two home mortgages and caring for his minor teenaged sister. Applicant was then unemployed, living with his mother, and has had irregular wages through several short-term jobs. He admitted falling behind on his child-support payments, but made partial payments whenever possible. He was unsuccessful in obtaining a reduced child-support payment, and he incurred arrearages despite paying child support since 2013. Applicant found a full-time job in November 2017 with a salary of \$95,000. As a result, he stated that he resumed regular child-support payments, and tries to make additional payments toward the arrearage when he can. He provided evidence of child-support payments from November 2014 to February 2018. His most recent statement shows that he has not been able to meet his required payments in full, and continues to owe a balance of \$4,750. He notes that his credit score has improved since March 2017.

Applicant stated that he completed his SCA in October 2016, but his employer did not submit it as required, so he was asked to complete another SCA during an overnight shift in April 2017. Of note, the SCA submitted by the Government was signed and dated January 3, 2017. (GE 3) In response to questions regarding financial delinquencies, including child support and delinquent debts, Applicant answered "no." In his response to the FORM, Applicant noted that he did not have a clear understanding of what was being requested, and his failure to note his financial delinquencies was an oversight. He noted in his answer to the SOR, that he was making payments on his child-support obligation, and that he was disputing the charges on the credit card.

Since Applicant elected to have this case decided on the written record in lieu of a hearing, I was unable to further inquire into these allegations, or evaluate his demeanor or credibility in response to questions about the status of his debts and current finances.

Law and 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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 1(d).

Analysis

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;
- (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.

Applicant's delinquent debts have been a recurring problem that have not been fully addressed. Although Applicant has suffered financial hardships resulting from his mother's death, responsibility for his sister, and an inconsistent employment history, he has not provided sufficient evidence for me to determine that he has addressed his delinquent debts and child-support arrearages in good faith, and that continued indebtedness is unlikely to recur. Applicant recently disputed debts that were charged off years ago, but did not specify what charges were fraudulent and what charges belonged to him. He defaulted on his credit card a number of years ago, but claimed a dispute after receiving the SOR. He has not shown a reasonable basis to dispute the credit card and collection debt, has not received a resolution of the disputes, and has not offered evidence of a contemporaneous report of a theft of his credit card or personal identity. Applicant has not shown sufficient evidence of the legitimacy of his disputed debts. In addition, he has held a job paying \$95,000 since November 1, 2017, but continued to make incomplete child-support payments and has shown insufficient evidence of a plan to repay the arrearage.

Applicant's long-standing disregard for his debts and child-support obligations raises questions about his judgment and willingness to comply with rules and regulations. He presented no evidence showing his current financial condition or that he sought financial counseling or other assistance to address his debts. He has not shown that his financial situation is under control, or that he has a reasonable basis to dispute his delinquent debts. No mitigating condition is fully applicable.

Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 condition is 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 employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When falsification allegations are controverted, as here, the Government has the burden of proving the allegations. 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.³ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.⁴

Applicant failed to report his delinquent debts and child-support arrearage on his SCA, as required. Based on the evidence in the record, I find that he knowingly failed to report his debts despite his claim of not fully understanding the questions on the SCA and having to complete the form twice. There is sufficient evidence that Applicant knew of the delinquent credit card and child-support arrearage, and that he knowingly omitted them from his SCA.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's omissions were recent and I have insufficient evidence that it is unlikely to recur, given his claim to have completed two SCAs within a few months of each other. At the time, he knew of the delinquent accounts, and his later dispute of the debts and payments of child-support, do not absolve him of the requirement to truthfully report the debts. No mitigating condition fully applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

⁴ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E in my whole-person analysis. Applicant's delinquencies remain an ongoing concern. He has not shown evidence of whole-person factors sufficient to overcome the debts and his failure to report them. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him 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
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a and 2.b:	Against Applicant

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.

Gregg A. Cervi
Administrative Judge