



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



In the matter of:)
)
) ISCR Case No. 18-00703
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges 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

On March 29, 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 April 11, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 9, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2018, scheduling the hearing for October 11, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on his own behalf. He submitted a packet, which was marked

as Applicant Exhibit (AE) A, and was accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on October 19, 2018.

Findings of Fact

Applicant, age 38, is married and has one stepchild. He obtained his undergraduate degree in 2006. Applicant completed his security clearance application on March 4, 2017. He has never held a security clearance. (GE 1) His former employer is sponsoring him for a security clearance. (Tr. 13) Applicant has been unemployed from September 2017 to March 2018, and is currently collecting unemployment.

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$29,000. The debts include six delinquent student loans, and three collection accounts. Applicant admitted the allegations relating to the student loans, but denied the three collection accounts. He denied the allegation SOR ¶ 2.a. under personal conduct concerns. He provided explanations for each allegation.

Applicant acknowledged his financial hardship. He takes responsibility and is attempting to correct the issues. He does not want to make excuses, but wanted to clarify the situation. Applicant suffered a major heart attack in March 2011. He explained that he almost died. (Tr. 21) He was in rehabilitation for about three months. At the time, he was working for an agency that he had been employed with for 13 years, but he was let go. His illness and medical costs drained his savings and he was unable to pay his student loans. (AE A) After the surgery, he was not able to work for various times over the past few years. (Answer to SOR) His wife is unemployed as well. (Tr. 31)

Applicant had medical setbacks after the surgery. He was not able to walk and needed surgery again in 2018 for blood clots in his leg. (AE) A. He continues with his visits to the doctor. (Tr. 29) He decided to let his health issues take precedence over the student loan issues. (Tr. 27)

Applicant explained that the hospital worked out a payment arrangement with him. He noted that he was focused on gaining back his health. He talked to some credit repair agencies and was told to continue paying on his car loan, which he did. (Tr. 32) The car loan is now paid. (See attachment to Answer) Applicant's plan was to use the money that he had been paying on his \$500 monthly car loan to start paying his student loans. (Tr. 27, 31)

During his OPM investigative interview, Applicant spoke about his six student loans that had been deferred from 2012 and are now due. He stated that he did not have the money to make payments. Since he has not been working and collecting a salary he had no money for student loan payments. (GE 2)

As to SOR ¶¶ 1.a-1.f., Applicant admitted that he owes the six student loans. He has not made any payments in the past seven years. He was credible when he stated that he had made some payments in 2010 and 2011, but he was at times delinquent before his health problems in 2011. (Tr. 35)

As to SOR 1.g and 1.h for phone bills in collection for a total of \$715, Applicant denied that he owed these accounts. He stated that another phone company had a promotion and the other two phone accounts were to have been paid. He has been working with them for a while. He received notices for payment from the two phone companies and forwarded them to the new phone provider. (Tr. 38) He has not yet officially disputed the accounts. (Tr. 39).

As to SOR 1.i, a medical account in the amount of \$407, Applicant admits that he owes this account. His father is going to help him pay this medical bill and some other ones as well. He states that he is willing to pay this account, but does not have the money to do so. He cannot pay until he resumes his employment and is earning a salary. He also would like to ask for another deferment for the student loans.

Applicant's last salary in 2017 was about \$62,000. He was about to set up payment arrangements for the student loans when the SOR arrived. He provided proof that he has paid his car loan in full. However, he has no health insurance at this time and is relying on savings and his unemployment benefits. (Tr.48) His surgery in 2018 has affected his finances as well. Applicant has taken about \$7,000 from his 401(k) to help pay his bills. (Tr. 49)

When Applicant completed his 2017 SCA, he answered "No" to Section 26 concerning judgments or liens in the past seven years. He also answered "No" to Section 26 concerning bills or debts turned over to collection accounts.

Applicant denied that he intentionally falsified his 2017 SCA. In his answer, and in his testimony at the hearing, he claimed he had not thought of the student loans. He knew he was paying his household bills and did not have a look at his credit bureau report until his OPM investigation. At the investigation, he told the investigator that he had satisfied a judgment, which was confirmed by a recent credit report and that the phone bills were to have been resolved. He did not think they were delinquent. He knew he had student loans but didn't think of them in that category. He testified that he did not deliberately falsify his SCA in 2017. He answered "No" because the student loans were not on his radar. (Tr. 66) Applicant stated that he kept no information from the investigator during his interview.

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 seeks access to classified information enters 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;

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; and

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

Applicant's student debts are long-standing and he acknowledges that he has not paid on them in about seven years. He has a medical debt and other medical accounts that are the result of circumstances beyond his control. He had been paying on his student loans before his heart attack, but not on a consistent basis. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved. Although he promises to address them when he is gainfully employed.

AG ¶ 20(b) is not established. While Applicant's unemployment, heart attack and other health issues were beyond his control, he has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that his financial situation is under control. He talked to some credit repair agencies and has paid his car loan in full. His current ability to pay his delinquent debts is in doubt as he stated that he lives on his unemployment benefits and some savings. 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.a through 1.i. 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 that he falsified his 2017 SCA, in his answer, and in his remarks at the hearing, he was adamant that he was not trying to defraud the Government. He did not consider the student loans as belonging in that category. He had a satisfied judgment. He had not seen his credit report and did not know of the phone accounts that

were still on his credit report. In fact, he had denied those allegations on the SOR. 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 An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.²

In this instance, it is clear from Applicant's comments that he was not aware of some of his delinquent debts, and was relying on the deferment or consolidation of student loans. He should have disclosed the delinquent debts he had knowledge of on his SCA. However, I find insubstantial evidence of an intent by Applicant to intentionally omit, conceal, or falsify facts from and on his SCA. Therefore, AG ¶ 16(a) is not established.

Applicant made prompt or good-faith efforts to correct his falsification or concealment. He spoke openly to the investigator during his interview. Applicant was credible and has shown that similar lapses in judgment are unlikely to recur. He provided sufficient information in this record to demonstrate that he has met his burden of proof for his personal conduct.

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 his credibility and openness at the hearing, I conclude that Applicant did not deliberately falsify his SCA, but he has not mitigated the

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

² ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

security concerns raised by his financial indebtedness. Accordingly, Applicant has not 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.i: Against Applicant

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

Subparagraphs 2.a: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge