



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00805

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations or Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On April 3, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant answered the SOR on May 24, 2018, and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on June 27, 2018. Applicant received the FORM on July 2, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided an undated, one-page response to the FORM, with attachments including the names and addresses of four character references, a copy of a July 18, 2018, pay stub, and a letter from his community college. The Government's evidence, was identified as Items 1 through 6.

All exhibits were admitted into evidence without objection. The case was assigned to me on October 11, 2018.

Findings of Fact¹

Applicant is 28 years old. He graduated from high school in 2008, and had some community college courses, but did not obtain a degree. Applicant has been employed as a structural design learner by a federal contractor since March 2017. He has never been married and he has an eight-year-old son. Applicant states that he had a period of unemployment from October 2006 to November 2008. He reports no military service or previous security clearance.

Applicant disclosed an arrest in February 2008 for possession of marijuana (MJ) with intent to sell in section 22 of his Security Clearance Application (SCA).² He stated “I was in someone’s car driving it. When I got pulled over, there was marijuana in the glove box and I got arrested for it.” The case was dismissed when Applicant agreed to attend a drug-substance abuse course. In section 23 of the SCA, he disclosed that he smoked MJ in social settings with friends, approximately once every six months during the last seven years. He does not intend to use MJ again because he does not like the way it makes him feel. In his clearance interview, Applicant said he smoked blunts once every three months, due to peer pressure, but he no longer associates with these friends.³ The MJ supposedly had no impact on him, and he quit smoking it because of consequences to his career.

In his Answer to the SOR (Answer), Applicant admitted 12 of the 14 delinquent debts alleged in the SOR totaling \$37,974. These included eight delinquent student loan debts owed to the Department of Education (DOE), a child support arrearage, consumer debts, and medical debts. He denied the allegations in SOR ¶¶ 1.k and 1.n, claiming that his mother used his personal information and took out these “fast loans” in his name. He is working with an attorney to have these removed from his credit history. However, Applicant has provided no documents or evidence to support his claims.

In his Answer to the SOR, Applicant also admitted the five allegations under SOR ¶ 2 for personal conduct, with explanations. In SOR ¶ 2.b, Applicant admits to making the false statement alleged regarding being charged with any felonies. He responded negatively in the SCA because the charge was reduced to a misdemeanor. Further, “the incident occurred when I was 18 years old, and the girl was 15. It was consensual, but I realize it was wrong due to the age difference between us.”⁴ In SOR ¶ 2.c, Applicant responded that his MJ use was in the past, and he has changed his

¹ Unless stated otherwise, the source of the information in this section is Applicant’s October 26, 2016 Security Clearance Application (SCA). (Item 2)

² Item 2.

³ Item 3, p. 6.

⁴ Item 1, Answer to SOR at p. 2.

lifestyle. In SOR ¶ 2.e he responded that his arrest for possession of MJ with intent to sell, was seven years ago and it was a misdemeanor charge. “I realize now that it was wrong, and it will never be an issue again.” Attached to his Answer, were a letter of representation from his attorney dated May 18, 2018, and two job performance reviews from March and April 2018.

In his clearance interview by an Office of Personnel Management (OPM) investigator on December 8, 2017, Applicant explained that he previously worked full time at a casino from December 2013 to April 2017, and part time for three years at a community college where he took classes for one semester. When confronted by the OPM investigator with a discrepancy, Applicant admitted that he only actually worked at the college for four months from August 2009 to December 2009. Applicant acknowledged that he purposely misrepresented the dates of this employment to fill in the gaps because Applicant had a long period of unemployment from December 2009 to January 2012. Applicant was terminated by the casino in April 2017.

Applicant told the OPM investigator that he wasn’t earning enough money to repay his student loans, which Applicant said totaled \$40,000. Sometime in 2017, Applicant started to have \$40 per week deducted from his paycheck for student loan repayments. He initially claimed to have no knowledge about his delinquent debts to Department of Education (DOE) at SOR ¶¶ 1.a through 1.h, totaling \$34,172. He stated his intention to pull his credit report and confirm these debts, and if legitimate, he promised to take care of them.⁵ In his undated response to the FORM (response), Applicant said he was aware he was in default on his student loans, but was in the process of getting out of debt. He had met with an attorney to help him and he started weekly payments of \$40 for his student loans, and \$154 for child support payments – to be deducted from his paycheck. He attached a July 2018 pay stub that confirmed this.

SOR ¶ 1.j alleges an account placed for collection in the amount of \$470 and SOR ¶ 1.m is for another account placed for collection by telecommunications providers. Applicant told the OPM investigator that he would contact the two providers and start payment plans, but he produced no documentary evidence to substantiate this. He thought that the medical debt at SOR ¶ 1.l was for a visit to a hospital. He promised to contact the creditor, but provided no documents to substantiate any efforts to resolve this delinquent debt.

SOR ¶ 2.a alleged a falsification in the SCA at section 26. Applicant admitted this in his Answer, and explained that at the time, he did not have a stable job. I find that it was intentional. Similarly, Applicant admitted to the falsification allegation in section 22 of his SCA at SOR ¶ 2.b. His explanation was that the sexual assault felony charge was later reduced to a misdemeanor charge of reckless endangerment, which he pled guilty to as a part of a plea bargain. Nonetheless, he was clearly charged with a felony. He admitted to the criminal offenses alleged in SOR ¶¶ 2.c – 2.e. He explained that the bag containing 2-3 ounces of marijuana, which fell out of the glove compartment, when

⁵ Item 3, at p. 10.

Applicant was stopped by police, was actually his friend Michael's bag. Yet, Applicant produced no corroboration from Michael, or other evidence to substantiate his claims.

Policies

This action was taken under Executive Order (EO) 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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 that "[a]ny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 access to classified information. Decisions include, by necessity, consideration of

the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “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 security concern relating to financial considerations 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 abuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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 delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interview of December 2017. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁶ Applicant has not met that burden. None of the delinquent debts have been resolved.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, 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 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 endured a long period of unemployment. Arguably, this condition was beyond his control. He has produced a May 2018 letter of representation by his attorney with his Answer to the SOR and two favorable job performance evaluations. It is unclear if his attorney is providing financial counseling. In addition, Applicant attached to his response to the FORM, a July 2018 pay stub showing deductions weekly for child support and student loans. This is some evidence of at least one repayment on these debts. These efforts were on the eve of his FORM. He claims that his mother took out loans in his name in SOR ¶¶ 1.k and 1.n. He may have reason to dispute these delinquencies, but he has provided no evidence of disputes. In short, he has provided insufficient documentation to mitigate the delinquent debts alleged in the SOR. These debts are recent and ongoing. He has not demonstrated that he acted responsibly

⁶ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above do not apply.

Guideline E, 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 conditions are 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Since Applicant admitted his intent to provide false information as alleged at SOR ¶¶ 2.a and 2.b, his intent is not an issue. Applicant responded negatively when asked if he had any delinquencies regarding routine accounts in the last seven years in section 26 of his SCA (Financial). The wording of the questions in section 26 of his SCA could not be more straightforward and unambiguous. Similarly, he responded negatively to questions in section 22 (Police Record) in the same SCA when asked if he was ever

charged with any felony offense. Since he had been charged with a sexual assault on a 15-year old eight years before completing the SCA, it is difficult to envision circumstances under which he could have misunderstood the question or forgot about the sexual assault allegation. Although it was not alleged in the SOR, Applicant admitted his duplicity about the length of his employment with the community college, (four months vice three years) when he was interviewed by the OPM investigator. Applicant did not answer the SCA questions honestly. I conclude that he had the specific intent to deceive when he provided this false answers in sections 22 and 26, and he deliberately falsified the SCA. He admitted to the other transgressions alleged in SOR ¶ 2. SOR ¶¶ 2.a – 2.e have not been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Most importantly, Applicant has not been candid or forthcoming in the security application process, and he has not mitigated his delinquent debts.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations or under Guideline E, personal conduct.

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 to 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge