



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-03242 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

04/27/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 11, 2013. The Department of Defense (DOD) Consolidation Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on September 22, 2014, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Trustworthiness determination Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated October 10, 2014. He did not request a hearing. A decision on the written record will be made in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 4, 2015. Applicant received the FORM on March 20, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated March 30, 2015. DOHA assigned this case to me on April 16, 2015. The Government submitted six exhibits, which have been marked as Items 1-6 and admitted into the record. Applicant's response to the SOR is attached to the SOR, and like the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibits (AE) A to AE H.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.d, and 2.a of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.b and 1.e of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 58 years old, works in janitorial services for a DOD contractor. He began his current position in April 2013. He also works part-time, evenings and weekends, as a sales associate in the building supply industry, a position he has held since May 1998. Applicant previously worked as a groundskeeper.²

Applicant did not complete his high school education. He married in May 1981. He and his wife have three adult children, ages 33, 29, and 28. He also has a stepdaughter, age 35. At the time of his 2013 personal subject interview, his 29-year-old daughter lived with him, but his other children lived independently. It is unknown if his daughter and wife work or if they provide financial support to the family.³

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 ion(App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 2; Item 3.

³Item 1; Item 3.

The SOR identified five purportedly continuing delinquencies as reflected by credit reports from 2013, 2014 and 2015, totaling approximately \$40,000. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

SOR allegation 1.a states that Applicant owes \$15,237 to a credit union. This debt appears to be a repossessed automobile. The credit reports of record provide conflicting information about Applicant's accounts with this creditor. The April 2013 credit report shows three accounts with this creditor. One account is in good standing; one account is paid and closed; and one account is in past-due status. The May 2014 credit report reflects only one account with this creditor, which Applicant disputed. The February 2015 credit report shows only one charged-off account. Applicant does not deny this debt. He advised that he has a payment plan with the creditor and that he is making payments on this debt. He provided two separate printouts with confusing information about what he is doing financially. I am unable to determine from the documentation the amount of his payment, how often his payment was being made, and the terms of his repayment plan.⁴

The SOR alleges that Applicant owes \$785 on a medical bill. In his response, he denied this debt on the ground that the debt is resolved. This debt is only listed on the May 2014 credit report. He provided documentation showing that the debt had been deleted from his credit report after a challenge to the debt; however, the creditor identified as being deleted is not the same creditor as listed in the SOR. He provided a medical bill for asthma treatment. His documentation shows the asthma bill as paid, but it does not provide any information reflecting that the recent zero balance asthma bill is related to the \$785 bill.⁵

The \$10,472 debt in SOR allegation 1.c concerns a truck loan Applicant co-signed with his son. His son could not make the payments, and the truck was voluntarily repossessed. The April 2013 credit report reflects that the original creditor closed and transferred this account to a collection agency. Based on the original account balance, the new creditor shows the account as a paid charged-off account. Applicant later disputed this debt, which was removed from his credit report in October 2013.⁶

⁴Item 1; Items 4-6; AE D.

⁵Item 1; Items 4-6; AE F.

⁶Item 1; Item 3; Item 6.

Applicant advised the Office of Personnel Management (OPM) investigator that he did not recognize the \$106 debt in SOR allegation 1.d. He disputed this debt, and it was removed from his credit report in September 2013.⁷

The SOR alleges a \$13,315 debt on a vehicle repossession. Applicant advised the OPM investigator that he did not recognize this debt. In his response to the SOR, he stated that he contacted the creditor, and the creditor told him that it did not have any record of an account in his name or with his Social Security number. He has disputed this debt, but he has not shown the result of his dispute.⁸

Applicant retained the services of a credit repair and consulting company to work with him to resolve his debts. Through this company, he has successfully disputed three debts, which have been removed from his credit reports. He is disputing one additional account (SOR ¶ 1.e). The February 2015 credit report indicates a delinquent cell phone bill for \$491. Applicant provided documentation indicating that he has paid his cable bill in full; that he has resolved in full two other non-SOR accounts; and he is paying on an account with a small remaining balance. His current income and monthly expenses are unknown. Applicant's credit report reflects that he pays his mortgage and other bills.⁹

When Applicant completed his e-QIP, he answered "no" to the questions about past-due debts, loan defaults, and debts turned over to collection agencies. When he met with the OPM investigator, he voluntarily changed his response to these questions after being asked to verify his answer. He explained to the OPM investigator that he did not know his account information. During his interview, he also denied knowledge of three SOR debts. In his response to the SOR, he indicated that he was confused by the question and that he had cosigned some of the loans and did not realize the debts were on his credit report and needed to be listed.¹⁰

Applicant provided a copy of his most recent performance evaluation. His supervisor rated him as a valued employee. A co-worker described him as a hard-working individual who pays attention to detail. He is responsible in the performance of his work and any assigned duties. His co-worker considers him honorable and trustworthy. According to his co-worker, Applicant's "word is his bond."¹¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁷Item 1; Items 3-5.

⁸Item 1; Item 3.

⁹Item 1; Items 4-6; AE A - AE F.

¹⁰Items 1-3.

¹¹AE G; AE H.

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(c), the entire process is a conscientious scrutiny 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 that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 information.

Section 7 of Executive Order 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 clearance concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 sensitive [classified information]. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise a security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when he was unable to pay his debts. Most of the debts had not been resolved at the time the SOR was issued. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

The record lacks any information that reflect Applicant's financial problems are the result of unemployment, divorce, unexpected medical emergency, or any other event that was beyond his control. Applicant has not provided any concrete evidence establishing a good-faith effort to resolve his debts. He did indicate that he is paying on debt, but his documentation is inadequate to show his payments. He has not mitigated the security concerns under AG ¶¶ 20(b) and 20(d).

Although Applicant hired a company to help him resolve his debts, he has not provided evidence of financial counseling. Without a budget and verification of his income, it is difficult to determine if his finances are under control. When Applicant met with the OPM investigator, he denied any knowledge of the debts in SOR allegations 1.d and 1.e. The debt in SOR allegation 1.b was not discussed during his interview with the OPM investigator because it did not appear on his credit report until a year later. The debt in SOR allegation 1.c is the same as the third debt he denied knowing when he discussed the debts on his credit report with the OPM investigator. The April 2013 credit report reflects that this debt is paid. Because the debts in SOR allegations 1.c, 1.d and 1.e were unknown to Applicant, he had a reasonable basis to dispute these debts. AG ¶ 20(e) is applicable to the debts. The evidence is insufficient to find that Applicant mitigated the Government's security concerns under AG ¶ 20(c).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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.

The Government alleges falsification by Applicant when he completed his 2013 e-QIP (SOR ¶ 2.a) by failing to list the debts in SOR ¶¶ 1.c, 1.d and 1.e. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2013 security clearance application when he answered "no" to questions asking about delinquent debts, collection accounts, and payment defaults. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying his answers on his security clearance applications.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is

direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹²

In the instant case, Applicant voluntarily indicated to the investigator that he did not list some debts because he did not know the account information. He also denied knowledge of three debts listed in his credit reports. Because he lacked any knowledge of a number of debts on his credit report and he voluntarily provided information to the OPM investigator about his debts, I find that intentional falsification of his answers about the status of his fiances and past-due debts is not established. A security concern has not been raised under AG ¶ 16(a).

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant overextended himself when he cosigned a car loan with his son. He also fell behind in another car loan for himself. He did not provide any reason for why he could not pay these debts. He has not provided a copy of his earnings statement or a budget, which

¹²See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

could help assess his current finances, including his ability to pay his debts and his customary living expenses. He indicated that he is paying the large debt in SOR allegation 1.a, but the documentation he provided is unclear about what his payments are, how often he is making his payments, and what his current balance is on the debt. He did not provide a copy of the agreement reached with the creditor to settle this debts Applicant appears to pay his mortgage, and he established that he paid other small debts. He disputed the second largest SOR debt, but the result of his dispute is unknown. After a complete review of the record, it is concluded that this record lacks sufficient information for a favorable determination under Guideline F. Applicant did not intentionally falsify his answers on his e-QIP.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that a security concern arising from his personal conduct under Guideline E has not been shown; however, Applicant has not fully mitigated the security concerns about his finances under Guideline F.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | Against Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |

Conclusion

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

MARY E. HENRY
Administrative Judge