



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



In the matter of:)	
)	
1)	ISCR Case No. 14-03979
)	
Applicant for Security Clearance)	

Appearances

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

07/01/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$28,000 in delinquent debts over the past decade, most of which remain unresolved. He misused a prior employer’s travel credit card for about \$8,000 in personal expenses, leading to several counseling sessions before his termination. He denied those facts on his security clearance application. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on October 15, 2013. On October 3, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing

¹Applicant’s middle names were mistakenly merged and misspelled in the original SOR. The SOR heading was corrected to reflect this accurate spelling during the hearing. (Tr. 5-7.)

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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in several written responses (AR)² and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 28, 2015. The case was assigned to me on February 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 25, 2015, and I convened the hearing, as scheduled, on March 19, 2015. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and offered exhibits (AE) A and B, which were also admitted without objection.

During the hearing, pursuant to Directive ¶ E3.1.17, I amended ¶¶ 1.m and 2.c of the SOR to conform to the evidence with the consent of both parties.³ I also granted Applicant's request to leave the record open until April 8, 2015, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on March 26, 2015. Applicant timely submitted AE C and D, which were admitted without objection and the record closed.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor, where he has worked since April 2013. He is divorced, with two adult children. He is a high school graduate. He enlisted in the Army in October 1972, and served honorably until he retired in November 1992. He has held a security clearance since 1973. (GE 1; Tr. 8-10.)

Applicant admitted the allegations set forth in the SOR with some explanations. (AR.) The record credit reports and his SF 86 substantiate the accuracy of all alleged delinquencies and falsifications. (GE 1; GE 3; GE 4; GE 5.) Applicant's admissions, including those contained in his response to DoD CAF interrogatories (GE 2), are incorporated in the following findings.

²The case file contains two signature pages, the first of which is dated and notarized on October 22, 2014, and the second of which is dated and notarized on December 2, 2014. It appears that his initial answer to the SOR did not contain responses to the allegations under Guideline E. He admitted those allegations in his second response.

³SOR ¶ 1.m was amended to reflect that the 2004 tax lien was for a Federal, vice a state, tax delinquency. SOR ¶ 2.c was amended to delete reference to SOR ¶ 1.m, since the tax lien was more than 7 years old.

Applicant owed more than \$28,000 to multiple creditors for delinquent consumer and Federal income tax debts. He recently repaid the two debts alleged in SOR ¶¶ 1.h and 1.j, totaling \$726. (AE B; AE C; Tr. 34-35, 50-51.) He also made a \$108 payment toward the \$647 debt alleged in SOR ¶ 1.g on March 28, 2015, which reduced the current balance to \$432; and paid off another loan debt that was not listed on the SOR on March 12, 2015. (AE A; AE D; Tr. 33-34.) He produced no evidence of progress toward resolving his remaining debts, including a Federal income tax lien from 2004 for almost \$10,000.

Other than two brief periods of unemployment totaling about three months, Applicant was fully employed during the past ten years. He attributed his financial delinquencies to, “overspending beyond my means.” He knowingly misused his company’s travel credit card for about \$8,000 in personal expenses that he could not otherwise afford to pay, for which he was counseled and ultimately terminated from a previous job. (AR; GE 1; GE 2; Tr. 28, 35-37, 40-42.)

Applicant provided no documentation to support his claim that he has worked with a debt consolidation law firm to assist him with resolving his debts. He testified that the firm has not achieved any progress, but instead monitors his credit reports for him. (Tr. 28, 37-38.) He did not provide a budget or financial statement from which his ability to repay existing debt or avoid incurring future debt could be evaluated.

Applicant admitted that he falsified his SF 86 responses to deny his delinquent debts, and adverse employment actions for company travel credit card abuse. He offered no credible explanation for these falsifications, particularly in light of the fact that he has been holding and renewing his security clearance for more than 40 years. Instead, he asserted that he needed his job to pay off his debts. (AR; Tr. 27-28, 40-42.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability.

Policies

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According

to AG ¶¶ 2(a) and 2(c), 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 that “[a]ny doubt concerning personnel being considered for access to classified information 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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 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 information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accrued more than \$28,000 in delinquent debts over the past ten or more years, and demonstrated neither the means nor a reasonable effort to resolve them. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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, 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.

Applicant's delinquent debts are substantial and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He has been fully employed during the period he incurred substantial delinquent debts, and has not taken reasonable steps to resolve them. This is not responsible action under the circumstances, even if some arose from circumstances beyond his control.

Applicant did not undergo financial counseling. He neither documented any effective effort to resolve most of the SOR-listed delinquent debts, nor asserted any legitimate basis to dispute their validity. He repaid two of those debts, totaling \$726, and they no longer raise security concerns. These facts preclude a finding of significant mitigation under MC 20(c), (d), or (e).

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 two conditions that could raise security concerns and may be disqualifying with relation to the allegations 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (4) evidence of significant misuse of Government or other employer's time or resources.

There is substantial evidence showing that Applicant's denial of his significant delinquent debts, and adverse employment actions for misusing the travel credit card of his former employer for personal expenses, on his SF 86 was a deliberate falsification with intent to conceal information that he knew to be relevant to his eligibility for a security clearance. His attempt to justify these falsifications during the hearing was not credible. The credit card misuse generated several counseling sessions, led to his termination, and involved about \$8,000 that he used to pay personal obligations that he voluntarily incurred but could not otherwise afford. Security concerns under DC 16(a) and 16(d) were established.

AG ¶ 17 provides conditions that could mitigate security concerns under this guideline. Two have potential applicability under the facts in this case:

(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 circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not attempt to correct his SF 86 falsifications about delinquent debts until confronted with the facts by the OPM investigator, and his continuing denial of intent to deceive concerning the credit card abuse was neither credible nor reasonable. These falsifications involved his recent application to renew his long-held clearance, and were deliberate. He demonstrated no basis to conclude that it does not reflect adversely on his current reliability, trustworthiness, and judgment. Accordingly, mitigation was not established under MC 17(a) or 17(c).

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant incurred substantial delinquent indebtedness over the past ten or more years that he has made only minimal recent effort to repay. All but two of these debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his

choices and financial irresponsibility. He attempted to conceal these debts and his misuse of a former employer's credit card for personal expenses, in connection with his application to renew his security clearance, and offered insufficient justification for his conduct. Overall, the record evidence creates ongoing and serious doubt as to Applicant's present eligibility and suitability for a security clearance.

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
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge