



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



In the matter of:)
)
) ISCR Case No. 14-05519
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems were significantly caused by circumstances beyond his control, he failed to provide evidence documenting what progress, if any, that he has made in addressing them. Moreover, he provided no explanation for failing to disclose relevant financial information, as required, on his clearance application. Clearance is denied.

Statement of the Case

On February 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On March 2, 2015, Applicant

answered the SOR, admitting all of the allegations and requesting a decision on the written record rather than a hearing.

On May 4, 2015, Department Counsel prepared a File of Relevant Materials (FORM). Applicant was provided a copy of the FORM on May 21, 2015, and was instructed that he had 30 days to file any objections to this information, or to supply additional information. Applicant did not file a response. On February 3, 2015, the case was assigned to me.

Findings of Fact

Applicant is a 53-year-old married man with an adult child. He has been married since 2009. A previous marriage ended in divorce in 1988. Applicant earned a GED in 1979 and an electronics trade school certificate in 1982. (Item 2 at 11) Since March 2014, he has worked for a defense contractor as a field service engineer.

Before beginning his current job, Applicant had been unemployed for approximately seven months, having been laid off from his previous job. While unemployed, he fell behind on his finances. Currently, he has approximately \$18,000 of delinquent debt, including the deficiency balance on a repossessed car totaling \$5,718 (subparagraph 1.b). In February 2015, Applicant retained a credit counselor and developed a payment plan. (Item 1 at 5) He provided no evidence of how much he is supposed to pay monthly, nor did he provide a projected date when the debts would be satisfied.

Applicant completed a security clearance application in March 2014. He did not disclose any delinquent debts, as required in response to Section 26. (Item 2 at 40-42) During an interview with an investigative agent, Applicant explained that he did not list any delinquent debts because Section 26 required the disclosure of debts that were more than 120 days late, and none of his debts met this criterion when he completed the SOR. Later, in Applicant's supplemental answer to the SOR, he admitted intentionally omitting his delinquent debts from his security clearance application.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt.

Applicant’s financial problems stem from a seven-month unemployment period between August 2013 and March 2014. Since then, he has retained a credit counseling agency to help him develop a debt repayment plan. Conversely, this is not the first time that Applicant has had difficulty paying his debts. Between 1999 and 2005, he incurred approximately \$11,000 of delinquent debt, including the deficiency on a loan for a car that was repossessed. Under these circumstances, AG ¶ 20(b) is only partially applicable.

Although Applicant provided evidence that he has retained a credit counseling agency, he provided no proof of the terms of their agreement, nor any proof that he has been making payments. Under these circumstances, AG ¶¶ 20(c) and 20(d) do not apply.

Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Moreover, “of special interest is any failure to provide truthful and candid answers during the security clearance process . . .” (*Id.*)

After initially denying that he intentionally omitted relevant information about his delinquent finances from his security clearance application, Applicant later admitted the allegation, and offered no further explanation. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies without mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Circumstances beyond Applicant’s control clearly contributed to his financial problems. However, he provided minimal supporting evidence documenting steps taken to get his financial problems under control. This failure, together with his falsification of his security clearance application, compel me to conclude that he has not mitigated the security concerns.

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.l: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | 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.

MARC E. CURRY
Administrative Judge