



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



In the matter of:)
)
) ISCR Case No. 14-06041
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concern. The Government did not prove deliberate falsification by Applicant, therefore personal conduct disqualifying conditions were not established. Eligibility for access to classified information is denied.

Statement of the Case

On January 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E (personal conduct). DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on May 20, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 10, 2015. The evidence included in the FORM is identified as Items 1-6 and is admitted into the record. The FORM was mailed to Applicant who received it on July 1, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to submit any further information. The case was assigned to me on October 13, 2015.

Findings of Fact

In Applicant's answer to the SOR, he admitted ¶¶ 1.a - 1.d. He denied ¶ 2.a. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 63 years old. He is twice divorced and has one adult child. He has worked for a federal contractor since March 2014. He served in the Navy for 21 years and retired honorably in the pay grade of E-7.¹

The SOR lists four delinquent debts totaling approximately \$19,939. The SOR also alleged that he falsified his security clearance application by failing to affirmatively disclose his debts turned over to collection agencies, charged-off accounts, and debts which have been or are currently 120 days delinquent. He did not list the debts in his application because he believed they were all over seven years old and listing them was not required.

Applicant stated that most of the debts were the result of his unemployment in 2007. He regained employment in approximately 2009 or 2010 and claims he contacted the original creditors about the debts, but was told all the debts were sold to collection agencies. He was unable to determine what collection agencies held the debt. He pointed out that he has "refinanced his personal property" and is in good standing with his mortgage holder.²

The four debts are all credit card or consumer debt accounts (SOR ¶¶ 1.a – 1.d). The debts are supported by credit reports from April 2014 and June 2015, and by Applicant's admissions.³

¹ Item 3.

² Items 1-2.

³ Items 2, 4-6.

The status of the debts is as follows:

SOR ¶¶ 1.a - 1.d:

Applicant acknowledged these credit card accounts in his personal subject interview and his answer to the SOR. He claims to have contacted the original creditors trying to work out payment arrangements, but he provided no documentation showing that he entered into any payment plans. All four accounts appear on his most recent credit report as either charged-off accounts or collection accounts. These debts are unresolved.⁴

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.⁵

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 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, and has the ultimate burden of persuasion to obtain a favorable security decision."

⁴ Items 2, 4-6.

⁵ Items 2, 4.

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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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 guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that he was unemployed for a period of time between 2007 and 2010, which is a circumstance beyond his control. However, he failed to show that he acted responsibly under the circumstances. He is a military retiree and had income during his unemployment. He has now been employed for five years and no information was provided about what actions he has taken to resolve his debts since 2010. I find AG ¶ 20(b) partially applies. He provided no documentation the debts were paid or that he set up payment plans. I find AG ¶ 20(c) and AG ¶ 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

Applicant stated during his personal subject interview and in his SOR answer he believed that all the debts were older than seven years and therefore he was not required to list them on his application. This information is sufficient to establish lack of

intent to deceive when he incorrectly answered the financial-related questions. The Government failed to produce sufficient evidence of such intent. AG ¶ 16(a) does not apply.

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(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 guideline 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 also considered Applicant's 21 years of military service. He has not shown a track record of financial stability, and has made no progress in resolving his debts.

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 Applicant failed to mitigate the security concerns arising under Guideline F. I find that Guideline E has not been established.

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: Subparagraphs 1.a – 1.d:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT 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 access to classified information is denied.

Robert E. Coacher
Administrative Judge