



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



In the matter of:)	
)	
)	ISCR Case No. 14-06404
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On January 29, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 27, 2015. A notice of hearing was issued on June 1, 2015, scheduling the hearing for July 31, 2015. Government Exhibits (GX) 1-8 were admitted into evidence with objection.¹ Applicant testified and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. I held the record open for additional submissions until August 4, 2015. No

¹Applicant objected to the credit reports and the subject interviews based on "inaccuracies" and fraud.

additional documents were received. The transcript was received on August 10, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F with the exception of 1.a, 1.c, and 1.e. He admitted the allegations under Guideline E, and provided explanations.

Applicant is 53 years old. He graduated from high school in 1979 and received an Associate's Degree in 1984. In 1989, he received a Certificate in Computer Programming. He served in the United States military from 1979 until 1982. He is divorced and has a daughter. He has been with his current employer since 2013. He is also employed part-time with a private company. He completed security clearance applications in May 2013 and May 2014. (GX 1 and 2)

The SOR alleges 18 collection accounts, including medical accounts and credit collection accounts for a total amount of about \$11,000. (GX 4, 5 and 6) Applicant submitted three new credit reports which confirm the debts. (AX A)

Applicant believes that various accounts appearing on his credit reports are inaccurate, invalid, and or unverifiable. He contacted the Lexington Law Firm to investigate and verify the status of the debts listed on the credit reports. Specifically, he thinks that several of the credit items of the credit reports were a result of fraud. He remembers a time when he lived in an apartment and other people rented it and he believes they got his mail. (Tr. 57)

At the hearing, Applicant admitted the debt in SOR 1.a for \$180 and he acknowledged that it is not paid. (Tr. 53) He also admitted the debt at SOR 1.b for \$360, and acknowledged that it is not paid. (Tr. 54) As to the medical account in SOR 1.c for \$158, he admitted the debt and confirmed that it is not paid. He stated that he has not paid them because he is waiting for a "letter of deletion." (Tr.55) When questioned about such a letter, he stated that he waits for a letter saying that they would be removed from his credit report. (Tr. 55)

As to SOR 1.d for \$728, Applicant contested that account because it is "fraudulent." He elaborated by saying that he never had a wireless account with that company in 2006 or 2007. (Tr. 56) He claimed he called the company but provided no documentation to support his position. (Tr. 58)

In his answer to the SOR, Applicant admitted this delinquent debt for \$2,801 (1.e), but at the hearing he stated that he consulted with the Lexington Law Firm to resolve the debt. By that he meant, it was not his account and he wants it removed. In his 2014 interview, he stated that it was a bill that he owed and that he fell behind in making payments. (GX 8) When further questioned, he said he could not speak to the debt even though it is still on the most recent credit report. (Tr. 62) He finally noted that it should be disputed. (Tr. 63)

As to the debt in SOR 1.f for \$537, he does not know anything about the account even though he was first questioned about this debt in 2013. He notes that he has service with the same company and if it was delinquent, they would not allow him to still have service with the company. (Tr. 64)

Applicant denied SOR allegations 1.g through 1.p. He again noted that he did not pay them because they are not his accounts. He agreed that they appear on the most recent credit reports that he submitted as (AX A). He stated that maybe they were the result of identity theft. However, he did not file a police report at the time. (Tr. 69)

Applicant knew that a 2012 judgment was filed against him and produced an order that it was vacated in 2014. (Tr. 73) He acknowledged that the investigator in 2013 confronted him with the judgment. Applicant asserted that he paid it last year. (Tr. 74)

Applicant purchased a home in June 2015 for \$402,000. (AX B) He submitted the deed to show that he was able to obtain a mortgage and buy a home despite the allegations of delinquent debt in the SOR. The mortgage is about \$2,200 a month. Applicant's annual salary is about \$94,000 for his full-time employment and he earns an additional \$10,000 from his part-time job. (Tr. 75) He has about \$1,000 in a net monthly remainder.

At the hearing, Applicant noted that he has some delinquent debt at the current time. He also has a payment plan with the IRS for 2011 federal tax liability and the state for 2011 state tax liability. (Tr. 78) He also has tax liability for 2014. (Tr. 80) On his security clearance application, he answered "No" when asked about failure to file or pay Federal or state taxes. He claims he started the payment plans in 2014. (Tr. 82)

Applicant states that he is a hard worker and would never do anything to harm the country. He states that he has taken active measures regarding his credit issues. Given an opportunity to supplement the record with additional documentation, Applicant did not submit any evidence after the hearing.

Personal Conduct

Applicant stated that the information on the 2013 and 2014 security clearance applications in response to questions regarding finances are "what they are." In his answer to the SOR, he admitted all the allegations under Guideline E regarding the non-disclosure of financial information. He stated that it was either misinterpreted or he had a lack of focus when answering the questions. (Answer to SOR) His other explanation was that he was not aware of any delinquent accounts. During the hearing, he admitted that he knew about the state judgment (SOR 2.c), that he did not file timely his federal and state tax returns² and that he relinquished a corporate credit card (2.b). He contradicted

²At this juncture in the hearing, Counsel asked to amend the Guideline E allegations by adding SOR 2.e that Applicant falsified his 2014 security clearance application with respect to Section 26 Finance Records and Taxes for 2011. The Motion to Amend was granted. (Tr. 92)

himself with his testimony and the answers that he gave to the 2013 and 2014 security clearance application questions in Section 22 and 26 on both the 2013 and 2014 applications. He clearly knew that he received a warning about the violation of his credit card use. (SOR 2.b and 2.d; Tr.51) He made it sound that he just surrendered the corporate card, but acknowledged that he received a warning. (Tr. 41-52) His interviews from 2013 and 2014 confronted him with several delinquent accounts, that contradicted his response “No” to questions in Section 22 and Section 26 (2.a).

At the hearing, Applicant stated that listening to the questions in the security clearance application was quite different from reading them online. He says he was diverted by multi-tasking and he answered incorrectly. However, he states that he was candid with the investigator. Finally, he said that completing the application in 2013 and having to do another one in 2014, a lot of the answers just carried over from the 2013 application to the 2014 application.

Applicant did not disclose any information in his 2013 or 2014 security clearance applications with respect to Sections 22 and Section 26. His testimony at the hearing was not credible that he was not aware of any of the required information. He deliberately falsified both applications.

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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.

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

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

(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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single 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 person may not properly safeguard protected information.

In this case AG ¶¶ 16 (a) and (c) applies. Applicant is a mature man. He knew and admitted that he falsified the information concerning the 2013 and 2014 security clearance applications with respect to his finances. The admissions and the subject interviews are evidence that he was aware of his delinquent debts, misuse of a corporate credit card, an unpaid judgment, and failure to pay taxes until 2014. I do not accept his explanation that he misinterpreted the questions or that he was not focused. He did not disclose material information and intentionally falsified his security clearance application.

Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessment and limit the compromise of classified information.

Applicant's explanations do not persuade me that he is reliable, trustworthy, or has met his burden to mitigate the personal conduct concerns. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. This leaves me with doubts about his eligibility for a security clearance. Any doubts must be resolved in favor of the Government. After considering the mitigating factors, Applicant has not mitigated the personal conduct concerns under Guideline E. I resolve Guideline E against Applicant.

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts in the amount of \$11,000. His current credit report submitted by him confirm the debts. He admitted that none were paid and he was disputing them. He also disclosed that he did not timely file Federal and state tax returns and is now in payment plans. He did not provide a copy of that repayment agreement. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant has unresolved delinquent debt. He recently started a payment plan with the IRS and the state for tax liabilities. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply. Even the nine delinquent accounts of approximately \$300 each remain unpaid.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant has been gainfully employed. He just purchased a home. He presented no evidence of circumstances beyond his control adversely affecting his finances. He noted fraudulent activity or identity theft but presented no evidence of such. I cannot find that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant as noted above recently took steps to arrange payments with the IRS. He has not provided documentation showing payment in accord with the agreement. FC MC AG ¶ 20(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) does not apply.

The Appeal Board has addressed the issue concerning Applicant's responsibility for fulfilling a legal obligation. In regard to federal and state income taxes, the Appeal Board has commented:

A person who fails repeatedly to fulfil his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information. See, e.g. ISCR Case No., 98-0608 at 2 (App. Bd. Jun. 27, 2000).

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 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 guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 53 years old. He has been with his current employer since 2013. He is divorced and has one daughter. He also has another job. He served in the military.

Applicant provided no documentary evidence to support his dispute of his delinquent debts. He hired a law firm, but provided no documentation that any of the inaccuracies that he claimed were in fact wrong. His own exhibit confirms the delinquent debts. The debts are recent and did not arise in the time frame that he alleges identity theft. He has not mitigated the security concerns under the financial considerations guideline

Applicant did not disclose any information pertaining to finances or delinquencies in either his 2013 or 2014 security clearance applications. The falsifications are multiple and recent. He also did not disclose that he received a warning about the misuse of his corporate credit card. He admitted that he had a 2012 judgment and presented information about it, but did not disclose the information on his application. He was also made aware of delinquencies during his subject interviews. He acknowledged this at the hearing. He did not voluntarily disclose any of this information before being confronted with it.

At the hearing, Applicant disclosed that he did owe Federal and state tax debts for tax years 2011 and 2014. Applicant recently made payment arrangements for the tax liability. He answered "No" to the question, in Section 26 concerning unpaid income taxes on the security clearance application.

Applicant did not adequately refute or mitigate the Government's case concerning the personal conduct and financial considerations security concerns. Any doubts must be resolved in the Government's favor. For all these reasons, clearance is denied.

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.r:	Against Applicant
Paragraph 2, Guideline :	AGAINST APPLICANT
Subparagraphs 2.a-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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge