



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



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| In the matter of: |) | |
| |) | |
| REDACTED |) | ISCR Case No. 15-00193 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Alison Patricia O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant refuted the allegation that he deliberately falsified his security clearance application. However, he did not mitigate security concerns raised by his delinquent debts. Clearance is denied.

Statement of the Case

On July 2, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his conduct and circumstances raised security concerns under the financial considerations and personal conduct guidelines.¹ Applicant answered the SOR, waived his right to a hearing, and elected to have his case decided on the written record (Answer).

¹ This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

On October 7, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM lists and references eleven documentary exhibits, which are admitted into the record without objection as Exhibits 1 – 11.

On October 19, 2005, Applicant received the FORM and the referenced exhibits. He was advised that he had 30 days to submit a response and any additional matters in support of his case. (Appellate Exhibit (Ax.) I) He did not submit a response or any additional matters within the 30-day time period.

On January 20, 2016, I was assigned Applicant's case. On my own motion, I opened the record to provide him a final opportunity to submit matters in support of his case, to include documentation to corroborate his claim that his former wife was responsible for paying the major debt referenced in SOR 1.c. (Ax. II) Initially, February 5, 2016, was set as the deadline for the submission of any such materials, but at Applicant's request, I extended the deadline to February 19, 2016. (Ax. III) Applicant submitted an e-mail noting he had no additional documents to submit. His e-mail is admitted into the record as Exhibit (Ex.) 12. The record closed on February 19, 2016.

Findings of Fact

Applicant, who is in his forties, is a college graduate. He has been married and divorced three times. He is the father of three children. He served in the U.S. military from approximately 1990 to 2005, with some breaks in service. His military service included deployments, but the record is devoid of any information as to when, where, or the number of deployments. No evidence was submitted regarding Applicant's combat record, if any, or military duty performance. Applicant left the military in 2005 due to a physical injury, but no information regarding the injury or whether it was service-related was provided. (Ex. 5; Ex. 10; Ex. 11)

Applicant indicated on a recent security clearance application that he received an Honorable discharge following the completion of each period of military service. However, during a security clearance background interview, Applicant acknowledged that upon completion of one of his terms of enlistment he received a General (under honorable conditions) discharge. *Compare*, Ex. 5 at 16-18, *with*, Ex. 11 at 2.

Applicant's financial problems date back to at least 2003, as evidenced by an April 2003 credit report. This credit report reflects 20 accounts that were in collection status, charged-off, or had been reduced to judgment or lien. Applicant's past-due debts, at the time, totaled nearly \$60,000. (Ex. 9 at 1 – 7)

During a 2004 security clearance background interview, Applicant acknowledged he had numerous past-due debts, including over \$15,000 in back child support for his two oldest children. He told the background investigator that his financial problems were caused by his former spouses' mismanagement of their finances while he was deployed. He promised to contact his overdue creditors and resolve his debts. (Ex. 10) Applicant was subsequently granted a security clearance. (Ex. 5 at 31)

In May 2014, Applicant submitted his current security clearance application in connection with his job as a federal contractor. He only listed his youngest child, not the two oldest children for whom he previously owed a significant amount of back child support. His application reflects full-time employment since at least 2002, except for a three-month period from October 2005 – January 2006 when he was unemployed.

In response to questions on the security clearance application regarding his financial record, Applicant denied having any past-due debts that needed to be disclosed. (Ex. 5 at 33) A credit check revealed that he had two medical collection accounts for \$51 and \$91, respectively. Applicant was asked about these two collection accounts during his background interview in June 2014. He told the investigator he was unaware of the two accounts prior to the interview, but promised to address them following the interview. (Ex. 8 at 6, 8; Ex. 11 at 4)²

The SOR lists the two medical collection accounts at SOR 1.a and 1.d. It also references another medical collection account for \$40 at SOR 1.b. This medical debt first appears on a June 2015 credit report (*or, over a year after Applicant submitted his security clearance application*). (Ex. 6 at 1) Applicant admits all three medical debts in his Answer. He did not supply any information as to what efforts he has taken to address them. As of the close of the record, SOR 1.a, 1.b, and 1.d remain unresolved.

In addition to these three debts, the SOR lists a \$9,239 charged-off account. This account is also reflected on the June 2015 credit report. Based on a review of the credit reports, Applicant stopped making the monthly payments due on the account shortly after his background interview and the creditor eventually charged off the account.³ Applicant claims that his former wife (spouse number 3) is responsible for the account. The credit reports reflect that it was a joint account. Applicant, however, provided no documentation, such as a settlement agreement or a divorce decree, to corroborate his claim that his former spouse is solely responsible for the debt. As of the close of the record, SOR 1.c also remains unresolved.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

² The 2014 credit report also reflects two additional collection accounts totaling over \$16,000, including a \$13,730 collection account owed to the Government for past-due child support. (Ex. 8 at 4 – 5). Applicant was confronted about these two additional debts during his background interview. (Ex. 11 at 4) Neither debt is alleged in the SOR. Accordingly, as with all such non-alleged matters, I have only considered these debts in assessing Applicant’s mitigation case, credibility, and the whole-person factors.

³ See Ex. 6 at 4 (2015 credit report reflects that the last payment on the account was made in August 2014, *or three months after the security clearance application was submitted*); Ex. 8 (2014 credit report reflects that, as of the time of the background interview, Applicant was paying as agreed with no prior reported delinquencies).

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that applicants are afforded the due process provided by the Directive. Judges make certain that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty in accurately assessing the security suitability of an individual and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern is explained at 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's accumulation of nearly \$10,000 in delinquent debt, as established by his admissions and the other record evidence, raises this concern. The record evidence also raises the disqualifying conditions listed at AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

The financial considerations guideline lists a number of conditions that could mitigate the security concern. I have considered all the mitigating conditions in assessing Applicant's case, including the following:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

None of the mitigating conditions fully apply. Although there is some evidence to suggest that Applicant's overall financial situation has improved since 2003, the recent accumulation of nearly \$10,000 in delinquent debt raises concerns he may be returning to the poor financial habits of the past. Furthermore, the timing of when some of the SOR debts became delinquent is also disconcerting, as it occurred after the background interview. This interview, in part, touched upon Applicant's finances. Applicant should have been aware from the interview and his prior experience that an individual's failure to pay their financial obligations may place their eligibility for a security clearance in jeopardy. Despite this, two of the SOR debts became delinquent after the interview and, as of the close of the record, remain unresolved.

Applicant did not supply documentation to support his claim that his wife was responsible for the debt referenced in SOR 1.c. He also did not provide information regarding the current state of his finances or evidence of having received financial counseling. He failed to submit documentation of what efforts, if any, he has made to address the SOR debts, including the two relatively minor debts he was made aware of during his background interview 20 months ago.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.⁴ Applicant failed to meet his burden.

Guideline E, Personal Conduct

The SOR alleges that Applicant deliberately falsified his security clearance application by failing to disclose the past-due debts referenced in SOR 1.a – 1.d. An allegation of falsification requires consideration of the personal conduct security concern, which is explained at AG ¶ 15:

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.

Individuals seeking a security clearance must provide truthful responses to questions asked of them during their background investigation, including in responding to questions on the security clearance application. However, the omission of material information standing alone is not enough to establish that an individual intentionally falsified their application. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an individual's true intent.⁵

Applicant denies he deliberately falsified his security clearance application and, as such, the Government bears the burden of establishing the allegation by substantial evidence. Based on a review of the record evidence, I find that the Government did not meet its burden. Of note, only the two minor debts referenced in SOR 1.a and 1.d, totaling less than \$150, would presumably have been in collection status and required disclosure when the application was submitted. The other two SOR debts were not delinquent at the time the application was submitted. As for the two minor medical

⁴ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁵ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

collection accounts referenced in SOR 1.a and 1.d, Applicant's statement to the investigator that he was unaware of these two debts at the time he submitted his application is plausible and consistent with his SOR answer. Accordingly, SOR 2.a is decided in Applicant's favor.⁶

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F and highlight some additional whole-person factors.

I gave due consideration to all the favorable and extenuating factors in this case, to include Applicant's military service. However, he has a lengthy history of financial problems and he has started to once again accumulate delinquent debt, raising concerns about his judgment, reliability, and the other pertinent character traits required of those granted access to classified information. Applicant did not take advantage of the multiple opportunities provided to him to submit evidence of having addressed his past-due debts and to show that he manages his current finances in a responsible fashion. Accordingly, notwithstanding the favorable information in the record, the security concerns raised by his finances remain. Overall, the record evidence leaves me with doubts about his eligibility for access to classified information.

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 (Financial Considerations) | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.d: | Against Applicant |
| Paragraph 2, Guideline E (Personal Conduct) | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |

⁶ In reaching this favorable finding, I considered that Applicant *may* not have provided fully accurate information about his background during the present and past background investigations. Notably, he did not list his children on his current application – the very same children that he previously owed a significant amount of back child support. His current application also does not appear to accurately reflect the characterization of all his military discharges. Also, at least two significant collection accounts should have been listed on the current security clearance application. However, based on the record evidence, it is unclear whether these two debts were accurately reflected on the June 2014 credit report or, even if accurately reported, whether Applicant was aware of the debts. Furthermore, this potentially adverse information does not alter the fact that the Government failed to establish the falsification allegation, as drafted; nor does it elevate the omission of two medical debts totaling less than \$150 sufficiently high enough to qualify as a material omission.

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge