



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



In the matter of:)	
)	
)	ISCR Case No. 15-00650
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On August 8, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (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 December 2, 2015. The case was originally scheduled for January 29, 2016, but was postponed for good cause. A notice of hearing was issued on February 10, 2016, rescheduling the hearing for March 3, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. The transcript was received on March 10, 2016. 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 admitted the SOR allegations under Guideline F, with the exception of allegation 1.e. He provided explanations. Applicant denied the falsification allegation under Guideline E.

Applicant is 55 years old. He obtained his high school diploma in 1978. He attended college and has ten years of certificate training. He is divorced. Applicant completed a security clearance application in 2011 and has been employed as a federal contractor for many years. (GX 1) He is sponsored by a former employer, but is now working as a salesman. (Tr. 24) He has held a security clearance since 1987.

The SOR alleges 14 delinquent debts, including judgments, collection accounts and medical accounts. (GX 2-4) The approximate total for the delinquent debts is \$32,000. Applicant cites his financial difficulties to a contentious divorce, cosigning loans for his wife and brother, and lost work due to the federal sequestration as reasons for his financial problems. (Tr. 7) He obtained a number of loans and tried to pay his bills. When he was laid off in 2014, he could not pay the bills. He was laid off again in May 2015 and had several conditions which resulted in medical bills. (Tr. 9) He is now employed and intends to pay his debts. He acknowledged that his wife took out a loan that he was not aware of until he saw the SOR.

Applicant stated that he has been ill and homeless. He had nowhere to live after he left his wife in 2012. When he was unemployed he would take temporary jobs so that he could make some money. He called his creditors recently and is hoping to settle some accounts. Applicant stated that he lost his documentation and receipts for bills that he has paid. He could not afford to pay his storage bill and the company would not release his personal files to him. (Tr. 18)

As to the debts alleged in the SOR, Applicant remembered that most were credit cards, but he did not remember when they became delinquent.(Tr. 52) He believes that the last payments that he made were in 2007. (Tr. 53) He does not have any plan in place yet to start repaying the debts. He also noted that he did not have money to pay these debts because the state was garnishing his pay for back taxes. As to the debt in 1.e, he believes he paid the debt, but the documentation is in storage. (Tr. 61) Applicant claims that he paid the two parking tickets that are noted in allegations 1.l and 1.m, but he does not have any documentation. (Tr. 67) The remainder of the bills on the SOR have not been settled or resolved.

Applicant noted on his 2011 security clearance application that he was behind on his mortgage due to cosigning loans with his wife and brother. He stated at the hearing that the home went to foreclosure. However, as to his answer to Section 26 concerning judgements and collection accounts, he answered "No". He was candid about his debts and denied that he deliberately falsified his application. He stated in his answer that it

was an error. He put the government on notice about his financial difficulties. The government did not challenge his reasoning at the hearing by asking any questions. I find his explanations credible, and I do not find that he falsified his 2011 security clearance application.

Applicant's last full time position provided an annual salary of about \$100,000. He is now working on commission and does not earn more than \$2,500 a month. Since 2013, he had to use savings and retirement money to pay bills. He states that he has never been irresponsible. He pays \$600 a month for his auto payment. (Tr. 80) He continues to live in his car.

Applicant submitted medical bills at the hearing (AX C-F) to fully disclose his financial situation. He has not been able to pay them in full. He fully intends to pay all bills. (Tr. 77) He also submitted a statement that shows he has been paying some back taxes. (AX A-B)

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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ 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. The following condition is relevant here.

(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.

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

⁶ *Id.*

In this case AG ¶ 16 (a) does not apply. Applicant answered his 2011 security clearance application to the best of his ability. He denied the falsification and was not questioned at the hearing about his reasoning. He listed information concerning a mortgage issue and put the government on notice of financial problems. He was candid at the hearing about his debts. Some of the accounts he did not know about at the time. I do not find that he intentionally falsified her 2011 security clearance application.

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 admitted that he was indebted and had delinquencies after his divorce and various periods of unemployment. 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 her and mitigate security concerns.

Applicant's financial delinquencies were exacerbated by unemployment in 2014 and 2015. His last full time position earning a steady income was in 2013. He took temporary jobs. He became ill after his divorce and lives in his car. He tried to pay his car payment so that he would have a place to live. He used savings and retirement monies. His separation and divorce also led to indebtedness. However, he has not provided any documentation to show what actions he has taken. He states that he has paid some small debts, but did not produce any evidence. He intends to pay his bills, but a promise to pay in the future is not sufficient for mitigation. 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) receives partial application.

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) partially applies. Applicant's divorce, medical condition, and loss of income were beyond his control. He has worked hard but he has not produced documentation that he is resolving his debts or has a plan in place.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above paid some small amounts and used his savings to make ends meet. He lives in his car. However, he has not provided any documentation that he has resolved his debts or even has the means to do so. There is no information that he has received any financial counseling. 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.

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 55 years old. He has held a security clearance for many years. He has worked as a contractor earning a good salary. He had a separation and divorce that impacted his financial status. In addition, he had two separate periods of unemployment. He had to take temporary low-paying jobs. He cosigned a loan with his wife and brother and had the responsibility for them. He became ill and has had to live in his car. There is nothing in the record concerning any criminal behavior. He has worked hard for many years. He has had unfortunate circumstances in his life. He admits that he probably did not handle things the best way.

Despite the fact that he intends to pay all his debts, he has not provided any evidence that he has paid any SOR debts or is in a position to pay them. I found him candid and sincere in his testimony. However, given the fact that none of the debts in the SOR have been resolved or in a repayment plan, I have doubts that there are clear indications that his financial problems have been resolved. He has not mitigated the security concerns under the financial considerations guideline.

He has mitigated the personal conduct concern. I do not find that Applicant intentionally falsified his security clearance application. Applicant omitted information about his finances in his responses to Section 26. However, he detailed information about his home mortgage issues. He stated that it was a mistake, and his mistake does not reflect a wilful omission.

Applicant has not provided sufficient information to establish mitigation under the financial considerations guideline. He has mitigated the security concerns under the personal conduct guideline.

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-nl:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge