



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



In the matter of:)	
)	
)	ISCR Case No. 14-04658
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems resulted from circumstances that were partially beyond his control. Although he has limited financial resources, Applicant resolved four of the SOR debts. He started the process to correct his financial situation, and understands what is required of him to establish his financial responsibility. Financial considerations security concerns are mitigated. His falsification of his 2014 security clearance application (SCA) continues to raise serious concerns about his honesty, judgment, and on his ability to follow rules and regulations. Clearance denied.

Statement of the Case

Applicant submitted an SCA on March 22, 2014. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct) on October 20, 2014.¹ Applicant answered the SOR on January 16, 2015, and requested a hearing

¹ The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 28, 2015. DOHA issued the notice of hearing on April 29, 2015, scheduling a hearing for May 20, 2015.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified and presented five exhibits (AE 1 through 5). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 28, 2015.

Findings of Fact

In his answer, Applicant admitted all the SOR ¶ 1 factual allegations, with explanations. Concerning SOR ¶ 2.a, he admitted that he omitted the required information, but denied that his omission was made with the intent to mislead the Government or to falsify his SCA. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 27-year-old physical security officer working for a federal contractor. He requires a security clearance to retain his job. Applicant married his wife in 2012, and they have five children, ages seven, six, five, two, and four months. He graduated from high school in 2006, and has completed some college courses. He is currently enrolled in college and working toward an associate's degree.

Applicant was employed part time for retailers from 2002 to 2009. He has worked full time as a security officer for different companies from 2009 to present. He was hired for a part-time position by his current employer in November 2013. His employment was contingent on his eligibility for a security clearance. Applicant was suspended from his position in April 2015, pending the adjudication of his clearance.

Applicant submitted his first SCA in March 2014. Section 26 (Financial Record) of the 2014 SCA asked Applicant whether in the last seven years he had any property repossessed, debts turned over to collection agencies, credit cards suspended or charged off, or whether he was currently over 120 days delinquent on any debt. Applicant answered "no" to all the financial questions and disclosed no repossessions, or delinquent or in collection debts.

The subsequent security clearance background investigation revealed the nine delinquent debts alleged in the SOR, which are established by his April 2014 credit report and Applicant's admissions. (GE 3) On April 2014, Applicant was interviewed by a government investigator and questioned about his delinquent accounts. He told the investigator that he did not list any of his delinquent debts because he was not familiar with his debts at the time he submitted his 2014 SCA. At his hearing, Applicant explained that he did not know what was being reported in his credit report, and that he

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

knew he had existing delinquent debts, but he did not know the total owed for the debts. He explained that this was his first SCA, and he did not want to report inaccurate information. Applicant claimed that he was not provided any guidance or assistance completing his SCA.

In 2012, Applicant contracted for the services of a financial management company to help him resolve his delinquent debts. He paid a \$100 initiation fee, and arranged a payment plan of \$39 a month. He participated in the payment plan for two months and terminated his participation because he could not afford it. In April 2014, he returned to the same company for a free credit counseling evaluation. During his April 2014 interview, Applicant acknowledged all the SOR delinquent debts were his debts, indicated they were unresolved, and stated his intention to pay them.

SOR ¶ 1.a alleges a \$9,061 delinquent debt for a car Applicant purchased in 2009. Shortly after the purchase, he was involved in an accident. He had no insurance to cover the repairs, and surrendered the car to the dealership. At his hearing, Applicant testified that he had established a payment plan and paid off the debt in February 2015.

Applicant submitted a statement of payments showing payments made to a car dealership from February 2012 to February 2015, for a car purchased in February 2012. (AE 3) It is not clear from the document submitted whether the payments were made to pay for the car he purchased and wrecked in 2009. The creditor alleged in SOR ¶ 1.a (for the 2009 car) is not the same creditor to whom Applicant made payments from 2012 to 2015. When he was interviewed in April 2014, Applicant stated that the debt alleged in SOR ¶ 1.a was unpaid. He did not tell the investigator that he had established a payment plan and was making payments. Additionally, the statement of payments indicates that the payments were for a car purchased in 2012. The car repossessed was purchased and wrecked in 2009.

The remaining alleged SOR debts pertain to unpaid medical bills and delinquent consumer accounts. Applicant submitted documentary evidence showing that he successfully disputed the debt alleged in SOR ¶ 1.b. (AE 3) He settled the debts alleged in SOR ¶¶ 1.g and 1.h for \$278 (the original debt was for \$1,530). He testified that he made an electronic payment for \$100, and then issued a \$178 check in March 2015, to pay off the debt. He also paid the delinquent debt alleged in SOR ¶ 1.i in May 2015. (AE 3)

Concerning the debts alleged in SOR ¶¶ 1.c through 1.f, these are unpaid medical debts that Applicant incurred between 2008 and 2010. Applicant explained that at the time he incurred these medical services, he did not have medical insurance or the financial resources to pay them. He attempted to resolve the debts in 2012, when he retained the services of a financial management company. He testified that he is currently consulting with a credit counselor who is helping him to resolve his debts. His most recent contact with the creditors was the week before his hearing. Applicant intends to pay his debts sometime in the near future. However, in April 2015, he was suspended from his job pending the resolution of his clearance eligibility.

Applicant's wife is currently working part time. Their combined 2014 income was around \$56,000. He described 2014 as the best earnings year they ever had. Before he started working for his current employer, his income was substantially less. Applicant lives from paycheck to paycheck because he has a large family and limited financial resources.

In September 2010, Applicant was involved in an argument with his wife (then girlfriend). The police responded to a complaint filed by one of his wife's relatives, and Applicant was arrested (placed in handcuffs, booked, and kept in pre-trial confinement for two days), and charged with battery and domestic violence. In November 2010, he was acquitted of the charges.

Section 26 (Police Record) of the 2014 SCA asked Applicant whether in the last seven years he had been arrested by any police officer. Applicant answered "no" and failed to disclose his September 2010 arrest. Applicant testified that he made an honest mistake because he was rushing to complete his SCA. He claimed that he had verbally informed his employer during his employment interview about the arrest, the charges, and that he was acquitted of the offenses. He also averred that he was honest and forthright during his interview with a government agent in April 2014. The investigator acknowledged in the summary of the interview that Applicant "was forthright with the arrest information in response to routine questions." Applicant noted that he is in the process of requesting the expungement of the record.

Applicant testified that his father was in the military, and when he was a child, Applicant lived in the same military reservation where he now works. He believes that his current position is more than just a job. He considers his job as a great opportunity for him and his family. With the additional anticipated income from his job with the federal contractor, Applicant believes he will be able to pay his debts and better provide for his family. He averred that he tried to maintain contact with his creditor and pay his debts, but he did not have the financial means to pay both his family's living expenses and his debts.

Applicant expressed remorse for his financial situation and for his omissions in his SCA. He believes that with his anticipated income and his wife's income, they will be able to regain control of their financial situation. He understands that he is required to maintain financial responsibility to be eligible for a security clearance. He and his wife follow a budget, but they have to juggle their debt payments to meet their more present obligations.

Applicant presented numerous positive reference letters from supervisors and coworkers. Taken together they present an impressive mosaic of his performance and work ethic. Applicant is considered to be a hardworking and dedicated employee who displays a consistent positive attitude. He is also considered to be a trustworthy and a reliable employee.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Between 2007 and 2010, Applicant accumulated the nine debts alleged in the SOR totaling close to \$14,000. He resolved four debts, and six remain outstanding. Financial considerations disqualifying conditions AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply. Applicant’s financial problems were the result of his inability to pay the debts, and not because of his unwillingness to do so.

AG ¶ 20 lists conditions that could mitigate the financial considerations security concerns:

(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.

AG ¶ 20(a) does not fully apply because Applicant’s financial problems are recent and ongoing. AG ¶ 20(b) is partially applicable because his financial problems were caused, in part, by his underemployment, and him being the primary provider for his large family. Applicant maintained some communication with his creditors, and in 2012, he sought the assistance of a financial management company to help him resolve his debts. AG ¶¶ 20(c) and (d) are partially applicable. He received financial counseling through the financial management company, and he resolved four of the debts alleged in the SOR.

Applicant is in a difficult financial situation. He is living from paycheck to paycheck, and his and his wife’s income are barely sufficient for him to establish a viable payment plan to pay his debt. Notwithstanding, he resolved four SOR debts, and he intends to continue paying the remaining debts. Applicant’s credit report shows that he is living within his means, and there is no evidence of any additional delinquent debts in addition to the SOR debts.

Guideline E, Personal Conduct

AG ¶ 15 articulates 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 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.

Applicant omitted relevant and material information from his 2014 SCA when he failed to disclose his 2010 arrest and charges. I find his omission was deliberate and with the intent to conceal the information or to mislead the Government. Applicant was fully aware that he was arrested, charged, and tried for criminal offenses in 2010. He was 26 when he submitted his 2014 SCA, and had been working as a security guard during the last five years. In light of his work experience, he should have been more honest about his past criminal record.

Considering Applicant's testimony in light of the whole evidence, and having observed Applicant's demeanor while testifying, his explanations for his failure to disclose his 2010 arrest and charges, and for his failure to disclose his financial problems are not credible.

Applicant's falsification of his 2014 SCA trigger the applicability the following disqualifying condition under 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;

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the above mitigating conditions fully apply. AG ¶ 17(a) does not apply because Applicant did not make a prompt, good-faith effort to correct the falsification. It was not until he was interviewed by a government investigator that he acknowledged his 2010 arrest and charges (and that he had financial problems).

AG ¶ 17(b) does not apply because his falsification of the 2014 SCA is a recent and serious. The SCA questions are clear and he understood what he was required to disclose. His explanation for his failure to disclose his arrest and charges is not credible. Applicant falsified his SCA because he was concerned about the possible adverse effect the information would have on his ability to hold a clearance. The remaining mitigating conditions are not sufficiently raised by the facts and circumstances of this case and are not applicable. Personal conduct concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is married and has five children. His financial problems resulted from difficult circumstances that were partially beyond his control. Although he has limited financial resources, Applicant resolved four of the SOR debts. I believe he has started the process to correct his financial situation. He understands what is required of him to establish his financial responsibility. Given additional time, I believe that he will regain full control of his financial situation. Financial considerations concern are mitigated.

Nevertheless, Applicant's falsification of his 2014 SCA continues to raise serious concerns about his honesty, judgment, and his ability to follow rules and regulations. He failed to mitigate the personal conduct 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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge