



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



In the matter of:)
)
-----) ISCR Case No. 14-04834
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel

For Applicant: *Pro se*

February 9, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 5, 2014. (Item 4.) On March 27, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. (Item 1.) The action was taken under Executive Order 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on April 15, 2015, with attachments, and requested a decision by an administrative judge without a hearing. (Item 3.) Department Counsel submitted the Government’s written case (FORM) to Applicant on July 1, 2015.

The FORM states it contained six documents.¹ Applicant acknowledged receipt of the FORM on July 7, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit additional information. The case was assigned to me on September 22, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 36 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.c, and 1.e in the SOR under this Paragraph. Those admissions are findings of fact. Applicant denied allegations 1.a, 1.b., and 1.d.

The SOR lists five delinquent debts. Four of them are consumer debts, totaling \$7,211. (Allegations 1.a, 1.c, 1.d, and 1.e.) Allegation 1.b concerns a mortgage with a past-due amount of \$34,643. The existence and amount of these debts is supported by a credit report dated March 13, 2015. (Item 5.) The current status of the debts is as follows:

1.a. Applicant denied owing a credit union a judgment in the amount of \$5,904 for a repossessed vehicle. He supplied documentation from the credit union showing that he has a payment arrangement with them and was paying on it. The available credit report indicates that Applicant, "Pays account as agreed," for a voluntary repossession. (Item 3 at 1, 3; Item 5 at 2.) Based on all of the available information, I find this debt is being resolved.

1.b. Applicant denied owing this past-due mortgage debt to a bank in the amount of \$34,643. According to Applicant, "I started a loan modification process with [the bank] at the beginning of 2014. That process took a very long time. I have attached documentation indicating that the loan was modified, the interest rate was reduced and my payments are approximately \$204 less than before the modification. These payments are current." The attached loan modification letter is dated March 15, 2015. The March 13, 2015 credit report entry on this account states that Applicant is, "Paying

¹The file provided to me did not contain Item 2, Applicant's signed receipt for the SOR, dated March 27, 2015. In addition, Item 6 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 5, 2014. It was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

under a partial payment agreement.” (Item 3 at 1, 4-12; Item 5 at 3.) Based on all of the available information, I find this debt is being resolved.

1.c. Applicant admitted owing a past-due credit card debt in the amount of \$257. He stated in Item 3 at page 1, “I will make arrangements immediately to make payments on [this debt].” Applicant did not provide any further information as to whether he has made any payments. I find this debt is not resolved.

1.d. Applicant denied owing a credit union \$727 for a repossessed vehicle. He supplied documentation from the credit union showing that he has a payment arrangement with them and was paying on it. The available credit report indicates that Applicant, “Pays account as agreed,” for a voluntary repossession. (Item 3 at 1, 3; Item 5 at 2.) Based on all of the available information, I find this debt is being resolved.

1.e. Applicant admitted owing a past-due credit card debt in the amount of \$323. He stated in Item 3 at page 1, “I will make arrangements immediately to make payments on [this debt].” Applicant did not provide any further information as to whether he has made any payments. I find this debt is not resolved.

Applicant submitted no evidence that he has received any financial counseling. He also did not submit a personal financial statement. The evidence also shows that he has been gainfully employed by different employers without break since May 1999. He has worked for his present employer as an engineering technologist since February 2014. (Item 4 at Section 13(A).)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process.

Applicant filled out a Government questionnaire on February 5, 2014. (Item 4). Section 22 of the questionnaire, “**Police Record (EVER)**,”² asks, “Have you **EVER** been charged with an offense involving alcohol or drugs?”³

Applicant stated, “No,” to the above question. That was not true, as he had been charged with Unlawful Purchase/Possess Alcohol Beverage and Drunk in Public in about February 2000; and he was charged with Possession of Marijuana in about February 2004.

²All emphasis in original.

³Emphasis in original.

Applicant argues that he did not intend to mislead the Government in regard to his false answer on the questionnaire. He states in Item 3 at page 2:

I was not aware that I was falsifying any material facts regarding a police record or having been charged with an offense involving alcohol or drugs. I understood the question to mean was I “convicted” of any offense involving alcohol or drugs and I was not. These charges were made many years ago and I have matured quite a bit since this period of time. I do not use any drugs and I may socially drink, perhaps, once every three months.

Applicant’s argument is undercut by the fact that several other questions in Section 22 specifically ask if an applicant was convicted.⁴ A reasonable person would not read that particular question the way Applicant states he did. He has simply not presented enough evidence to show that the alleged falsification was the result of innocent error. Therefore, under the circumstances, I find that it was intentional.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for a security clearance, the 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, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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

⁴See, for example, this question in the same subsection of Section 22, “**Police Record (EVER)**, . . . “Have you **EVER** been *convicted* of an offense involving domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former partner, or someone with whom you share a child in common?” (Italics supplied; all other emphasis in original.)

the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has over \$7,000 in past-due consumer debts, as well as \$34,000 in past-due mortgage debt. All of them had been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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) states that the disqualifying conditions may be mitigated where “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.” The facts of this case do not support the application of either one of these mitigating conditions.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” In addition, the fact that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c), is also mitigating. Applicant is resolving the three largest past-due debts (1.a, 1.b, and 1.d). The two remaining debts (1.c and 1.e), which Applicant indicated he would resolve, amount to about \$600. Under the particular circumstances of this case, I find that they have no current security significance. In conclusion, looking at Applicant’s entire financial situation at the present time, Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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.

Applicant knowingly and purposely falsified his e-QIP on February 5, 2014. He alleges that his failure to acknowledge and list his drug and alcohol-related charges was due to misreading the question, and not an intentional act. However, the question is unambiguous. It simply strains credulity for Applicant to claim that a criminal charge is the same as a criminal conviction, when the questionnaire clearly separates the two.

I have reviewed the mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, less than two years, since the falsifications. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 is found against Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which he has mostly resolved. However, Applicant failed to show that the false denial and omissions of relevant and material information from his e-QIP were accidental and not intentional.

Under AG ¶ 2(a)(3), Applicant's conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 has not mitigated the security concerns arising from his falsifications to the Government. He did mitigate the financial concerns. Accordingly, the evidence supports denying his request for a security clearance.

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 through 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge