



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



In the matter of:)	
)	
)	ISCR Case No. 14-05268
)	
)	
Applicant for Security Clearance)	

Appearances

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

07/07/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On November 21, 2014, 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 March 20, 2015. A notice of hearing was issued on April 23, 2015, scheduling the hearing for June 18, 2015. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-H, which were admitted without objection. The transcript was received on June 26, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F and Guideline E, and provided explanations.

Applicant is 37 years old. He graduated from high school and attended college. He served in the United States Army from 2000 until 2005, and received an honorable discharge. Applicant is married and has four children. Applicant has held a security clearance since his time in the military. He has been employed with his current employer since August 2014. (GX 1)

The SOR alleges violation of company policy concerning abuse of a corporate credit card in 2008 and 2010 (SOR 1.a, 1.b) The allegations are cross referenced under Guideline E (SOR 2.a).¹ Applicant readily admits that is the case.

In about April 2008, Applicant used his corporate credit card for personal use on various occasions. He acknowledged that he intentionally used the card for paying his private bills, buying things, and home remodeling. Applicant explained that he would pay a large monthly amount when the monthly bill arrived. In June 2008, Applicant became 90 days past due on his corporate card. (AX E) At the time, Applicant was a security officer. Applicant received a written warning from the company manager. (AX F) Applicant was explicitly warned that this lapse in judgment could have major repercussions for his ability to maintain his security clearance. He was advised that any further lapses of this nature would be grounds for disciplinary action, which could include termination. (AX F)

Applicant temporarily ceased using his corporate card for personal use for about one year, but in 2010, he resumed using the corporate card for his own use. He amassed approximately \$11,000 to \$14,000 of personal charges on the corporate credit card. When he failed to make the requisite payment, his employer was notified. Applicant's card was cancelled. Applicant was asked to resign from the company, which he did in December 2010.(GX 2)

Applicant admitted at the hearing that he was ashamed of his behavior. (Tr. 13) He explained that in 2011, he entered into an agreement with his company to repay the entire amount that was wrongly charged on the corporate card. He paid a monthly amount of \$481.28. In March 2013, Applicant made his final payment of \$481.10 and resolved the obligation. The total amount that he repaid to the company was \$11,550.54. (AX G and H)

Applicant submitted his security clearance applications that he has completed since 2011. He emphasized that he has disclosed the abuse of the corporate credit card and his resignation in 2010. He accepts full responsibility for his actions. (Tr. 17) Applicant completed three security clearance applications since 2011 and was denied a

¹At the hearing, Counsel withdrew allegation 2.b under Guideline E.

position because of his disclosure. However, he was approved for a position of public trust in 2012. (AX C)

Applicant admitted it was stupid and selfish behavior. He did not make excuses. He stated that he foolishly believed he could pay the entire bill each month. He does not offer that as an excuse or justification. (Tr. 31) Applicant realizes that this was a huge wake-up call that something was wrong in his life. At the time that Applicant abused the corporate credit card, he earned about \$55,000 a year.

Applicant discussed the situation with his wife. He knew he had a problem with shopping and buying things that he did not need. He now avoids “triggers” that would create a problem. (Tr. 55) He also admitted that he had his personal credit card at the maximum credit amount. He knows he made poor financial choices. (Tr. 48) Applicant has fully disclosed this abuse of the corporate credit card in detail in subsequent security clearance applications.

Applicant told his current employer that he did not want a corporate credit card. He does not believe he would abuse such a privilege, but he learned a harsh lesson. He has made a point to tell others about his situation. He wants this to serve as a learning tool, especially with younger people. (Tr. 50) He offered that he has had the opportunity to look at himself and see that he did not handle the financial and corporate card issue appropriately.

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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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

(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 (c) applies. Applicant is a seasoned employee who has held a security clearance. The facts alleged under Guideline F are the same as under Guideline E.

Applicant's explanations persuade me that he is reliable, trustworthy and has met his burden to mitigate the personal conduct concerns based on the same reasons that he has mitigated the security concerns under the financial considerations guideline. Applicant has mitigated the personal conduct concerns under Guideline E. The mitigating conditions that are applicable in this case are 17(c) and 17(d).

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 abused the policy for his corporate credit card in 2008, and was given a written warning. However, he again abused the privilege and was past-due on the account in 2010. 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 and FC DC AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust) applies. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant's financial decisions are not recent. Applicant's abuse of his corporate credit card occurred in 2008 and 2010. He resigned from the company. He has chosen

not to obtain another card from his new employer. He has accepted full responsibility for his actions. He disclosed the information on all subsequent security clearance applications. 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) applies.

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) applies in part. The facts in this case do not allow for this mitigating condition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant as noted above immediately took steps to repay the company for the entire amount that he owed on the corporate card. He fulfilled his obligation in 2013. 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) applies.

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 37 years old. He served in the military. He is an educated man. He violated company policy concerning his corporate credit card. He was warned in 2008, but relapsed in 2010. He made monthly payments but in 2010 he was past due on a monthly bill. He resigned from the company. Since then he has disclosed on at least

three security clearance applications his violation and abuse of policy regarding the corporate credit card. He also immediately signed an agreement with the company to make monthly payments to resolve the financial obligation. He completed his payment in full in 2013. He realizes how stupid and selfish his actions were. He is ashamed of his behavior. He now tries to mentor young people concerning finances and the issue of having a corporate credit card. I found him candid and sincere in his testimony that he has learned a harsh lesson. He has examined his motivations and realizes that he had a problem. He has persuaded me that there are clear indications that his problem has been resolved. He has held a security clearance for many years. He stated that this would never occur again.

Applicant provided sufficient information concerning his current judgment and reliability. He has mitigated the security concerns under the financial and personal conduct guidelines.

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-1.b	FOR APPLICANT For Applicant
Paragraph 2, Guideline : Subparagraph 2.a: Subparagraph 2.b:	FOR APPLICANT For Applicant WITHDRAWN

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge