



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



In the matter of:)
)
) ISCR Case No. 11-12721
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

05/24/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and the exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. His request for a security clearance is denied.

Statement of the Case

On February 4, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). This action was taken 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* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his February 25, 2013 Answer to the SOR, Applicant admitted all the allegations under the financial considerations guideline, with explanations. He admitted he answered "No" to questions on his security clearance application regarding criminal charges, but denied intentionally concealing the information. Applicant also requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated March 14, 2013. On April 2, 2013, Applicant received the Government's FORM, along with nine documents (Items 1 through 9). He was given 30 days to submit a response to the FORM. No response was received. The case was assigned to me on May 24, 2013, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant is 54 years of age. He married in 1994 and divorced in 2004. No children were listed in his security clearance application. Applicant worked as an assembler from 1990 to 2005. He then left his job to attend college full time. In November 2006, he began his current position in information technology technical support. He earned an associate's degree in 2007. He indicated on his security clearance application that he received a secret security clearance in 2006. (Items 7, 9)

In his 2011 security clearance application, Applicant disclosed that within the previous seven years, he had filed a Chapter 7 bankruptcy petition that was discharged; that he had "numerous credit cards" charged off; and that his wages were garnished to satisfy a student loan. In his security interview, he stated that his debts became delinquent in 2007, because he was unemployed while attending college. He did not believe that his debts were due to circumstances beyond his control. Schedule F of Applicant's 2007 bankruptcy petition shows his liabilities totaled \$112,815. It lists one student loan, in the amount of \$15,714. However, Applicant's credit report of October 2012 shows six student loans, which total \$35,628. The creditors for one of the loans brought a suit against Applicant, and a judgment was filed in September 2010 in the amount of \$20,418. (Items 4, 5, 6, 7, 9)

Applicant's October 2012 credit report shows that he has numerous open accounts that are current. He stated in his Answer to the SOR that he has two credit cards with low limits "to ensure that I do not overspend" and he usually pays the balance each month. Applicant received financial counseling when he filed the bankruptcy petition. (Items 3, 5)

During his March 2011 security interview, Applicant stated that he planned to repay his student loans once he earned additional income. In his interrogatory response of December 2012, Applicant stated that he had made payment

arrangements for the student loans. He attached a bank account statement showing one payment of \$160 on December 5, 2012, to "DF2 Student Loan." Applicant also circled a December 3, 2012 payment of \$169.29, but did not indicate whether this payment related to his student loan debts. He also attached his pay statements for September and October 2012, but they do not show any deductions related to student loan payments. In his Answer to the SOR, Applicant again stated he is paying on the loans: "I am currently having payment [sic] made to the [government creditor] automatically from my checking account every month." He also stated he is ". . . still trying to set the same thing up for [student loan creditor]." (Items 5, 6)

Applicant's December 2012 personal financial statement (PFS) shows that he earns \$2,662 net monthly income. His monthly expenses and debt payments total \$1,992, leaving a monthly net remainder of \$558. He did not list payments toward his student loan debts. (Item 6)

When Applicant completed his 2011 security clearance application, he answered "Yes" to a question that asked if he had ever been charged with an alcohol- or drug-related offense, and disclosed a charge of Driving While Intoxicated in 1989. He explained that he served 45 days in a work-release program, and attended an in-patient alcohol rehabilitation program. He noted that he has been sober since 1992. Applicant also disclosed his 2007 bankruptcy, his wage garnishment, and his numerous credit card accounts that were charged off or in collection before the bankruptcy. (Items 1, 7)

However, Applicant did not disclose other information regarding his criminal history. In June 2005, Applicant's friend became intoxicated at his home, and he "escorted her out." She called the police and claimed he assaulted her. The file does not specifically state that Applicant was arrested. However, when asked in his interrogatory why he did not disclose his 2005 arrest, he stated that he did not know he had to list it because he did not assault the woman. Applicant was served with a summons to appear in court regarding a charge of second-degree assault. A plea hearing was held in October 2005, and Applicant's case was placed on the Stet docket, meaning no further action was taken, barring any future criminal activity. In February 2006, Applicant was again charged with second-degree assault. He stated in his interrogatory response that a female friend attacked him in his home, she "kept returning," and he, his ex-wife, and his girlfriend all obtained protective orders against her. He did not provide evidence to support this claim. A summons was issued and served on Applicant in March 2006. The file does not indicate if Applicant was arrested. The charge was *not proessed* in May 2006. (Items 6, 8)

SOR allegations 2.a and 2.b state that Applicant deliberately falsified his response to Section 22, questions (a) and (b), on his 2011 security clearance application. The questions ask if, in the previous seven years, he received a summons to appear in court in a criminal proceeding, or had been arrested by any law enforcement official. In his interrogatory response, Applicant explained that, as to both the 2005 and 2006 charges, "I was unaware that I needed to provide this." Applicant

stated that in both cases, the women attacked him, and he did not assault them. Because he was not at fault, he did not believe he had to report the charges. In his 2013 Answer to the SOR, Applicant reiterated that he did not think false charges had to be disclosed, and “I was not trying to hide anything.” He added that “In retrospect I see I should have answered these questions differently” The SOR also alleges in ¶ 2.c that Applicant deliberately falsified his response to Section 23, question (f) of a security clearance application he completed in November 2006. However, that application is not included in the FORM. Without documentation to support the Government’s allegation, I find for the Applicant on ¶ 2.c. (Items 1, 3, 6, 7)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and policy in the AG.¹ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines F (financial considerations) and E (personal conduct).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest² for an applicant to either receive or continue to have access to classified information. The Government must produce admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.³ A person who has access to classified information enters a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his 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.⁴

¹ Directive. 6.3.

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

³ See *Egan*, 484 U.S. at 528, 531.

⁴ See *Egan*; AG ¶ 2(b).

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant has a history of financial problems. His numerous delinquencies led to filing a Chapter 7 bankruptcy petition in 2007, with liabilities of \$112,815. It was successfully discharged in 2008. However, Applicant's student loan debts remain delinquent. As of the date of the SOR, these debts total more than \$35,000. His history of financial delinquencies supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, I considered the following conditions that can potentially mitigate 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.

Although Applicant's debts started to become delinquent in 2008, they are not in the distant past because the debts alleged in the SOR remain delinquent. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be

applied. Applicant admitted in his security interview that his delinquencies did not result from circumstances beyond his control. AG ¶ 20(b) does not apply.

Applicant states that he is making payments on his student loan debts through automatic deduction from his checking account. He provided a document showing at least one payment made in December 2012. Although he stated in December 2012 and February 2013 that he had made payment arrangements, he provided no evidence of a payment plan, or a track record of making consistent payments on his student loans, despite having a monthly net remainder of more than \$500 that he could have used for this purpose. The record does not contain evidence of a good-faith effort to repay his loans, and Applicant's finances are not under control. AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E (Personal Conduct)

AG ¶ 15 expresses the security concern about 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.

The Government alleges that Applicant deliberately failed to disclose facts related to his criminal history, implicating the following 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.

Applicant failed to report on his 2011 security clearance application that he was arrested in 2005, and received a summons to appear on criminal charges in 2005 and 2006. He knew he had been charged with assault within the seven-year period covered by the questions, but decided that he did not have to report the charges, because he believed he was not guilty of the offenses. AG ¶ 16(a) applies to Applicant's failure to disclose these facts in response to questions 22(a) and 22(b). As noted previously, I find for the Applicant on allegation 2.c, because the 2006 security clearance application to which it refers is not in evidence.

Among the mitigating conditions under AG ¶ 17, the following are relevant:

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

(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.

Applicant failed to disclose his criminal history because he did not think that he was required to list what he considered to be false charges. However, the questions do not refer to guilt; they state plainly that he must disclose whether he had been arrested, and whether he had received a summons to appear in court on a criminal charge. The Appeal Board has held that an applicant completing a security clearance application is bound by the plain language of the question.⁵ Applicant's failure to be candid with the Government during his security clearance investigation is not minor. His actions reflect poorly on his reliability and judgment. In addition, there is no evidence that Applicant made efforts to change or correct the answers on his application during the security clearance process. AG ¶ 17(a) and (c) cannot be applied.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature, 54-year-old adult. He has accrued more than \$35,000 in delinquent student loan debt. He was on notice that delinquent debts are a security concern when he completed his security clearance application in January 2011, and

⁵ ISCR Case No. 00-0713 AT 3 (Feb. 15, 2002).

again during his security interview in March 2011. Although applicants are not required to be debt free, they are expected to develop a plan to resolve their SOR debts, and provide evidence that they are implementing that plan.⁶ In 2011, Applicant mentioned payment arrangements, but he has provided no proof of such a plan. In 2013, he stated he is making payments from his checking account, but provided evidence of only one payment. Overall, the record contains scant evidence of a clear plan to resolve debts.

When Applicant completed his security clearance application in 2011, he failed to inform the government of a 2005 arrest, or his summons to criminal proceedings in 2005 and 2006. Applicant stated he did not disclose them because they were not true, although the questions clearly did not ask about guilt. Applicant was a mature, educated adult when he completed the application, and was experienced with security clearance applications because he had completed one in 2006 when he was granted his first clearance. The Government must be able to rely on security clearance applicants to be candid and forthright during the clearance process. Doubts remain about Applicant's suitability to hold a security clearance.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.g	Against Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraphs 2.a – 2.b	Against Applicant
Subparagraph 2.c	For Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge

⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).