



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00483
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on (SCA) March 7, 2016. On March 5, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 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 (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 22, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on August 30, 2018. On September 4, 2018, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM included summaries of personal subject interviews (PSI) conducted on February 10 and 24, 2017, and November 1, 2017. The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summaries, make any corrections, additions, deletions or updates; or object to consideration of the PSI summaries on the ground that they were not authenticated. Applicant received the FORM on September 12, 2018, and did not respond. I conclude that he waived any objections to the PSI summaries by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). The case was assigned to me on January 17, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations except SOR ¶ 1.h, which he denied. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old solution developer employed by a federal contractor since January 2015. He received a bachelor's degree in May 1999 and a master's degree in May 2004. He worked as a software developer for a private-sector employer from January 2006 to November 2011, when he was laid off. He was unemployed from November 2011 to January 2013. He was self-employed from January 2013 to January 2015, when he accepted his current position. He has never held a security clearance.

Applicant has never married and has no children. He provided no information about his income and expenses while self-employed or since his current employment in January 2015.

The SOR alleges 20 delinquent debts totaling about \$443,600. It includes seven default judgments totaling about \$330,206, of which six are unsatisfied. The court records reflect that the default judgments were entered after notices were sent to the addresses for Applicant's rental properties, posted on the rental properties, sent to his mother's home, where he lived from 2006-2009, sent to his residence from 2009-2015, sent to Applicant's post office box, and served by publication. (FORM Items 7-13.)

Many of the debts are related to Applicant's investments in rental properties. The debts are reflected in court records (FORM Items 7-13) and credit reports from October 2015 (FORM Item 5) and December 2017 (FORM Item 6.) The evidence concerning the debts alleged in the SOR is summarized below.

¹ Applicant's personal information is extracted from his security clearance application (GX 3) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶ 1.a: judgment for \$10,115, filed in November 2010. This is a default judgment for a delinquent credit-card account. (FORM Item 7.) During the February 2017 PSI, Applicant told an investigator that he was unable to pay this debt because he was unemployed at the time and had other financial obligations. (FORM Item 4 at 9.) The debt is not resolved.

SOR ¶ 1.b: judgment for \$44,999, filed in November 2011. This is a default judgment for a delinquent mortgage loan on a rental property. The October 2016 credit report reflects that the property was sold after foreclosure and the debt has a zero balance. (FORM Item 5 at 6.) This judgment is satisfied.

SOR ¶¶ 1.c-1.g: judgments for \$60,981, filed in February 2012; \$42,547, filed in August 2013; \$35,081, filed in August 2013; \$42,200, filed in January 2015; and \$94,283, filed in June 2015. These are default judgments for delinquent mortgage loans on rental properties. Applicant attributed these delinquencies to his unemployment from November 2011 to January 2013 and inability to find renters for his properties. (FORM Item 4 at 10-11.) In Applicant's SCA, he stated that the lender foreclosed on the property in SOR ¶ 1.f (judgment for \$42,200), but he submitted no evidence to support his statement. (GX 3 at 45.) These judgments are not resolved.

SOR ¶ 1.h: collection account for \$23,836. The credit report from May 2016 reflects that this debt is a delinquent student loan being collected by garnishment. (FORM Item 5 at 3-4.) In the February 2017 PSI, Applicant told an investigator that he fell behind on his payments because he was laid off. (FORM Item 4 at 10-11.) The debt is not resolved.

SOR ¶ 1.i: line of credit charged off for \$9,479. In the February 2017 PSI, Applicant told an investigator that he did not intend to pay this debt because it was charged off. (FORM Item 4 at 10.) This debt is not resolved.

SOR ¶ 1.j: collection account for \$1,129. This debt is not reflected on the credit reports in the record. This allegation is not supported by the evidence.

SOR ¶¶ 1.k, 1.q, 1.r, 1.s, and 1.u: utility bills placed for collection of \$364, \$292, \$88, and \$73 (two bills). These debts were incurred when Applicant's tenants failed to transfer the accounts to their names or failed to pay the bills. (FORM Item 3 at 44; Form Item 4 at 12-14.) They are not resolved.

SOR ¶ 1.l: collection account for \$35,706. This debt is a delinquent credit-card account. It is not resolved. (FORM Item 4 at 10.)

SOR ¶ 1.m: collection account for \$32,575. This debt is a delinquent student loan being collected by garnishment. (FORM Item 5 at 3.) It is not resolved.

SOR ¶ 1.n: credit-card account charged off for \$8,605. In the February 2017 PSI, Applicant told an investigator that he did not intend to pay this debt because it was charged off. (FORM Item 4 at 12.) It is not resolved.

SOR ¶ 1.o: debt to credit union charged off for \$285. This debt is an overdraft charge. (FORM Item 4 at 13.) It is not resolved.

SOR ¶ 1.p: credit-card account placed for collection of \$916. In the February 2017 PSI, Applicant acknowledged this debt. (FORM Item 4 at 12.) It is not resolved.

SOR ¶ 1.t: telecommunications account placed for collection of \$49. This debt is reflected in the October 2016 credit report. (FORM Item 5 at 12.) In the February 2017 PSI, Applicant was unable to identify this debt. (FORM Item 4 at 15.) It is not resolved.

In Applicant's answer to the SOR, he asserted that the debts alleged in SOR ¶¶ 1.h and 1.i were duplicates. It is unclear whether the same lending institution is involved in both debts. However, the evidence shows that the debts are not duplicates. The debt alleged in SOR ¶ 1.h is a student loan, and the debt alleged in SOR ¶ 1.i is a line of credit.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible,

unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence in the FORM establish the following disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and AG ¶ 19(c): a history of not meeting financial obligations. The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous and recent. The debts related to Applicant's rental properties (SOR ¶¶ 1.b-1.g, 1.1, 1.r, 1.s, and 1.u) were incurred under circumstances making recurrence unlikely, because it is unlikely that Applicant will again venture as deeply into multiple rental-property investments as he has done in the past. The other debts alleged in the SOR were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's unemployment, his inability to keep his properties rented, and the failures of his tenants to pay their utility bills were conditions largely beyond his control. However, he has not acted responsibly. He has been gainfully employed for four years. He was aware of many delinquent debts when he submitted his SCA in March 2016, and he was questioned about his delinquent debts during the

February 2017 PSI. However, he submitted no evidence of efforts to renegotiate, compromise, settle, or otherwise resolve any of his debts.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. The judgment alleged in SOR ¶ 1.b was resolved by foreclosure and the student loans alleged in SOR ¶¶ 1.h and 1.m were or are being resolved by garnishment. However, these involuntary measures do not constitute good-faith efforts within the meaning of this mitigating condition. Payments by involuntary garnishment are “not the same as, or similar to, a good-faith initiation of repayment by the debtor.” ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). Applicant has submitted no evidence of payments or payment agreements regarding the other delinquencies alleged in the SOR.

AG ¶ 20(e) is not established. Although Applicant asserted that the debts alleged in SOR ¶¶ 1.h and 1.i are duplicates, he submitted no evidence that he has disputed any of the debts with the original creditors, collection agencies, or credit bureaus.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

² The factors are: (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.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a: **Against Applicant**

Subparagraph 1.b: **For Applicant**

Subparagraphs 1.c-1.g: **Against Applicant**

Subparagraph 1.j: **For Applicant**

Subparagraphs 1.k-1.u: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge