



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00505
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

12/26/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application on July 22, 2016. On March 9, 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), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on April 5, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 24, 2018, and

the case was assigned to an administrative judge on August 9, 2018. On September 11, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 17, 2018. The case was reassigned to me on October 16, 2018, due to illness of the assigned judge. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until October 31, 2018, to enable him to submit additional documentary evidence. He timely submitted AX B through D. AX B was an encrypted document that could not be opened. It pertained to a debt not alleged in the SOR. I contacted Applicant on December 6, 2018, and requested that he send an unencrypted version of the document, but he did not respond. (Hearing Exhibit I.) I did not admit AX B. AX C and D were admitted without objection. DOHA received the transcript (Tr.) on October 24, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old tactical communicator employed by defense contractors since June 2012. He served on active duty in the U.S. Army from October 1998 to June 2012, attained the rank of staff sergeant, and received an honorable discharge because of his inability to maintain weight standards due to a medical condition. He is taking online college courses and expects to receive his bachelor's degree by the end of 2018. (Tr. 31-32.) He has held a security clearance since 1998 and received eligibility for access to sensitive compartmented information (SCI) in November 2008. (Tr. 34.)

Applicant enlisted in the Army National Guard in 1997 and was assigned to a Special Forces unit. He was assigned to an installation in the United States from 1998 to 2001. During this time he was single and followed the "Sam Walton" practice: "If you can't afford it, you don't buy it." From 2001 until 2012, he was deployed most of the time. He married in 2004, and has two children from the marriage, ages 14 and 11. He trusted his wife to manage the family finances while he was deployed. (Tr. 27.) His wife incurred several of the delinquent debts alleged in the SOR and used a power of attorney to open accounts in his name without his knowledge. (Tr. 53.) Except for the debt alleged in SOR ¶ 1.d, he did not specifically identify which accounts were opened without his knowledge or consent. He has not disputed any of the debts alleged in the SOR.

The SOR alleges 13 delinquent debts totaling about \$27,000, which are reflected in credit reports from August 2016 (GX 2) and February 2018 (GX 3). In October 2017, Applicant and his wife joined a personal finance counseling group that met weekly. They completed the program December 2017. The leader of the counseling group considers Applicant and his wife as "one of the success stories" for the counseling group. (Answer

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

to SOR; AX A.) The counseling program assigns a sponsor to each participant. Applicant testified that he meets with his sponsor about every two weeks to review his progress. (Tr. 71.) He testified that he received financial counseling while he was on active duty, but he enrolled in the most recent course so that his wife would attend it. His wife now understands that “debt doesn’t have to be a lifestyle.” (Tr. 44.) Their plan is to set aside \$1,000 per month and use it to pay off delinquent debts. (Tr. 69.)

Applicant’s take-home pay is about \$5,556 per month, and he receives disability pay of \$1,809 per month. His wife has been employed since September 2017, and her take-home pay is about \$1,750 per month. Their monthly budget accounts for all their monthly income. It provides for payments on the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.i, 1.j, and 1.k, and a monthly contribution of \$1,096.50 to an “emergency fund. (Tr. 36-38; AX C.)

The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: military credit-card account placed for collection of \$13,877. Applicant testified that he has been making monthly \$150 payments for about two years, but the finance fees limited his progress in reducing the debt. His budget provides for a monthly \$150 payment on this account, but he submitted no documentation that any monthly payments have been made. He made a lump-sum payment in March 2018 that reduced the debt to \$6,575. He testified that he is trying to negotiate a lump-sum settlement but has not yet been successful. (Answer to SOR; Tr. 47-51; AX C.)

SOR ¶ 1.b: charge account charged off for \$3,313. Applicant testified that he was unsure about the nature of this debt. He contacted the creditor after receiving the SOR, but he has been unable to negotiate a payment agreement. His budget provides for a monthly payment of \$58.75 to this creditor, but he submitted no documentation of any payments. (Tr. 54-56; AX C.)

SOR ¶ 1.c: delinquent rent placed for collection of \$1,554. Applicant testified that this debt was incurred for rent while a home was being cleaned after they vacated it. They contacted the creditor about a possible payment agreement, but the creditor insisted on full payment. The debt is not resolved. (Tr. 57-58.)

SOR ¶ 1.d: credit-card account charged off for \$1,173. Applicant testified that his wife opened this account without his knowledge. He was not sure if he had made any payments on this debt. (Tr. 58-59.) His budget provides for a monthly \$35 payment to this creditor, but he submitted no documentation of payments. (AX C.)

SOR ¶ 1.e: credit-card account placed for collection of \$1,007. At the hearing, Applicant was not sure if he had made any payments on this account. (Tr. 60.) It is not resolved.

SOR ¶ 1.f: payday loan placed for collection of \$500. This debt was paid in full in March 2018. (Answer to SOR; Tr. 60.)

SOR ¶ 1.g: charge account charged off for \$421. Applicant testified that he was making payments on this debt. His budget provides for a monthly \$70 payment to this creditor, but he submitted no documentation of any payments. (Tr. 61; AX C.)

SOR ¶ 1.h: online charge account charged off for \$263. Applicant testified that he contacted the creditor in March 2018 and has offered to pay the debt in full, but that the creditor cannot find his account. (Tr. 63.) The debt is not resolved. (Tr. 62.)

SOR ¶ 1.i: online charge account placed for collection of \$855. Applicant testified that he offered to make monthly payments in March 2018, but the collection agency was unable to find his account. (Tr. 64.) His budget provides for a monthly \$142 payment to this creditor, but he submitted no documentation of any payments. (AX C.)

SOR ¶ 1.j: charge account placed for collection of \$507. Applicant testified that he had a payment agreement for this debt, but he was not sure whether any payments had been made. (Tr. 65-66.) His budget provides for a payment of \$58.75 to this creditor, but he submitted no documentation of any payments. (AX C.)

SOR ¶ 1.k: charge account placed for collection of \$165. Applicant testified that the collection agency was unable to locate his account. His budget provided for payment in full in October 2018, but he submitted no documentation that he paid it. (Tr. 66; AX C.)

SOR ¶ 1.l: satellite-television service placed for collection of \$206. Applicant testified that this debt was the final bill for service and had been paid, but he submitted no documentation of payment. (Tr. 66.)

SOR ¶ 1.m: bank loan placed for collection of \$3,497. At the hearing, Applicant was unsure about the nature of this loan. He testified that he contacted the bank in March 2018, but the bank insisted on full payment. (Tr. 67-68.)

A co-worker, who has known Applicant since July 2016 and has daily contact with him, testified that Applicant is “one of the most thrifty, cost-conscious, less excessive personalities” that he has encountered. He has no reason to question Applicant’s reliability or trustworthiness. (Tr. 19-25.)

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 submitted at the hearing establish the two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially relevant:

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; and

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, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. The financial irresponsibility and misuse of a power of attorney by Applicant's wife were circumstances beyond his control. However, he has not provided evidence of responsible conduct. He completed a credit-counseling course in December 2017, but he has not provided documentary evidence of any significant steps to resolve his delinquent debts until March 2018, after he received the SOR.

AG ¶ 20(c) is not fully established. Applicant completed a financial counseling course, but he has not shown "clear indications" that his financial problems are under control.

AG ¶ 20(d) is not established. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan, but he has not presented evidence of significant actions to implement it. He paid the debt alleged in SOR ¶ 1.f after he received the SOR. He has not submitted evidence that he made any payments on any debts before he received the SOR. He claimed that he had been making payments on the debt alleged in SOR ¶ 1.a for two years, but he submitted no documentary evidence to support his claim. Applicants who claim that debts have been or are being resolved are expected to present documentary evidence supporting their claim. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). The mitigating effect of Applicant's efforts to resolve his delinquent debts is diminished by the fact that they all occurred after he received the SOR. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(e) is not established. Applicant has not submitted evidence that he disputed any of the debts alleged in the SOR 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). I have considered Applicant's military service, the testimony of his co-worker, and his candor and sincerity at the hearing. 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.

Formal Findings

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

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

Subparagraphs 1.a-1.m:

Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge

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.