



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 18-01677
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Shirin Asgari, Esq.

03/14/2019

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 (SCA) on December 19, 2017. On June 25, 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 August 31, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 1, 2018, and the case was assigned to me on November 15, 2018. On December 21, 2018, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 7, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and offered Applicant's Exhibits (AX) A through I, which were admitted without objection. I kept the record open until February 28, 2019, to enable him to submit additional documentary evidence. He timely submitted AX J through N, which were admitted without objection. DOHA received the transcript (Tr.) on February 21, 2019.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.e. He denied the allegation in SOR ¶ 1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old cyber-risk consultant employed by a federal contractor since December 2015. He received a bachelor's degree in May 2007 and a master's degree in May 2011. He has worked for federal contractors since August 2011. He was cleared for a public trust position in December 2011. He has never married and has no children.

The SOR alleges six delinquent debts reflected in a credit report from February 2018. (GX 2.) The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a and 1.b: two student loans from same lender for \$12,606 and \$5,701, both charged off in September 2013. In Applicant's answer to the SOR and in his testimony at the hearing, he stated that he decided to stop making payments on these loans, because the lender had not explained why the balances were not decreasing even though he was making regular payments. He submitted a payment history dated August 6, 2018, reflecting electronic payments from October 2012 through April 2013. Most of the amounts paid were applied to interest, with only a small amount applied to principal. (AX A.) He did not consult with a legal or financial professional before he stopped making payments. (Tr. 28.)

At the hearing, Applicant testified that, as of the date of the hearing, he had not made any payments on the debts since April 2013. He hoped to negotiate a "substantial payoff" in return for the lender's agreement to forgive some of the debt. (Tr. 16.)

On February 28, 2019, the date the record closed, Applicant and the lender agreed to settle the alleged in SOR ¶ 1.b for \$2,280. (AX J.) He submitted no evidence that he had paid the agreed amount. The debt alleged in SOR ¶ 1.a is unresolved.

SOR ¶ 1.c: delinquent credit-card account placed for collection of \$2,088 in December 2017. Applicant testified that he missed two payments on this account

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

because a roommate who was sharing the rent payments on an apartment unexpectedly moved out in 2014, causing him to deplete most of his savings to pay the rent. (Tr. 31-32.) . Applicant does not have a payment agreement for this debt, but he has been making monthly payments of between \$20 and \$50 since November 2017. (AX B; AX J.) He has reduced the balance due to \$1,799. (AX M.)

SOR ¶¶ 1.d and 1.e: student loan past due for \$3,724, with a balance of \$106,683; and student loan past due for \$2,401, with a balance of \$68,799. The February 2018 credit report reflected both debts as more than 120 days past due as of December 2017. (GX 2 at 6.) In his answer to the SOR, Applicant provided evidence that the two loans had been consolidated in April 2018 and were in forbearance at that time. (AX C.) He made no payments between 2014 and the date of the hearing. He is scheduled to begin making payments of about \$500 per month on these loans in April 2019. (Tr. 18, 35-37.)

SOR ¶ 1.f: unpaid rent placed for collection of \$1,642. Applicant denied owing this debt, and he submitted evidence from the property manager showing that the debt had been satisfied and was erroneously referred for collection. (AX D; Tr. 20-21.)

For the past two years, Applicant has earned about \$81,000 per year. In his first job after graduate school, he earned \$56,000 per year, which increased to \$62,000 by the time he left this job in June 2014. He earned \$70,000 per year from June 2014 to December 2015. He started his current job at \$80,000 per year in December 2015, and he has earned \$81,000 for the past two years. (Tr. 24-25.) He has a net monthly remainder, after paying living expenses and the credit-card debt alleged in SOR ¶ 1.c, of about \$2,102. (AX E at 10.) He had \$7,125 in his retirement account as of June 2018, with an outstanding loan of \$1,642. (AX E at 4.)

In Applicant's SCA, he disclosed foreign vacation travel in May 2013, May and November 2015, April and May 2016, October 2016, June 2017, and May and June 2017. He testified that this travel was for low-cost vacations. He estimated that his out-of-pocket expenses for each trip were between \$500 and \$1,100. (Tr. 51.)

Applicant's close friend, who has known him for about ten years, submitted a letter describing Applicant's community service. He describes Applicant as "a fine man of immense integrity, among an abundance of other positive attributes." (AX I at 1.) A co-worker was impressed by Applicant's ability to organize work, delegate tasks, communicate with senior leadership, and create comradery among workers of various competencies and skill levels. This co-worker considers Applicant trustworthy, sincere, and diligent. (AX I at 2.) Another co-worker and a former roommate described Applicant's community service and dedication to his job. (AX I at 3.) Applicant's former mentor at work was impressed with his positive attitude and desire to learn new skills. He believes that Applicant has the initiative and moral judgment required to work as a federal contractor. (AX I at 4.) A former supervisor describes Applicant as highly intelligent, motivated, and trustworthy. (AX I at 5.) At the hearing, Applicant testified that his

performance evaluations have been generally positive, but he did not submit copies of any written evaluations. (Tr. 14.)

At the hearing, Applicant attributed his financial history to immaturity. He believes that he has matured and learned from his mistakes after being in the workforce for eight years. (Tr. 23.)

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 evidence submitted at the hearing 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(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 established for the debt alleged in SOR ¶ 1.c, but not for the other debts alleged in the SOR. Applicant's unexpected loss of a co-tenant for his apartment in 2014 was a condition beyond his control. He acted responsibly by negotiating a solution with his landlord, and the SOR does not allege a debt for past-due rent. He claimed that the increased rent expense made him unable to afford the payments on the credit-card account in SOR ¶ 1.c, on which he has been making payments since at least November 2017. He has not submitted evidence of conditions beyond his control for the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e.

AG ¶ 20(d) is established for the credit-card debt alleged in SOR ¶ 1.c. It is not established for the other debts alleged in the SOR, on which he has made no payments. Even though Applicant has been steadily employed since graduating from college, he has not made debt payment a high priority. Instead, he has used discretionary funds for multiple overseas vacations. He took no actions to resolve the delinquent debts in SOR ¶¶ 1.a and 1.b until he received the SOR and realized that the debts were an impediment to obtaining a security clearance. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.f. Applicant has not disputed any of the other debts alleged in the SOR.

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). 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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

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.

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