



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 18-01727
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Stephen B. Plott, Esq.

09/06/2019

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 April 14, 2016. On October 12, 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 November 18, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 7, 2019, and the case was assigned to me on February 26, 2019. On March 1, 2019, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 27, 2019. Applicant retained an attorney on March 18, 2019, who requested that the hearing be postponed to enable him to prepare. The attorney's request was granted and the hearing was cancelled on March 19, 2019. On May 8, 2019, DOHA notified Applicant and his counsel that the hearing was rescheduled for June 13, 2019. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. I kept the record open until July 17, 2019, to enable him to submit additional documentary evidence. He timely submitted AX N and O, which were admitted without objection. DOHA received the transcript (Tr.) on June 25, 2019.

Findings of Fact

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

Applicant is a 28-year-old research analyst employed by a federal contractor since April 2016. He served on active duty in the U.S. Navy from February 2012 to January 2016. He was unemployed for about one month after being discharged from the Navy. He worked in a temporary position for two months before being hired by his current employer. He married in December 2011 and has a four-year-old daughter. He received a security clearance in July 2012.

The SOR alleges 13 delinquent debts, which are reflected in Applicant's credit reports from June 2019, September 2018, November 2017, and October 2017. (GX 3-6.) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a: credit-card debt charged off for \$1,367. This credit card was in Applicant's wife's name and he was an authorized user. (Tr. 36.) The last payment on the debt was in July 2016, and it was charged off in August 2016. (GX 3 at 2.) Applicant settled this debt for \$615 in June 2019. (AX A; A B.)

SOR ¶¶ 1.b and 1.c: student loans past due for \$795, with a balance of \$8,234; and past due for \$337, with a balance of \$3,747. These loans were approved for administrative forbearance in July 2019. (AX M.)

SOR ¶ 1.d: collection account for \$1,267. This debt was reduced to judgment in March 2018, and it was satisfied in January 2019. (AX E; Tr. 21.) The debt was collected in full by garnishment. (Tr. 57.)

SOR ¶ 1.e: credit-card debt charged off for \$4,667. This account was opened in March 2012, charged off in October 2017, and settled in June 2019. (GX 3 at 3; GX 5 at 3; AX F.)

SOR ¶ 1.f: collection account for \$669. Applicant denied this debt. He testified that he asked the collection agency to identify the original creditor, and it was unable to provide the information. (Tr. 23.) Applicant made no further effort before the hearing to resolve this debt, and he had no further communications with the collection agency. (Tr. 44.) After the hearing, he attempted to obtain information from the collection agency about the identity of the original creditor, but without success. (AX N.) He has not disputed the debt with the credit bureaus. The debt is a duplicate of the debt alleged in SOR ¶ 1.i, discussed below.

SOR ¶ 1.g: home-improvement debt charged off for \$5,258. As of the date of the hearing, Applicant had contacted the creditor, who agreed to settle the debt for \$2,200. Applicant is awaiting receipt of an educational grant of \$3,000, and he testified that he intends to use it to settle the debt. (Tr. 24, 45.) The debt is not resolved.

SOR ¶ 1.h: auto loan debt past due for \$190, with a balance of \$2,671. Applicant made a payment on this debt on June 3, 2019, and the account is now current. (AX J.)

SOR ¶ 1.i: dental bill charged off for \$668. Applicant testified that this debt and the collection account in SOR ¶ 1.f are the same debt, but that the collection agency did not comply with a request to identify the original creditor. (Tr. 23.) Applicant admitted that he knew he had debts to a specific dentist for care received by his wife, but he disagrees with the amount claimed by the collection agency. (Tr. 55.) He submitted no documentary evidence showing the basis for his dispute and he presented no evidence of direct contacts with the dentist, even though he knows that the dentist is the original creditor. He has not disputed the debt with the credit bureaus. The debt is not resolved.

SOR ¶ 1.j: credit-card debt past due for \$956 with a balance of \$7,242. Applicant and his wife incurred this debt to pay for moving expenses and purchases of household items after they moved to their current home. They opened the account in October 2013 and made their last payment in October 2014. (GX 3 at 4-5.) The creditor obtained a judgment against Applicant and garnished his pay for about \$900 per month. After the balance was reduced to about \$2,000 by garnishment, Applicant settled this debt for \$500 in June 2019. (AX C; AX D; Tr. 50.)

SOR ¶ 1.k-1.m: federal government debts for \$4,161; \$1,593; and \$125. Applicant testified that these debts were for GI Bill overpayments, and they were satisfied by diversion of his federal income tax refunds, except for \$20, which he paid. (Tr. 26.) Once the debts were satisfied, his GI Bill entitlements were reinstated. (AX L.)

Applicant provided documentary evidence that three delinquent debts not alleged in the SOR were resolved. The creditor for two of the debts is the same creditor as alleged in SOR ¶ 1.e. (AX G, H, N, and O.)

Applicant earns about \$58,000 per year in his current job. In addition, he is a full-time college student, taking classes at night, and he receives GI Bill entitlements of \$1,550

per month for housing. (AX K; Tr. 27.) He has not received formal financial counseling. He and his wife use a budgeting application on their computer to track income and expenses. (Tr. 35.)

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 was only an authorized user on the debt alleged in SOR ¶ 1.a and not legally responsible for resolving it. Thus, I have resolved SOR ¶ 1.a in his favor.

The debts alleged in SOR ¶¶ 1.f and 1.i are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved the debt alleged in SOR ¶ 1.f in Applicant's favor.

Applicant's admissions and the evidence submitted at the hearing establish the debts alleged in SOR ¶¶ 1.b-1.e and 1.g-1.m. These debts are sufficient to 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 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 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;

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 established. There is no evidence that Applicant's discharge from the Navy was involuntary and a condition beyond his control. The record does not reflect whether his wife's dental care was routine or an emergency. On the other hand, the expenses of moving and furnishing a home in order to accept employment at a different location were conditions largely beyond his control. However, he has not acted responsibly. Even though he has been employed continuously since April 2016, he took no significant actions to resolve his delinquent debts until his hearing was imminent. "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)).

AG ¶ 20(c) is partially established. Applicant has not received financial counseling, but there are “clear indications” that his financial situation is now under control.

AG ¶ 20(d) is not established. The debt alleged in SOR ¶ 1.d and most of the debt alleged in SOR ¶ 1.j were satisfied by garnishment. Payment by involuntary garnishment, “is 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). Involuntary diversion of a tax refund is similar to garnishment, but the evidence indicates that Applicant voluntarily chose to allow the diversion as a convenient way of resolving the debts alleged in SOR ¶¶ 1.k-1.m.

All the debts alleged in the SOR have been resolved except the debts in SOR ¶¶ 1.g and 1.i. Applicant has promised to pay the debt alleged in SOR ¶ 1.g when he receives a \$3,000 grant, but a promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

Applicant did not resolve the debts alleged in SOR ¶¶ 1.a-1.e, 1.h, and 1.j-1.m until his hearing was imminent. A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Payment of debts motivated by the pressure of qualifying for a security clearance does not constitute “good faith” within the meaning of AG ¶ 20(d). “A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake.” ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

AG ¶ 20(e) is not established. Applicant believes the debt alleged in SOR ¶ 1.i is for dental services, but he disagrees with the amount. However, he presented no documentary evidence of the basis for his dispute, no evidence of efforts to negotiate a settlement, and no documentary evidence that he disputed the debt with the dentist or the 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 nine adjudicative factors in AG ¶ 2(d): (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant has made significant progress in resolving his delinquent debts, but that progress did not occur until his hearing was imminent. He has not yet established a track record of financial responsibility. If he continues on his present course, he may be able to qualify for a security clearance in the future. See Directive E3.1.38 through E3.1.40 (reconsideration authorized after one year).

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.c, 1.f, and 1.k-1.m: For Applicant

Subparagraphs 1.d, 1.e, and 1.g-1.j: 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. Clearance is denied.

LeRoy F. Foreman
Administrative Judge