



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01760
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2019

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 on November 2, 2015. On June 29, 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 July 26, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on August 22, 2018. On August 23, 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. He received the FORM on September 5, 2018, and did not respond. The case was assigned to me on January 17, 2019.

The FORM included Item 9, a summary of a personal subject interview (PSI) conducted on September 12, 2017. The PSI summary was 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 summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary 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).

Findings of Fact¹

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

Applicant is a 36-year-old senior network engineer employed by a federal contractor since October 2014. He received a bachelor's degree in July 2010, and he previously worked for federal contractors from November 2012 to March 2013. He married in June 2007 and has three children, ages 10, 7, and 6. He received a security clearance in November 2010.

The delinquent debts alleged in the SOR are reflected in a credit report from November 2015. (Item 8.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: mortgage loan in foreclosure with a balance of \$317,952. Applicant purchased a home in March 2007 for \$328,000 and had an interest-only mortgage loan, on which the payments were \$2,000 per month. When his wife stopped working as a day-care provider, they began having financial difficulties. He tried unsuccessfully to refinance his mortgage loan. His mortgage lender went bankrupt and the loan was assumed by another lender. At the suggestion of a friend, Applicant enrolled in a debt-relief program that advised him to challenge the lender's authority to collect payments. He filed documents in October and November 2011, demanding that the successor lender provide proof of authority to collect the payments. There is no evidence that the lender responded. Applicant stopped making payments and deposited \$2,000 in an escrow account each month.

In order to avoid foreclosure, Applicant filed a Chapter 13 bankruptcy petition in June 2012. The petition included the company servicing the mortgage loan and the credit-

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

card accounts alleged in SOR ¶¶ 1.d-1.g, and it indicated that the debts were disputed. (Item 5.) The bankruptcy petition was dismissed in August 2012 when Applicant failed to attend the creditors' meeting. He filed another Chapter 13 bankruptcy petition in October 2012. After the bankruptcy court declined to approve Applicant's payment plan, he changed his mind about pursuing bankruptcy and requested that his petition be dismissed without prejudice. The petition was dismissed in February 2013. This petition listed the mortgage loan alleged in SOR ¶ 1.a and the credit-card accounts alleged in SOR ¶¶ 1.e and 1.g, and it indicated that the account alleged in SOR ¶ 1.e was disputed. (Item 7.) The two bankruptcies are alleged in SOR ¶¶ 1.h and 1.i.

Applicant sought permission from the loan servicer for a short sale, which was denied. (FORM Item 9.) The property was foreclosed, and it was sold in March 2016 to another realtor. Applicant applied for and received relocation assistance from the buyer and agreed to move out by April 30, 2016, in return for \$3,000. (Item 10, Exhibit B-1.) The record does not reflect the sale price for the home. A credit report from November 2015 reflected that the property was in foreclosure, with a balance due of \$317,952. There is no evidence in the record reflecting a deficiency after the foreclosure sale. Based on the limited evidence in the record, the debt appears to be resolved.

SOR ¶¶ 1.b-1.g: Credit-card accounts charged off for \$5,172; \$3,322; and \$8,173; credit-card accounts placed for collection of \$14,340; \$12,707; and \$6,072. Applicant fell behind on credit-card payments at the same time as his mortgage loan, and he used the same debt-relief provider to dispute these six debts. His provider used a common practice of disputing every debt listed in a credit report, in the hope that some debts would fall off the credit reports. Applicant did not challenge the validity of any specific debts or assert specific errors underlying his delinquent debts. Instead, he made general assertions asserting faulty accounting and lack of documentation. The accounts in SOR ¶¶ 1.e, 1.f, and 1.g were disputed in November 2011. The accounts alleged in SOR ¶¶ 1.b and 1.c were disputed in March 2012. The account alleged in SOR ¶ 1.d was disputed in July 2012. The credit report from November 2015 reflects that the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f are disputed. There is no evidence that any of the disputes have been resolved. After filing his disputes, Applicant admitted the debts during the PSI in September 2017 and in his answer to the SOR in July 2018. In his response to interrogatories in May 2018, he asserted that collection of the debts is barred by the statute of limitation. (Item 10.)

Applicant's first bankruptcy petition did not reflect completion of the required credit counseling, but his second petition reflected that it was completed in October 2012. In the PSI, he stated that he is meeting current obligations, but he provided no specific information about his income and expenses.

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 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;

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 recurrence unlikely.

AG ¶ 20(b) is established for the delinquent mortgage loan alleged in SOR ¶ 1.a. The downturn in the real-estate market that made refinancing of Applicant's mortgage loan difficult was a circumstance beyond his control. It is not clear whether his wife's decision to stop working was involuntary and a condition beyond their control. He acted responsibly regarding his mortgage loan by trying to refinance it and exploring the possibility of a short sale. This mitigating condition is not established for the debts alleged in SOR ¶¶ 1.b-1.g. Instead of trying to resolve these debts, Applicant resorted to delaying tactics until collection was barred by the statute of limitation.

AG ¶ 20(c) is not established. Applicant completed the required counseling for his second bankruptcy, but his financial problems are not resolved.

AG ¶ 20(d) is not established. Applicant made no voluntary payments on the mortgage loan alleged in SOR ¶ 1.a after it became delinquent. He presented no evidence of payments, payment plans, or other resolution of the delinquent debts alleged in SOR ¶¶ 1.b-1.g. He abandoned the two Chapter 13 bankruptcies before any payment plans were confirmed by the court. Even if judicial enforcement of Applicant's delinquent debts is precluded by the statute of limitations, reliance on such a remedy is not a substitute for good-faith efforts to pay off the debts. ISCR Case No. 07-16427 (App. Bd. Feb. 4, 2010).

AG ¶ 20(e) is not established. Applicant disputed his delinquent debts as a delaying tactic, but he admitted during the September 2017 PSI and his answer to the SOR that they were valid debts.

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

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

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has worked for federal contractors and held a security clearance for many years. He was caught in the downturn in real-estate values and hampered by limited income. However, he resorted to delay and avoidance rather than reasonable efforts to resolve his delinquent credit-card debts. 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.

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: For Applicant

Subparagraphs 1.b-1.i: 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

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.