



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01836
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2019

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 October 8, 2014. On August 20, 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 September 4, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on September 24, 2018. On September 27, 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 October 1, 2018.

The FORM included Items 3 and 4, which are summaries of interviews on February 21, 2001, and October 1, 2015, during a background investigation. The summaries are not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions or updates; or object to consideration of the summaries on the ground that they are not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the summaries, nor did he object to them. I conclude that he waived any objections to the summaries. 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). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

When Applicant responded to the FORM on October 24, 2018, he submitted Applicant's Exhibits A through C, which were admitted without objection. The case was assigned to me on January 17, 2019.

Findings of Fact¹

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

Applicant is a 55-year-old safety manager employed by a defense contractor since November 1993. He is twice married and divorced. He married his current spouse in 2015. He has an adult daughter. He served on active duty in the U.S. Army from February 1982 to July 1992 and received an honorable discharge. He attended a university from January 2005 to November 2011 and received a bachelor's degree in business administration. He has held a security clearance, but the record does not reflect when he received it.

In March 1995, Applicant filed a petition for Chapter 7 bankruptcy, and he received a discharge in July 1995. He attributed the bankruptcy to his first divorce, which left him with numerous debts. (FORM Items 3 and 9.) A February 2001 credit report reflects that the bankruptcy included loans for home furnishings, multiple credit cards and charge accounts, a car loan, and several unsecured personal loans. (FORM Item 5.)

¹ Applicant's personal information is extracted from his security clearance application (GX 2) unless otherwise indicated by a parenthetical citation to the record.

In December 2003, Applicant filed a petition for Chapter 7 bankruptcy, and he received a discharge on March 2004. The record does not reflect the number, nature, or dollar amounts of the debts that were discharged. (FORM Item 9.) In his answer to the SOR, he attributed this bankruptcy to his second divorce, but he provided no details.

In January 2016, Applicant filed a petition for Chapter 13 bankruptcy. It was dismissed in March 2016 at his request. (FORM Item 10.) His petition listed secured debts totaling \$454,125 (including a home mortgage loan with a balance of \$375,298 and four delinquent car loans, including one loan for a luxury car), and unsecured debts totaling \$169,800. (Form Item 11 at 11, 20.) He listed his net monthly income as \$8,018 and his spouse's net monthly income as \$2,902. (FORM Item 11 at 24.) In his answer to the SOR, he attributed this bankruptcy petition to overspending on his most recent wedding. He dismissed the bankruptcy so that he could resolve his financial problems himself.

In Applicant's response to the FORM, he stated that he supports his disabled mother, and he was providing financial assistance to his 31-year-old daughter by making her car payments and insurance payments. His daughter is now making her own car and insurance payments. Applicant surrendered the car he bought for his daughter and now owes a deficiency of \$3,000 after the voluntary repossession. The deficiency is not alleged in the SOR.

Applicant also stated that his job required a relocation across the country, and he was unable to sell his home for seven months at his old work location. However, he was able to restructure his mortgage payment and is renting his previous home. (AX A.) His wife has found employment at their new location, with a starting salary of \$96,000 per year, a \$27,000 pay increase.

In Applicant's response to the FORM, he submitted a copy of his contract with a law firm he hired in October 2018 to assist him in challenging errors on his credit reports (AX C.) A September 2018 credit report reflects a disputed debt, but it appears that this dispute was filed before Applicant hired the law firm. (FORM Item 7 at 6.)

The SOR alleges the two Chapter 7 bankruptcy discharges (SOR ¶¶ 1.a and 1.b), the Chapter 13 bankruptcy petition (SOR ¶ 1.c), and five delinquent debts incurred after Applicant's bankruptcy discharge in March 2004 (SOR ¶¶ 1.d-1.h). Applicant's bankruptcy filings and delinquent debts are reflected in credit reports from February 2001 (FORM Item 5), October 2014 (FORM Item 6) and September 2018 (FORM Item 7.) The evidence concerning these debts is summarized below.

SOR ¶ 1.d: car loan charged off for \$12,944. Applicant explained that he purchased this car for his brother, who failed to make the payments. Applicant surrendered the car to the creditor, who sold it. He submitted evidence of a settlement agreement in which the creditor agreed to accept \$3,900, payable in 24 monthly \$60

installments, to begin in August 2018.² He did not submit documentation showing that any payments have been made.

SOR ¶¶ 1.e and 1.f: collection accounts for two debts to the same creditor for \$10,434 and \$3,199. In Applicant's answer to the SOR, he stated that both accounts were current. The SOR alleges the name of the creditor and amounts similar to the amounts reflected in the credit reports, but it does not provide the account numbers for these two debts. The October 2014 credit report reflects two accounts with this creditor, both of which are reported as current. (FORM Item 6 at 7-8.) The September 2018 credit report also reflects two accounts with this creditor. One debt has the same account number as one of the debts in the October 2014 credit report and one has a different account number. One is past due for \$63 and the other is past due for \$265. No other debts to this creditor are listed in either credit report. The credit reports establish that the accounts are either current or that the amount of the debt has been substantially reduced.

SOR ¶ 1.g: credit-card account placed for collection of \$1,772. In Applicant's answer to the SOR, he submitted evidence of a payment agreement providing for monthly \$25 payments, but he provided no documentary evidence that any payments had been made.

SOR ¶ 1.h: credit-card account charged off for \$463. In Applicant's answer to the SOR, he admitted this debt and promised to make arrangements to pay it. The September 2018 credit report reflects that this debt was charged off for \$463 and that it is disputed. The record does not reflect the basis for the dispute. (FORM Item 7 at 6.) The debt is not resolved.

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.

² It is unclear whether Applicant's evidence contains the whole agreement, because the total amount of the agreed payments (24 payments of \$60) is \$1,440, less than the agreed settlement amount.

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 three 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 not established. Applicant's two divorces adversely affected his finances and were conditions largely beyond his control. However, Applicant presented no evidence of reasonable efforts to resolve his debts before resorting to Chapter 7

bankruptcy. It is not clear whether Applicant's geographical relocation was voluntary or involuntary, but it had financial consequences when he was unable to sell his home and his wife left her employment. However, the end result was to Applicant's financial benefit, especially with respect to the dramatic increase in his wife's income. His brother's failure to make the car payments caused the debt in SOR ¶ 1.d and was a condition beyond his control. However, he has not demonstrated responsible conduct regarding this debt because he presented no evidence that he made payments under the agreement he reached with the creditor. He has not presented any evidence of conditions beyond his control that caused the debts alleged in SOR ¶¶ 1.e-1.h.

AG ¶ 20(c) is not established. Applicant hired a law firm to assist him in challenging incorrect information on his credit reports, but there is no evidence that the law firm provided him with the financial counseling contemplated by this mitigating condition. He received financial counseling in connection with his three bankruptcy filings, but he has not reached the point where there are "clear indications" that his financial problems are under control.

AG ¶ 20(d) is established for the two debts alleged in SOR ¶¶ 1.e and 1.f, because the credit reports reflect Applicant's substantial progress in resolving them. It is not established for the debts alleged in SOR ¶¶ 1.d and 1.g, because he presented no documentary evidence of payments. It is not established for the debt alleged in SOR 1.h, because he presented no evidence of payments, a payment agreement, or other resolution of the debt.

AG ¶ 20(e) is not established. The September 2018 credit report reflects that the debt alleged in SOR ¶ 1.h debt is disputed, but Applicant submitted no evidence regarding the basis for the dispute or resolution of the debt.

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).³

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

³ 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.

additional comment. Applicant served honorably in the U.S. Army for ten years. He has worked for his current employer for 15 years and has held a security clearance. However, he has a long history of financial problems. He has been overly indulgent in his generosity to his brother and his adult daughter, and he has not yet resolved the debts incurred on their behalf. His Chapter 13 bankruptcy petition was triggered by his overspending on his most recent wedding. Because he 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**

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	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