



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



In the matter of: [Redacted] Applicant for Security Clearance)))))	ISCR Case No. 18-01837
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Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2019

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 September 11, 2015. On July 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 October 4, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on October 24, 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 December 1, 2018, and did not respond. The case was assigned to me on March 1, 2019.

The FORM included a summary of a personal subject interview (PSI) conducted on April 23, 2018 (FORM Item 4). 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 Applicant 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 57-year-old employee of a federal contractor. He has worked for his current employer since February 2018. (FORM Item 4.) When he submitted his SCA, he had been employed by various federal contractors, with short periods of unemployment between contracts, since at least October 2003. He was deployed overseas for most of the time. He was laid off in December 2016 and unemployed until May 2017. He worked for other federal contractors from May 2017 until he was hired by his current employer. His SCA reflects that he has never had a security clearance.

Applicant served on active duty in the U.S. Army from September 1984 to February 1989 and received an honorable discharge. He married in March 1985. He has three adult children.

The SOR alleges six delinquent credit-card accounts reflected in credit reports from October 2015 (FORM Item 5) and April 2018 (FORM Item 6) and totaling about \$41,440. During the April 2018 PSI, Applicant told an investigator that he had 26 credit cards and became financially overextended because of his son's health problems, several deaths in the family, and periods of unemployment. In his answer to the SOR, he stated that he had closed all his credit-card accounts except the six alleged in the SOR. (FORM Item 4 at 3.) The evidence concerning the debts alleged in the SOR is summarized below.

¹ Applicant's personal information is extracted from his security clearance application (FORM Item 3) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶¶ 1.a-1.c: three credit-card accounts issued by the same bank placed for collection of \$14,280; \$4,755; and \$2,550. In the April 2018 PSI, Applicant stated that these accounts were paid in full. (FORM Item 4 at 3.) The April 2018 credit report reflects that all three were charged off in June and July 2017. (FORM Item 6 at 10.) When he answered the SOR in October 2018, he stated that he intended to repay these debts, but he provided no evidence of payments, payment agreements, or other resolution of the debts.

SOR ¶ 1.d: credit-card account placed for collection of \$5,258. In his answer to the SOR, Applicant stated that he was making payments on this debt. He provided no evidence of payments, payment agreements, or other resolution of this debt.

SOR ¶ 1.e: credit-card account charged off for \$11,954. This account was charged off in October 2015. (FORM Item 5 at 5.) In the PSI, Applicant stated that this debt was paid in full in 2016 or 2017. (FORM Item 4 at 3.) In his answer to the SOR, Applicant promised to pay this debt. He provided no evidence of payments, payment agreements, or other resolution of this debt.

SOR¶ 1.f: credit-card account charged off for \$2,643. The April 2018 credit report reflects the account as charged off in April 2014. (FORM Item 6 at 11.) In the PSI and his answer to the SOR, Applicant stated that had paid this debt in full in 2018. (FORM Item 4 at 4.) He did not submit any evidence of payments, payment agreements, or other resolution of this debt.

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 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;

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 recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment were conditions largely beyond his control and were reflected in his SCA and verified in the PSI. However, he has provided no details and no documentation of the financial impact of his son's illness or the deaths in the family. He also failed to establish that he acted responsibly under the circumstances. He provided no information about his income and expenses. He provided no documentary evidence of payments, payment agreements,

contacts with creditors, negotiations, or other efforts to resolve the debts alleged in the SOR.

AG ¶ 20(c) and 20(e) are not established. Applicant submitted no evidence of counseling, and he has not disputed any of the debts alleged in the SOR.

AG ¶ 20(d) is not established. Applicant stated his intent to pay all the debts alleged in the SOR, but promises to pay delinquent debts are 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). He claimed that the debts alleged in SOR ¶¶ 1.e and 1.f were paid, but he provided no documentary evidence to support his claim. When applicants claim that debts have been resolved, they are expected to present documentary evidence to support their claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

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). 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**

Subparagraphs 1.a-1.f:

Against 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