



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



In the matter of:)	
)	
[Redacted])	ISCR Case No.18-02335
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 29, 2016. On November 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on December 17, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January

28, 2019, and the case was assigned to me on February 26, 2019. On February 28, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of two other witnesses, and submitted Applicant's Exhibits (AX) A through I, which were admitted without objection. I kept the record open until April 19, 2019, to enable him to submit additional documentary evidence. He timely submitted AX J through T, which were admitted without objection. DOHA received the transcript (Tr.) on April 5, 2019.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.f, 1.h, and 2.a. He denied the allegation in SOR ¶ 1.i. Department Counsel withdrew SOR ¶ 1.g. Applicant's admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old employee of a defense contractor, involved in the test and evaluation of training systems. He married in July 2006. He and his wife have two children, ages 12 and 3. He has worked for his current employer since March 2016. He served on active duty in the U.S. Navy from September 2004 to May 2014 and received an honorable discharge. He spent six years on sea duty as a tactical air controller and four years as a tactical air control instructor. (Tr. 35.) He first received a security clearance in June 2004.

Applicant left the Navy to care for his elderly and disabled mother, who had lived alone since Applicant's father passed away in 2005. He intended to stay in the Navy but was unable to obtain an assignment near his mother. He thought he had a job with a defense contractor waiting for him after his discharge, but he was mistaken. He planned to attend college, but did not realize that the GI Bill pays a housing allowance only for the time actually spent in school. He realized in hindsight that he had not planned well for the financial challenges of leaving the Navy. (Tr. 35-36.)

Applicant's mother passed away in October 2017. In December 2018, Applicant was appointed the administrator of his mother's estate. He had anticipated inheriting his mother's investments in certificates of deposit totaling more than \$100,000. After his mother's death, he discovered that his sister was the sole beneficiary for the certificates of deposit. (Tr. 41; AX I.) However, he inherited his mother's home, two other parcels of land, and three vehicles. (Tr. 47.)

Applicant was unemployed after his discharge until March 2015. He was bitten by a kitten that he had adopted in early 2015. The bite wound became infected, and he contracted Bell's palsy (temporary facial paralysis), which lasted about eight weeks. His

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

wife became pregnant in February 2015. Between March 2015 and obtaining his current employment, he had no medical insurance. He began classes at a community college, but dropped out during his second semester due to the Ball's palsy. He incurred an indebtedness to the Department of Veteran's Affairs for failing to complete the semester, which was collected by garnishment of his pay. (Tr. 43-44.)

Applicant was fired from two jobs for customer-service issues in vehicle repair shops in August 2015 and January 2016. He was unemployed for one month in 2016 and worked for one month in a tire store until he began his current job. In March 2017, he incurred about \$6,000 in veterinary fees when the family dog became ill and eventually died. (GX 5 at 4.)

Applicant's unemployment, underemployment, and unexpected medical and veterinary expenses caused him to fall behind on his debt payments, resulting in the debts alleged in the SOR, which are reflected in his credit reports from January 2018 (GX 2), February 2018 (GX 3), and November 2018 (GX 4). The evidence concerning these debts is summarized below.

SOR ¶ 1.a: credit-card account charged off for \$13,511. At the time of the hearing, he believed that he had arrived at a settlement with the creditor, but he had no documentation and did not know the specific terms of the settlement. (Tr. 46.) On April 10, 2019, about two weeks after the hearing, Applicant agreed in writing to pay this debt in full by May 31, 2019. (AX R.)

SOR ¶ 1.b: deficiency of \$10,653 after repossession of vehicle. Applicant bought a car about a week after he was hired by his current employer, and he incurred a high interest rate because of his poor credit record. (Tr. 38.) He borrowed about \$30,000 to purchase the car. (Tr. 47.) He testified that he bought an expensive car because he had a long commute to work, and he wanted a car that was comfortable and enjoyable. He admitted that, in hindsight, it was a "really bad idea." (Tr. 61-62.) He surrendered the car when he could not make the payments. He has a payment agreement for this debt, and he made a \$25 payment in November 2018 and \$100 payments in December 2018, January 2019, February 2019, and March 2019. (AX A.)

SOR ¶ 1.c: credit-card account charged off for \$9,754. Applicant received a settlement offer for this debt in February 2018. (AX B.) He accepted the offer in April 2019 and agreed to pay a lump-sum of \$1,950 by May 31, 2019. (AX Q.)

SOR ¶ 1.d: delinquent automobile loan charged off for \$7,943. This vehicle has not been repossessed, and Applicant continues to drive it. (Tr. 50.) In December 2018, Applicant received an offer to settle this debt for \$1,985. (AX C.) He accepted the offer in April 2019 and agreed to pay the amount due by May 31, 2019. (AX S.)

SOR ¶ 1.e: credit-card account placed for collection of \$758. Applicant paid this debt in February 2011. (AX D.)

SOR ¶ 1.f: credit-card account placed for collection of \$849. Applicant paid this debt in February 2017. (AX T.)

SOR ¶ 1.g: withdrawn. (Tr. 66-67.)

SOR ¶ 1.h: delinquent federal taxes of \$3,000. Applicant's 2015 federal income tax return was audited and he was notified by the IRS that he owed additional taxes. He had not paid them as of the date of his interview with a security investigator in June 2018. (GX 5 at 5.) The debt was paid by involuntary application of his tax refund when he filed his federal income tax return for 2017.

SOR ¶ 1.i: failure to file federal income taxes returns for 2017. Applicant told a security investigator that he failed to timely file his federal income tax return for 2017 due to procrastination and misplacing documentation regarding mortgage interest on the family home. He had not yet filed the past-due return when he was interviewed by the security investigator in June 2018. (GX 5 at 5.) He filed the return in September 2018, and his \$3,121 refund was applied to the tax debt from 2015. (AX E; AX F; AX G.)

Applicant has not sought or received financial counseling since his financial problems began. (Tr. 57.) His take-home pay is about \$4,000 per month. (Tr. 58.) His wife's take-home pay is about \$1,600 per month. (Tr. 61.) He and his wife now live in the home he inherited from his mother. (Tr. 46-47.) Because the inherited home requires numerous repairs, they have no net monthly remainder. (Tr. 64.)

Applicant's monthly payment on his previous home is \$1,600 per month, and the balance due on the loan is about \$212,000. He has listed his previous home for sale for \$274,990. (AX M.) On the advice of his realtor, he has made repairs to the home costing about \$2,141, and his realtor is confident that it will sell quickly. (AX N through O.) He is also making the mortgage-loan payments on his mother's home, where he now lives, which are \$860 per month for the first mortgage and \$400 on an equity line of credit. (Tr. 60.) Applicant is counting on the sale of his previous home to pay off the debts alleged in SOR ¶¶ 1.a-1.d. (Tr. 51.)

From January to September, 2017, Applicant improperly used his employer's credit card to buy fuel for his car, because he could not afford to buy fuel for his commute to and from work. He admitted that he knew the terms under which he was given a company credit card did not permit him to use it for personal expenses. (Tr. 56.) He testified that he was afraid to tell anyone in the company that he was having financial issues. (Tr. 57.) His misuse of the credit card was discovered when he missed a payment and the credit-card issuer reported the late payment to his employer. (GX 5 at 4.) His program manager reprimanded him for misuse of the credit card. Applicant signed an agreement that he would be terminated if he misused a company credit card again. (Tr. 56.)

The same program manager who reprimanded Applicant submitted a letter stating that his work has been superior, and he recommended that Applicant be given

another chance. (AX J.) Applicant's facility security manager also noted Applicant's changed behavior and his "unyielding attempt to rebuild trust with the organization." (AX K.)

The team lead for the contract on which Applicant is working testified that Applicant's Navy experience has made him the "go-to guy" on their current contract. (Tr. 24-25.) A co-worker has known Applicant for two years, and they have become friends. The co-worker testified that Applicant has truthfully disclosed his financial problems and has demonstrated that he is trustworthy. (Tr. 29-30.) Both witnesses knew that Applicant has financial problems but were not familiar with the details. (Tr. 26, 31.)

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 fully established. Applicant's unemployment from May 2014 to March 2015, his affliction with Ball's palsy, and his unexpected and uninsured medical and veterinary expenses were conditions largely beyond his control. The evidence is sparse regarding the circumstances under which he was fired in August 2015 and January 2016, and it falls short of establishing that these two incidents were conditions largely beyond his control. Furthermore, the evidence does not establish that he acted responsibly regarding the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.h. Shortly after he began his current employment, he bought a car that he could not afford. He did nothing to resolve his tax debt from 2015, and it was eventually resolved by an involuntary capture of his tax refund. However, he acted responsibly regarding the debts alleged in SOR ¶¶ 1.e and 1.f and resolved them before he received the SOR.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.f. It is not established for the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d, because Applicant has made no payments on these debts. 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). Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). Applicant is counting on the sale of his home to comply with his promise to pay these debts by May 31, 2019, but it is unlikely that he will be able to find a buyer, close the sale, and collect the proceeds by that date. The tax debt alleged in SOR ¶ 1.h was not resolved through good-faith efforts initiated by Applicant, but rather by involuntary application of a subsequent tax refund.

AG ¶ 20(g) is not fully established. Applicant did not make any arrangements to pay his tax debt for 2015. Instead, it was collected involuntarily by seizure of his tax refund for 2017. Applicant did not file his 2017 federal income tax return until after he was questioned about it by a security investigator. His belated filing of his 2017 return “does not preclude careful consideration of Applicant’s security worthiness based on longstanding prior behavior evidencing irresponsibility.” ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. . . .”

Applicant’s intentional misuse of a company credit card for an extended time period, in violation of the terms under which it was issued, establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that

the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources; and

AG ¶ 16(f): violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

The relevant mitigating condition is AG ¶ 17(c): “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” This mitigating condition is not established. Applicant's conduct was a serious breach of trust extending over a nine-month period. It occurred numerous times, was recent, and did not happen under unique circumstances. He stopped misusing the credit card only because he was caught, not because of any sense of obligation to his employer.

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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have noted that Applicant has satisfied some of his delinquent debts and taken steps to resolve the largest one. However, his plan for complying with his promises to pay the remaining debts rests on the unlikely possibility that he will be able to find a buyer for his former home, close the sale, and collect the proceeds by May 31, 2019, which is only about five weeks away.

Applicant did not begin to seriously address the large debts in SOR ¶¶ 1.a, 1.c, and 1.d until it was clear that his security clearance was in jeopardy. He never affirmatively addressed the tax debt. Instead, he passively allowed it to be involuntarily collected after he filed his overdue return for 2017. He needs more time to stabilize his finances and establish a track record of financial responsibility. See Directive ¶ E3.1.38 through E3.1.40 (reapplication authorized after one year). After weighing the

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.

disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial problems and personal conduct.

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: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraphs 1.c and 1.d: Against Applicant

Subparagraphs 1.e and 1.f: For Applicant

Subparagraph 1.g: Withdrawn

Subparagraphs 1.h and 1.i: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a: 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