



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-00229
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2019

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 (SCA) on June 15, 2017. On March 15, 2019, 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 April 12, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 1, 2019, and the case was assigned to me on July 23, 2019. On August 7, 2019, the Defense Office of

Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 28, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. DOHA received the transcript (Tr.) on September 9, 2019.

Jurisdiction

At the hearing Applicant testified that he had "resigned" from his job with a defense contractor on June 22, 2019, because he could not enter his workplace without a clearance. He testified that his employer offered him another position, but he "just walked away" and was unemployed. (Tr. 28.) He also testified that he had been offered another job, contingent on obtaining a security clearance. (Tr. 31.) The Directive ¶ 4.4 states that the adjudication process "shall cease upon termination of the applicant's need for access to classified information," except in cases where the hearing has commenced, a clearance decision has been issued, or the applicant's security clearance was suspended and the applicant provided a written request that the case continue. See ISCR Case No. 05-04831 (App. Bd. Nov. 29, 2006).

Applicant's clearance was not suspended. It expired due to the lapse of more than two years after he retired from the Navy. See ISCR Case No. 15-02480 (A.J. Sep. 19, 2016 at 7-8) (explaining differences between active, current, and expired security clearances). As of the date of the hearing, the Joint Personnel Adjudications System (JPAS) reflected that Applicant was being sponsored for a clearance by the contractor who hired him in April 2019. On September 17, 2019, three weeks after the hearing, JPAS still reflected that he was being sponsored by the same company. (Hearing Exhibit I.) Notwithstanding Applicant's decision to "resign," he remains on the employer's records, apparently in an unpaid leave status, and his sponsor will reinstate him if he receives a security clearance. He also has another employment offer contingent on obtaining a security clearance. I conclude that DOHA has jurisdiction to complete the adjudication of his application for a security clearance.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, explaining that some of the debts had been satisfied or were being satisfied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 50-year-old logistics auditor employed by a defense contractor since April 2017. He served on active duty in the U.S. Navy from October 1987 to June 2014 and retired as a chief petty officer. He was unemployed from June 2014 to April 2015. He worked for a ride-sharing company from April 2015 until he was hired by his current employer. (GX 2 at 3.) He held a security clearance while he was on active duty in the Navy. (Tr. 27.)

Applicant married in March 1992 and he has two children. He obtained an associate's degree in 2010, a bachelor's degree in 2011, and a master's degree in 2012.

The SOR alleges 32 delinquent debts totaling about \$80,000. The debts are reflected in three credit reports and court records reflecting judgments entered against Applicant. (GX 3-6.) Applicant disclosed three delinquent debts, including the debt alleged in SOR ¶ 1.I, when he submitted his SCA, and he declared his intention to "schedule new monthly payments on all [his] credit cards to have them all paid off in 2018." (GX 1 at 30-34.) When he was interviewed by a security investigator in April 2018, he was confronted with numerous delinquent debts. He claimed to be resolving several of them but provided no documentation of his claims. (GX 2 at 5-9.) The evidence concerning the debts and judgments alleged in the SOR is summarized below.

SOR ¶ 1.a: debt to electronics and appliance store referred for collection of \$5,449. In November 2017, a judgment was entered against Applicant for this debt. (GX 6 at 4.) In his SOR answer, he promised to pay this debt by December 2019. It is not resolved.

SOR ¶ 1.b: credit-card debt for \$568. Applicant settled this debt in August 2019 (AX F.)

SOR ¶ 1.c: home-improvement debt referred for collection of \$3,438. A default judgment was entered against Applicant for this debt in January 2019. (GX 6 at 1.) In his SOR answer, he promised to pay this debt by November 2019. It is not resolved.

SOR ¶ 1.d: credit-card debt for \$1,525. In Applicant's SOR answer, he promised to pay this debt by September 2019. It is not resolved.

SOR ¶¶ 1.e and 1.f: medical debts for \$143 and \$123. In Applicant's SOR answer, he stated that these debts were paid in March 2019. He submitted no documentation of payment.

SOR ¶ 1.g: department store debt for \$1,414. In Applicant's SOR answer, he promised to pay this debt by December 2019. It is not resolved.

SOR ¶¶ 1.h, 1.i, and 1.j: collection accounts for \$1,197; \$161; and \$317. Applicant paid these debts in August 2019. (AX C, D, and E.)

SOR ¶¶ 1.k, 1.m, and 1.n: debts to the same bank for \$1,240; \$7,536; and \$1,045. In Applicant's SOR answer, he promised to resolve these debts in September 2019, December 2019, and March 2020. He submitted evidence that he made payments on two other debts to this creditor in November 2018 and August 2019. (AX L and M.) However, he submitted no evidence of payments or payment agreements for the debts alleged in the SOR, which are not resolved.

SOR ¶ 1.i: debt to furniture store for \$4,088. This debt was reduced to judgment in March 2017. (GX 6 at 5.) Applicant paid it in July 2019. (AX A; Tr. 33-34.)

SOR ¶ 1.o: credit-card debt for \$2,259. In December 2017, a default judgment was entered against Applicant for this debt. (GX 6 at 2.) In his SOR answer, he promised to pay this debt by September 2019. He made a payment agreement on August 22, 2019 (six days before the hearing) and promised to make payments in August, September, and October 2019. He submitted no evidence of payments. The debt is not resolved.

SOR ¶ 1.p: debt to credit union for \$4,126. In Applicant's SOR answer, he stated that he had a payment agreement for monthly \$84 payments. He submitted no documentary evidence of payments or a payment agreement.

SOR ¶ 1.q and 1.ff: debt to credit union for about \$12,000. In Applicant's SOR answer and at the hearing, he stated that these debts were duplicates and that he was paying \$162 per month. He submitted no documentation of payments or a payment agreement.

SOR ¶ 1.r: debt to credit union for \$6,093. In Applicant's SOR answer, he stated that he settled this debt for \$2,498 and was paying \$150 per month. He submitted no documentary evidence of payments or a payment agreement.

SOR ¶ 1.s: charge-account debt for \$3,331. In Applicant's SOR answer, he promised to pay this debt by December 2019. It is not resolved.

SOR ¶ 1.t: department-store debt referred for collection of \$1,224. Applicant settled this debt in February 2019. (AX H.)

SOR ¶¶ 1.u, 1.w-1.y, 1.aa, and 1.cc: credit-card accounts issued by the same bank for \$3,483; \$1,394; \$3,333; \$3,345; \$795; and \$1,048. Applicant paid these debts in June 2019. (AX N.)

SOR ¶¶ 1.v and 1.z: credit-card accounts issued by the same bank delinquent for \$2,234 and \$3,052. In Applicant's SOR answer, he promised to resolve these debts by May 2019. They are not resolved.

SOR ¶ 1.bb: office-supply store debt for \$179. In Applicant's SOR answer, he promised to resolve this debt by May 2019. It is not resolved.

SOR ¶ 1.dd: charge-account debt for \$512. In Applicant's SOR answer, he promised to resolve this debt by December 2019. It is not resolved.

SOR ¶ 1.ee: past-due payments on time share for \$1,080. In Applicant's SOR answer, he stated that he was "working on settlement amount." He submitted no evidence of negotiations, payments, or a payment agreement. It is not resolved.

Applicant has a history of financial problems. He purchased a luxury sports car for \$68,000 in 2012. He purchased the time share alleged in SOR ¶ 1.ee in 2014 and has never used it. He incurred federal and state tax debts for 2015 and 2016 by making early withdrawals from his 401k account for “stuff around the house.” His federal tax debt was about \$8,000 and his state tax debt was about \$2000. He resolved the tax debts through payment agreements. (GX 2 at 9.)

Applicant has not sought or received financial counseling. He declined an offer from his employer to reassign him to a job not requiring a security clearance. However, he has made some progress in righting his financial ship. He paid off the mortgage loan on his home in June 2018, making more funds available to pay off his debts. (Tr. 55.) In January 2019, he resolved several debts, not alleged in the SOR, to two insurance companies, a discount department store, an electronics store, and a bank. (AX G and I through M.)

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 submitted at the hearing 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 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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's 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 after his retirement from the Navy and his underemployment from April 2015 to April 2017 were conditions beyond his control. However, he has not acted responsibly. He disclosed several delinquent debts in his SCA, attributed them to unemployment, and indicated that he was in the process of resolving them. He was confronted with his delinquent debts when he was interviewed by a security investigator in April 2018, but his first significant action to resolve his debts was in June 2018, ten months after he found employment, when he paid off his mortgage loan. Six months elapsed before his next significant step, when he paid off several delinquent debts that were not alleged in the SOR.

Applicant declined an offer of reassignment from his current employer in June 2019, choosing unemployment over a less desirable job. He has not sought or received financial counseling. Most of his activity to resolve his debts occurred after he received the SOR. "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(d) is established for the debts alleged in SOR ¶¶ 1.b, 1.h-1.j, 1.l, 1.t, 1.u, 1.w-1.y, 1.aa, and 1.cc, which have been resolved. Although Applicant claimed he was making payments on the debts alleged in SOR ¶¶ 1.q, 1.r, and 1.ff and had paid the debts alleged in SOR ¶¶ 1.e and 1.f, AG ¶ 20(d) is not established because he submitted no

documentary evidence to support his claim. When an applicant claims to have resolved certain debts, he or she is expected to present documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.g, 1.k, 1.m, 1.n, 1.s, and 1.dd, which Applicant promised to pay by a future date. 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).

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. An administrative judge should consider the nine adjudicative process factors listed at 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). I have considered Applicant's long and honorable service in the U.S. Navy, during which time he held a security clearance without incident. 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.g, 1.k, 1.m-1.s, 1.v, 1.z, 1.bb, and 1.dd-1.ff: **Against Applicant**

Subparagraphs. 1.b, 1.h-1.j, 1.l, 1.t, 1.u, 1.w-1.y, 1.aa, and 1.cc: **For Applicant**

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