



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



In the matter of:)
)
) ISCR Case No. 19-00746
)
Applicant for Security Clearance)

Appearances

For Government: Alison Marie, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Concerns) and E (Personal Conduct). Applicant defaulted on 25 accounts and has admitted each delinquent debt. The total of the admitted debts is about \$31,000. The SOR also alleges that he deliberately provided false information when he submitted his security clearance application by omitting information about a judgment and by failing to disclose 22 pre-existing debts alleged in the SOR. Applicant provided insufficient evidence in mitigation of the security concerns raised under Guideline F. The Government’s evidence, however, did not establish the falsification allegations under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

In February 2017, Applicant submitted a security clearance application (SCA) seeking a clearance as a first-time applicant. He had previously applied for a position of trust. In April 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD

Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on an unspecified date, and elected to have his case decided on the written record in lieu of a hearing. As noted, he admitted the allegations under Guideline F, but failed to provide any documentation regarding mitigating steps taken to address his debts. He did not admit or deny the two falsification allegations under Guideline E, but he did write an apology for not having the information about his debts when he prepared the SCA. He noted in his answer that his wife suffered from diabetes for three years before her death and that as a result of his lost time at work, he was let go at a good-paying job and has struggled financially. He concludes his SOR response writing: "I have now got on the right path of paying off my debts on my credit." (GE 3 at 4.)

On July 8, 2019, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included ten attached documents, identified as Items 1-10. Applicant received the FORM on July 15, 2019. Department Counsel notified Applicant in the FORM that he had the opportunity to file objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He did not respond to the FORM.

By failing to respond to the FORM, Applicant raised no objection to the admission of Item 5 attached to the Government's FORM, which is an unauthenticated report of investigation summarizing Applicant's July 31, 2018 background interview. Department Counsel advised Applicant in her FORM that Applicant had the right to object to the admissibility of this evidence as unauthenticated by a government witness and that his failure to do so may constitute a waiver of any objection he may have. He was also advised in the FORM that he could provide corrections or updates to the information summarized in the document. By failing to respond to the FORM, Applicant made no objections or comments about Item 5. I conclude that he has waived his right to object to the admissibility of this document.

I have marked the ten Items attached to the FORM as Government Exhibit (GE) 1-10. The evidentiary documents, GE 4-10, are admitted without objection. The case was assigned to me on September 20, 2019.

Findings of Fact

I have incorporated Applicant's admissions to the allegations set forth in SOR ¶¶ 1.a-1.y. I have also considered his notation in his SOR response that at the time he prepared the SCA, he was unaware of the delinquent debts on his credit report. Applicant's personal information is extracted from GE 4, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of

the pleadings, the Government's FORM, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 47 years old and is a widower with two children, ages 23 and 15. His wife of 15 years died in 2015 or early 2016 after a three-year illness. He lost his job in 2015 due to missing too many days from work to care for his wife during her illness. Since October 2016, he has worked as a warehouse tech for his security clearance sponsor. He does not claim in his SCA any periods of unemployment, though he may have been unemployed or underemployed for a brief period in late 2015 and early 2016. In his SOR response, he describes the job he lost in 2015 as a "good paying job." He also suggests that he suffered a financial loss working at another job in 2016 before he began working in his current position. He concludes with the following statement: "So I did what I could to make ends meet. I have now got on the right path of paying off my debt on my credit [report]." (SOR response at 4.)

As noted, Applicant has admitted all of his indebtedness set forth in the 25 SOR allegations, which total about \$31,000. The SOR alleges 16 medical collection debts (SOR ¶¶ 1.f, 1.g, 1.i, 1.k, 1.m-1.t, and 1.v-1.y) with a total amount of \$12,304. He noted in his background interview that his insurance had lapsed, presumably after he lost his job in 2015. He acknowledges some of the bills are for his medical care. Presumably some or most of the others relate to his wife's medical care, though some of the medical bill may also have been for medical expenses for his children. The nine remaining debts (SOR ¶¶ 1.a-1.e, 1.h, 1.j, 1.l, and 1.u) total \$18,723 with an auto loan deficiency debt of \$10,646 following a voluntary repossession in 2014, being the largest debt. The other large non-medical debts alleged are for an electric bill (SOR ¶ 1.b), two delinquent rent bills (SOR ¶¶ 1.h and 1.j) and a cell phone bill (SOR ¶1.l). These bills total \$6,043. (GE 3, 5, 6-8.)

In his July 2018 background interview. Applicant denied any knowledge about having any delinquent debts. When confronted by his the interviewer that he had a number of outstanding debts, Applicant stated that he intended to contact these creditors and work with them to pay off his debts. Since he failed to provide any evidence of payments with his SOR response and he did not respond to Department Counsel's FORM, the record contains no evidence of any steps he took to pay the debts alleged in the SOR. (GE 3, 5.)

In his background interview, Applicant advised the interviewer that he was unaware of any collection accounts. He also stated that he was unaware of any judgments against him, including the judgment in favor of a residential company in the amount of \$757, which is alleged in SOR ¶ 1.h. The interviewer did not develop any facts to suggest that Applicant knew about these debts at the time he prepared the SCA or that he deliberately omitted the debts from the SCA. In his SOR response, Applicant did not specifically respond to the two Guideline E falsification allegations. Instead, he wrote the following comment: "Please forgive me I wasn't familiar with what was all on my credit, I apologize for my lack of information." It is apparent that his intent was to deny he deliberately provided false information because he was unaware of them. (GE 3, 5.)

Department Counsel submitted with his FORM part of an application for a position of public trust (SF85P) signed by Applicant in April 2011 and an April 2011 credit report. She notes that Applicant's credit report reflects that he had about \$22,000 in delinquent debt and that he failed to disclose these debts in his SF85P as he did in the SCA. (GE 9, 10; FORM at 6.)

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 as follows:

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.

Applicant's admissions in his SOR response and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline:

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

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

AG ¶ 19(e) "consistent spending beyond one's means . . . , which may be indicated by excessive indebtedness, . . . a history of late payments or of non-payments, or other negative financial indicators."

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(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 creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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 partially established. At least some of the debts arose due to the unique circumstances of the terminal illness of Applicant's wife and his loss of employment due to that situation. Applicant has not, however, provided sufficient evidence to permit a conclusion that it is unlikely that his negative financial condition will recur or that his indebtedness does not cast doubt upon his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is partially established to the extent that some of Applicant's debts likely arose due to circumstances beyond his control. He presented insufficient evidence to support a conclusion that he has acted responsibly under the circumstances since the record contains no evidence that he is making payment arrangements with any of his creditors.

AG ¶ 20(c) is not established. Applicant provided no evidence that he has received financial counseling or that his indebtedness is being resolved or is under control.

AG ¶ 20(d) is not established. Applicant provided no evidence that he has initiated a good-faith effort to repay his creditors or otherwise resolve his numerous debts.

AG ¶ 20(e) is not established. Applicant does not dispute any of the debts alleged in the SOR.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15 as follows:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The following disqualifying condition under Guideline E is potentially applicable:

AG ¶16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Department Counsel seeks to establish that Applicant deliberately omitted information in response to questions in the SCA regarding his financial condition. One could reasonably conclude that the evidence presented was sufficient to meet the Government's substantial evidence burden establishing that Applicant deliberately omitted derogatory information about his debts. An alternative reasonable view of the evidence, however, is that Applicant was simply unaware of his financial condition in February 2017 when he prepared the SCA. The fact that he had endured his wife's three-year terminal illness and the loss of his job supports the conclusion that he had simply not focused on his debts at that time. The fact that he had made the same mistake in 2011 supports an argument that Applicant lacked the training to manage his finances and to review his credit report. I conclude that Applicant had insufficient information about his debts at the time he prepared his SCA, and therefore, he did not intentionally omit information about his debts in the SCA. Accordingly, I conclude that the Government has failed to meet its burden of proof to establish a disqualifying condition under this guideline.

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). These 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under these Guidelines, 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.y:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	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.

John Bayard Glendon
Administrative Judge