



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-01011
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2019

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 January 26, 2018. On April 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 May 3, 2019, and requested a decision on the written record. On July 19, 2019, he requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 24, 2019, and the case was assigned

to me on August 27, 2019. On the same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 25, 2019.

On September 12, 2019, Applicant requested a continuance until mid-October so that a court hearing on garnishment of his wages could be completed before his DOHA hearing. I denied his request but informed him that I would keep the record open until October 18, 2019, to enable him to provide documentation regarding the status of the delinquent debts alleged in the SOR. I convened the hearing on September 25, 2019, as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through L, which were admitted without objection.

I kept the record open until October 18, 2019, as promised. I also informed Applicant that I would entertain a request to reopen the hearing if he believed that any documents submitted after the hearing were not self-explanatory. He did not submit any additional documentary evidence or request that the hearing be reopened. DOHA received the transcript (Tr.) on October 15, 2019.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the delinquent debts alleged in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 63-year-old database manager employed by a defense contractor since January 2008. He worked in non-government jobs from January 1999 to October 2007. He was unemployed from October 2007 until he was hired by his current employer. He received a security clearance in January 2008.

Applicant married in June 1984, divorced in December 2005, and married again in July 2010. He has a 32-year-old son who is currently incarcerated and three stepchildren, ages 25, 26, and 28.

Applicant testified that he incurred legal expenses of about \$2,500 in April 2014, when his adult stepdaughter attacked him, was charged with domestic assault, and filed a complaint against Applicant for domestic assault. Although the stepdaughter's complaint was dismissed, Applicant incurred legal fees defending himself against his stepdaughter's complaint. The stepdaughter no longer lives in the household, and Applicant has had no contact with her for more than a year. (GX 2 at 7.) He did not provide any documentation of his legal fees.

Applicant's son was charged with rape in September 2014. He was convicted in July 2015, and his appeal of his conviction was not successful. (GX 2 at 5.) Although his son is an adult, Applicant felt obligated to assist him with his legal expenses. He believes that his son is innocent. He agreed at the hearing that his decision to help his son was voluntary and was not a legal obligation. (Tr. 71.) He testified that he spent \$15,000 to

\$20,000 for legal fees. He and his wife devoted their incomes to pay the legal fees and used credit cards for living expenses. As the legal fees continued to accumulate, he and his wife were unable to pay their credit-card accounts. (GX 2 at 7-8; Tr. 53.) Applicant did not submit any documentation of the legal fees for his son's defense at trial and subsequent appeal.

Applicant testified that he had medical bills in an unspecified amount for treatment of prostate cancer in 2013, and his wife incurred medical bills of about \$2,500 for arthritis and physical therapy around 2017. Finally, he testified that he incurred about \$800 in unexpected car repairs. (Tr. 55-57.) He provided no documentation of these expenses.

The SOR alleges eight delinquent debts totaling about \$61,380. In December 2017, Applicant signed an agreement with a debt-resolution company to handle the debts alleged in SOR ¶ 1.a-1.g. His agreement required him to deposit \$1,063 per month into a "settlement account." (AX A.) He testified that he terminated this agreement and replaced it with a debt-negotiation agreement with another company in June 2019. This debt-negotiation program requires Applicant to pay \$723 per month, and the estimated program length is 53 months. This program is handling the debts alleged in SOR ¶ 1.b, 1.c, 1.e, 1.f, and 1.g. (AX B.)

Applicant testified that in June 2019, his net monthly income was about \$6,149 and his expenses were about \$2,735, leaving a net monthly remainder of about \$679. (Tr. 44-46.) He testified that he expected his income to change because a new company was taking over the contract under which he was working. (Tr. 44-47.) He also testified that he had a detailed and accurate income and expense record at home and that he would submit it after the hearing. (Tr. 51.) However, he did not present any additional information.

The evidence concerning the debts alleged in the SOR is summarized below. The debts are reflected in credit reports from February 2018 and February 2019. (GX 4; GX 5.)

SOR ¶ 1.a: credit-card account charged off for \$14,516. This debt was included in the debt-resolution program but has not been resolved. The creditor filed a garnishment petition, and a hearing on the petition was scheduled for September 26, 2019, the day after the hearing. (AX C.) Applicant provided no additional evidence regarding the outcome of the hearing. The debt is not resolved.

SOR ¶ 1.b: credit-card account charged off for \$13,597. This debt was included in the debt-resolution program and the debt-negotiation program, but it has not been resolved. In July 2019, the creditor filed a warrant in debt against Applicant. The creditor sought to garnish Applicant's pay and the hearing on the garnishment summons was scheduled for September 26, 2019, the day after the hearing. (AX D.) The hearing was postponed until October 10, 2019. Applicant testified that he hoped that this hearing would result in a negotiated settlement rather than a garnishment. (Tr. 64.) Applicant provided

no evidence regarding the outcome of the hearing and no evidence regarding resolution of the debt.

SOR ¶ 1.c: unsecured loan charged off for \$8,185. This debt was included in the debt-resolution program and the debt-negotiation program. In Applicant's answer to the SOR, he provided evidence that the creditor agreed to settle the debt for \$5,698 in October 2018, to be paid through his debt-resolution plan in 11 installments. However, at the hearing, he testified that he had terminated his contract with the debt-resolution company, that the debt was not yet resolved, and that no further negotiations were underway. (Tr. 59.)

SOR ¶ 1.d: credit-card account charged off for \$956. The February 2019 credit report reflected that the balance on this debt was \$4,262 the payments were past due for \$956, and the account was charged off. (GX 4 at 2.) This debt was included in the debt-resolution program but had not been resolved when Applicant responded to the SOR. In January 2019, Applicant received an offer to settle the debt for \$1,407. (AX E.) There is no evidence that he accepted the offer. He testified that "some payments" had been made on the debt, but he submitted no documentary evidence reflecting any payments. (Tr. 59.)

SOR ¶ 1.e: credit-card account charge off for \$4,046. This debt was included in the debt-resolution program and the debt-negotiation program. In August 2018, the creditor agreed to settle the debt for \$1,718, to be paid in \$50 monthly installments until August 2019 and \$100 installments thereafter. (Answer to SOR; AX G.) Applicant submitted evidence of one \$50 payment on February 27, 2019. (AX F.) He did not submit evidence of any other payments.

SOR ¶ 1.f: department store charge account charged off for \$3,373. This debt was included in the debt-resolution program and the debt-negotiation program. The original debt was for \$4,497. In September 2018, the creditor agreed to settle it for \$3,373. (Answer to SOR) The February 2019 credit report reflects that the debt was charged off for \$3,373. (GX 4 at 2.) In September 2019, Applicant received an offer to settle this debt for \$1,476. (AX H.) There is no evidence that he accepted the offer or made any payments on the debt. He testified that this creditor was receiving payments from his debt-resolution company, but he submitted no documentary evidence reflecting any payments. (Tr. 60.)

SOR ¶ 1.g: credit-card account charged off for \$771. This debt was included in the debt-resolution program and the debt-negotiation program. The February 2019 credit report reflected that the balance on this account was \$2,202, that it was past due for \$771, and that the account had been charged off. In May 2019, Applicant received a settlement offer from the same creditor, but it appears to apply to another debt not alleged in the SOR, because the account number and the balance due do not match the debt reflected in the February 2019 credit report. (AX I.) He testified that his debt-resolution company had made "some payments" on this debt and that the debt-negotiation company was negotiating with the creditor, but he submitted no documentary evidence reflecting any payments or a payment agreement. (Tr. 60.)

SOR ¶ 1.h: time-share account charged off for \$15,936. Applicant acquired this property for \$15,000 in September 2015, before his son’s legal problems arose. (GX 3 at 5; Tr. 68.) He cancelled his purchase contract after paying about \$1,000. In July 2017, he hired a credit-repair company to challenge this debt. The debt was cancelled in November 2017 and an IRS Form 1099-C was issued. (AX J.)

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 evidence submitted at the hearing establish the disqualifying conditions in AG ¶ 19(a) ("inability to satisfy debts") 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;

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 debts are numerous and recent. His son's legal problems and his altercations with his stepdaughter were unusual circumstances. His son has exhausted his legal appeals, and the stepdaughter no longer lives in the household, making similar legal expenses unlikely to recur. However, the other debts alleged in the SOR were not incurred under circumstances making recurrence unlikely.

AG ¶¶ 20(b) and 20(d) are not established. Applicant voluntarily paid his son's legal expenses, but he provided no documentary evidence of the amount of the expenses. He described multiple situations that could qualify as conditions beyond his control, but he submitted no documentary evidence of the situations or their financial impact. He provided no documentation of his uninsured medical bills and car repair bills. He hired several companies to help him resolve his debts, but he has not monitored their progress and was unable to describe what they had accomplished in any detail. He is not making any payments on the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.g. He received settlement offers for the debts alleged in SOR ¶¶ 1.c-1.f, but he submitted no evidence that he had accepted the offers or made the required payments. It is reasonable to expect an applicant to present documentary evidence showing resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(c) is not established. Applicant's debt-resolution, debt-negotiation, and credit-repair companies are not the type of credit-counseling institutions contemplated by this mitigating condition.

AG ¶ 20(e) is applicable to the debt for the time share property alleged in SOR ¶ 1.h. Applicant has not disputed any of the other debts alleged in the SOR.

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). 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.g: **Against Applicant**

Subparagraph 1.h: **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