



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



In the matter of:)
)
) ISCR Case No. 19-01257
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

09/24/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Concerns). Applicant defaulted on five consumer accounts in 2018 and has admitted that he owes these debts, which total about \$30,000. He claims that his wife is seriously ill, but he has not provided any evidence to establish that his delinquent debts were caused by her illness or a lack of insurance. He and his wife have recently filed a Chapter 13 bankruptcy petition. The record shows no further actions taken in that matter. Applicant has provided insufficient evidence in mitigation. Eligibility for access to classified information is denied.

Statement of the Case

On May 18, 2018, Applicant filed a security clearance application (SCA) seeking to renew a previously granted clearance. On May 1, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 May 31, 2019, and elected to have the case decided on the written record in lieu of a hearing. He admitted all five of the SOR allegations, but failed to provide any information about mitigating circumstances or evidence.

Department Counsel submitted the Government's written case in an undated File of Relevant Material (FORM), which included seven attached documents (Items 1-7). A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an 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. In response, he only provided a copy of his voluntary Chapter 13 bankruptcy petition, dated July 28, 2019.

Applicant raised no objection in his response to the admission of Item 7 attached to the Government's FORM, which is an unauthenticated report of investigation summarizing Applicant's September 28, 2018 background interview. Department Counsel had advised Applicant in her FORM that he had the right to object to the admissibility of this evidence as unauthenticated 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. In his response to the FORM, he made no comments about Item 7. I conclude that he has waived his right to object to the admissibility of this document. I have marked the Items attached to the FORM as Government Exhibit (GE) GE 1-7. I have marked Applicant's bankruptcy petition as Applicant Exhibit (AE) A. All documents 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 for in SOR ¶¶ 1.a-1.e in my findings of fact. 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 35 years old and was married in 2012. He earned some college credits, but transferred to a technical institute where he completed his studies in automotive and diesel technology in 2010. He has worked in a number of positions since 2010, including two years (2012-2014) with a major defense contractor. Since October 2016, he has worked as a computer analyst for a government contractor, which is sponsoring him for a clearance.

In 2002, Applicant enlisted in the U.S. Marine Corps and served honorably for five years until his discharge in 2007 with the rank of corporal (E-4). He was granted eligibility

for access to sensitive compartmented information (SCI) in 2003. He was again granted SCI eligibility in 2012 when he began working at the major defense contractor. He was unemployed for about ten months after he was terminated for cause by that contractor for his misuse of a work computer system. The record is unclear whether he retained his top secret and SCI eligibility prior to submitting the SCA.

Applicant provided virtually no information regarding his financial problems except that his wife has a serious illness and has accumulated uninsured medical bills in excess of \$36,000. This information was just briefly mentioned in his September 2018 background interview and then with no details about any connection with his indebtedness, as alleged in the SOR and admitted in his response. As of the date of his background interview in September 2018 and presumably earlier while employed by his sponsor, Applicant had medical insurance that covered his wife's ongoing medical bills. This coverage presumably continues with Applicant's employment with his sponsor. In his background interview, he identified to the investigator six delinquent debts, five of which are now the subjects of the SOR allegations. He advised that he intended to pay these debts through a Chapter 13 bankruptcy that he was preparing with his lawyer to file. The bankruptcy petition was actually filed about 11 months later. He advised that his annual salary is \$66,000. He made no mention of his wife's employment status. The Chapter 13 petition reflects that his wife has not worked since sometime in 2017, when she earned about \$23,000 in that year. The record does not reflect the reason for her loss of income since 2017. (GE 7 at 3; AE A at 8-9.)

SOR ¶¶ 1.a and 1.c – Two credit-card accounts with a credit union charged off in the amounts of \$17,170 and \$5,022, respectively – The credit reports in the record reflect that these accounts were opened in 2014 (SOR ¶ 1.a) and 2017 (SOR ¶ 1.c). Applicant defaulted on both in or about June 2018, and the credit union charged off both accounts. Applicant commented in his September 2018 background investigation that his bankruptcy attorney advised him not to pay anything on these two delinquent accounts or on any of the three other debts alleged in the SOR until ordered to do so by the bankruptcy judge. These two debts and perhaps others debts owed to this creditor are included in Applicant's Chapter 13 bankruptcy petition. (GE 5 at 3; GE 6 at 2; GE 7 at 3; AE A at 9 of 19.)

SOR ¶¶ 1.d and 1.e – Two credit-card accounts with a bank charged off in the amounts of \$1,861 and \$604, respectively – The credit reports in the record reflect that these accounts were opened in 2014 (SOR ¶ 1.d) and 2004 (SOR ¶ 1.e). Applicant defaulted on both in or about July 2018, and the bank charged off both accounts. These debts appear to be included in his Chapter 13 bankruptcy petition. The record evidence suggests that the two accounts were combined, and a civil court entered a judgment in the total debt owed to this creditor. It is unclear however, if this assumption is correct because the last four digits of the listed account do not match the last four digits of either credit card. Applicant has offered no clarification about the status of these debts under his bankruptcy petition. (GE 5 at 2, 3; GE 6 at 2; AE A at 5 of 19.)

SOR ¶ 1.b – Healthcare credit account with a bank charged off in collection in the amount of \$5,185 – The credit reports in the record reflect that this healthcare credit account was opened in 2013. This may have been opened in connection with the treatment of Applicant’s wife. Applicant defaulted on the account in or about July 2018, and the bank placed the account with a collection agency. This debt is included in his bankruptcy petition. (GE 5 at 2; GE 6 at 2; AE A at 11 of 19.)

The record evidence contains virtually no information explaining why he defaulted on these five debts. Perhaps his wife’s illness forced her to leave her job, and the couple lost her income. There is no evidence in the record, however, to support such speculation is a fact. The record reflects that the couple bought a house in February 2017 and opened a mortgage loan account at that time in the amount of \$213,000 with a monthly payment of \$1,121. In his bankruptcy petition, he valued his house to be worth \$250,000. They also own a former residence in a different state worth about \$140,000. This home has been abandoned due to its poor condition. The record also reflects that Applicant opened an auto loan in August 2018 in the amount of about \$22,000 with a monthly payment of \$506. This vehicle apparently replaced a vehicle damaged by hail. In addition, his bankruptcy petition lists a number of other debts as joint debts of Applicant and his wife that do not appear in either of Applicant’s credit reports in the record or the SOR. The total of all of the unsecured debts owed by Applicant and his wife, as listed in his bankruptcy petition, is about \$112,000. (GE 5 at 6; GE 6 at 2 GE 7 at 3; AE A at 11, 27, 19 of 19.)

Aside from his Chapter 13 petition, Applicant offered no evidence regarding his debts or his character. Since his petition was filed so recently, he has no additional bankruptcy records or other evidence regarding his repayment plan for his debts or any track record of having made payments to his creditors. His petition states that he received credit counseling from an approved credit counselling agency within six months of the filing of the petition. (AE A at 5.)

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 Answer and response to the FORM and the documentary evidence in the record establish the following potentially 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 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; and

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

AG ¶ 20(a) is not established. While Applicant's debts arose a number of years ago, they remain delinquent. They are not infrequent, and the record contains insufficient evidence about the circumstances to support a conclusion that his delinquent debts are unlikely to recur. The evidence taken as a whole, including Applicant's long delay in filing his bankruptcy petition, casts doubt on his current reliability, trustworthiness and good judgment.

AG ¶ 20(b) is partially established to the limited extent that the record reflects that Applicant's financial problems are related to his wife's illness. The record evidence does not establish, however, that he has acted responsibly under the circumstances. He has not submitted a repayment plan that he intends to file with the bankruptcy judge, and he has no track record of payments at this point.

AG ¶ 20(c) is partially established. Applicant has taken a credit counselling course with a legitimate and credible source in connection with his bankruptcy petition and has taken steps that could lead to a successful resolution of his indebtedness by filing his bankruptcy petition. He has not, however, presented evidence that clearly indicates that his financial problems are being resolved or are under control. At this point, he does not even have a proposed repayment plan, let alone a court-approved plan with a track record of payments under the plan.

AG ¶ 20(d) is partially established. The record contains evidence that Applicant has initiated a good-faith effort to resolve his debts through a Chapter 13 bankruptcy filing, but the proceeding has not progressed to the point where he has a court-approved repayment plan and has a sufficient track record of payments to show that he not only intends to repay his debts, but is capable of doing so, and therefore is adhering to his repayment efforts.

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 Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some factors warrant additional comments. I have taken into account Applicant's extensive amount of debt. I believe he has taken a responsible first step to address his financial problems. His delay, however, from the summer of 2018 when he stopped paying his debts at the advice of his bankruptcy attorney until his actual filing of his Chapter 13 bankruptcy petition in July 2019 has left him with little opportunity to present evidence to support a conclusion that he is acting responsibly and with good judgment. Having taken this first step, it is simply too early in the bankruptcy process to know how that proceeding will turn out. Viewing the

evidence as a whole, he has presented insufficient evidence to carry his burden of persuasion to mitigate the security concerns set forth in the SOR and to prove that he is trustworthy and has good judgment.

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: AGAINST APPLICANT

Subparagraphs 1.a - 1.e: Against 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