



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Name redacted]) ISCR Case No. 18-02153
)
 Applicant for Security Clearance)

Appearances

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

05/05/2020

Decision

KATAUSKAS, Philip J., 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 November 21, 2017. On September 4, 2018, 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) (SEAD 4).

Applicant answered the SOR on October 17, 2018. On October 23, 2018, he requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 16, 2018, and the case was assigned to me on February 14, 2019. On April 5, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant

that the hearing was scheduled for May 2, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. I kept the record open until May 17, 2019, to enable him to submit additional documentary evidence. He timely submitted AE E, which was admitted without objection. Department Counsel's comments about AE E are attached to the record as Hearing Exhibit (HE) I. DOHA received the transcript (Tr.) on May 22, 2019.

Evidentiary Issue

GE 2 is a summary of an interview of Applicant by a security investigator on January 23, 2018, with follow-up interviews on January 31, 2018 and June 5, 2018. The summary was not authenticated as required by Directive ¶ E3.1.20. Applicant did not object to the admission of GE 2, but my review of the record has caused me to doubt whether Applicant understood that GE 2 was not admissible unless he waived the authentication requirement. Accordingly, I have not considered GE 2 in my decision.

Findings of Fact

In Applicant's answer to the SOR, Applicant admitted all the allegations. His admission in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old security officer employed by a federal contractor since August 2016. He was self-employed from August 2007 to August 2011. He worked as an unarmed security officer for a non-governmental employer from August 2011 until he was hired for his current job, initially as an unarmed security officer. He received technical training and became an armed special security officer in February 2017. He has never held a security clearance.

Applicant married in March 2006 and has two children, ages nine and four. He also has had custody of his 18-year-old niece since 2013, because her parents are deceased. (Tr. 25-26.)

The SOR alleges ten delinquent debts totaling about \$23,000. The debts are reflected in credit reports from December 2017 (GE 2) and August 2018 (GE 3), and court records reflecting judgments entered against Applicant in November 2017, September 2013, and July 2011 (GE 5.)

In 2018, Applicant hired a financial advisor in 2018 to devise a budget, contact creditors, and supervise his compliance with his budget and payment plans. (AE B.) He pays her \$250 every two weeks for her services. (Tr. 40-41.) He testified that she builds up a "piggybank" that she uses to negotiate settlements. (Tr. 40-41.) Applicant testified that he could obtain documentation of the amount of money in the "piggybank" and her plan for settling his debts. (Tr. 47.) He did not submit any such documentation.

In February 2019, Applicant hired a law firm specializing in credit repair. He pays the firm \$100 per month. (Tr. 69-70.) The law firm sent out two “interventions,” demanding information and validation of the debt alleged in SOR ¶ 1.e and another debt not alleged in the SOR. The firm also sent five “challenges” to the credit bureaus regarding the debts alleged in SOR ¶¶ 1.e and 1.h as well as another debt not alleged in the SOR. (AC C.)

Applicant’s financial advisor submitted the answer to the SOR on Applicant’s behalf. She did not testify or participate in the hearing. The SOR answer included copies of letters dated August 29, 2018, each captioned as a “Proposal of Settlement” and proposing monthly payments to the creditors alleged in SOR ¶¶ 1.a-1.d, 1.f, 1.g, and 1.j.

On May 11, 2019, six days before the record closed, Applicant’s financial advisor submitted a written description of payments and payment agreements for each debt alleged in the SOR, except the debt alleged in SOR ¶ 1.f. Her submission indicates that every debt alleged in the SOR is either resolved or is in the process of being resolved. However, she submitted no documentation to support her submission. She stated that additional documentation was forthcoming. (AE E.) However, the record contains no additional documentation. The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a: deficiency of about \$5,537 after vehicle repossession. Applicant obtained a vehicle loan in August 2013, and the vehicle was repossessed in December 2013. (GE 4 at 2.) Applicant testified that he had documents showing that the debt was paid in full, but he did not submit anything at the hearing. (Tr. 45.) In her post-hearing submission, Applicant’s financial advisor stated that this debt was paid in full. She did not submit any documentation showing that the debt was resolved, but stated that she was awaiting documentation and an order of satisfaction.

SOR ¶ 1.b: credit-card account past due for \$199, with a balance of \$948. Applicant’s financial advisor’s post-hearing submission stated that the balance had been reduced to \$240 and would be paid off in June 2019. She did not submit any evidence of payments or the reduced balance.

SOR ¶ 1.c: credit-card account charged off for \$430. At the hearing, Applicant submitted evidence that his balance was \$442, with a minimum payment of \$103 due in April 2019. (AE D.) The financial advisor’s post-hearing submission stated that the creditor had agreed to settle the debt for \$300 and that the balance due was \$150. She did not submit any documentation of a settlement agreement or any payments.

SOR ¶¶ 1.d and 1.e: credit-card account charged off for \$338 and line of credit charged off for \$95. The financial advisor’s post-hearing submission stated that these debts were paid in full, but her submission did not include any documentation of payments. She stated that she was awaiting documentation from the creditors.

SOR ¶ 1.f: telecommunications account placed for collection of about \$1,000. The December 2017 credit report reflected that this debt was disputed. It was placed for

collection in December 2015. (GE 3 at 3.) Applicant submitted no documentation of payments, payment agreements, or other resolution of this debt. However, the debt is not reflected in the August 2018 credit report (GE 4.) Since the debt is too recent to have “aged off” Applicant’s credit report under the Fair Credit Reporting Act, its absence from the more recent credit report indicates that the dispute was resolved in Applicant’s favor.

SOR ¶ 1.g: judgment obtained by automobile dealer in 2000 for \$600. The financial advisor’s post-hearing submission stated that the creditor agreed to settle this debt for \$300, had accepted a payment of \$50, and that the balance is \$100. She submitted no documentation of a settlement agreement or payments.

SOR ¶ 1.h: judgment obtained by collection agency in 2017 for a deficiency of \$11,333 after an automobile repossession. Applicant purchased a van for his mother in May 2015, and she helped him make the payments. His mother was injured in a vehicle accident and could no longer drive or assist Applicant with the payments. He voluntarily surrendered the vehicle when he could no longer afford the payments. (Tr. 31-32.) The vehicle was repossessed in March 2017 and the judgment for the deficiency was entered in November 2017. (GE 3 at 2; GE 5 at 1.) Applicant’s pay is being garnished for \$175 every two-week pay period to satisfy the judgment. The balance due as of April 25, 2019 was \$7,779. Interest continues to accrue on this judgment at 10%, which computes to \$2.11 per day on the principal amount. (AX A.) Applicant testified that the creditor is willing to settle the debt for less than the full amount, and he hoped that his federal income tax refund for a “few thousand” would allow him to settle the debt. (Tr. 33-34.) At the hearing, Applicant submitted a letter from his financial advisor, explaining that garnishment left him insufficient funds to pay other creditors. (AE B.)

SOR ¶ 1.i: judgment obtained by medical provider in 2013 for \$1,176. Applicant co-signed the contract for this debt, incurred by his 76-year-old mother. (Tr. 34-37.) The financial advisor’s post-hearing submission stated that the creditor agreed to settle this debt for \$700, to be paid in monthly \$100 installments. She submitted no documentation of a payment agreement or any payments.

SOR ¶ 1.j: lien obtained by fitness club in 2011 for \$1,457. The financial advisor’s post-hearing submission stated that the creditor agreed to settle this debt for \$750, to be paid by monthly \$50 payments. She submitted no documentation of a payment agreement or any payments.

Applicant’s income varies between \$3,300 and \$4,200, depending on the number of hours he works. He has a second job providing private security on Friday and Saturday nights, and he earns about \$600 per month. He is looking for a third job. (Tr. 70.) His wife is employed and earns about \$1,400 per month. (Tr. 48-49.) Applicant’s mother now lives with his sister, and he sends his sister \$500 to \$700 every other month to help defray their living expenses. (Tr. 52.) Applicant’s niece is now in college and has a scholarship, but he sends her money from time to time. (Tr. 53.)

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 in the record 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;

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 delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. The injury of Applicant's mother and the untimely deaths of his 18-year-old niece's parents were conditions largely beyond his control. His decision to seek professional help in resolving his debt was responsible conduct, but his failure to adequately monitor his financial advisor's activities and to obtain documentation of her financial management was not responsible. He is paying his financial advisor \$500 a month, but at the hearing, he did not know how much money was in his financial advisor's "piggybank," he had only a vague notion of her overall strategy, and he was unaware of her specific plans for specific creditors.

AG ¶ 20(c) is not established. Applicant has engaged the services of a financial advisor. However, the lack of documentation showing payments, payment agreements, or other resolution of Applicant's debts precludes a finding that there are "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is not established. Applicant's pay is being garnished to satisfy the judgment alleged in SOR ¶ 1.h, but payment by involuntary garnishment is not a good-faith initiation of repayment. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011.) Although Applicant's post-hearing submission asserts that all the debts alleged in the SOR have been paid or are being paid, but he has submitted no documentation of payments, payment agreements, or other resolution of the debts. 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(e) is established for the debt alleged in SOR ¶ 1.f. The credit report from December 2017 indicated that the debt was disputed, and it does not appear on the subsequent August 2018 credit report. Since the debt is too recent to have "aged off" Applicant's credit record under the Fair Credit Reporting Act, 15 U.S.C. § 1681c (FCRA), its deletion from his credit record indicates that that the dispute was resolved in Applicant's favor. Under the FCRA, , a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more

than seven years, or until the statute of limitations has run, whichever is longer. There are exceptions to this prohibition, but they do not apply to this case. This mitigating condition is not established for the other debts alleged in the SOR, which Applicant has not disputed.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant was sincere and candid at the hearing. He is deeply devoted to his family and generous to a fault. At the hearing and in the post-hearing submission, submitted on May 11, 2019, six days before the record closed, and his financial advisor stated that more evidence was forthcoming, showing that the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.e had been paid in full and that the creditors had agreed to settle the debts alleged in SOR ¶¶ 1.c, 1.g, and 1.i for less than the full amount. However, Applicant submitted nothing further. The Directive makes it clear that it is responsibility of the parties to present evidence for the administrative judge's consideration. ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011). The Directive does not authorize an administrative judge to act as an investigator for either party in a security clearance proceeding. ISCR Case No. 15-01515 at 3 (App. Bd. Aug. 17, 2016.)

“Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Any doubt about an individual's eligibility for a security clearance must be resolved in favor of national security. SEAD 4, ¶ E.4. 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 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.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraphs 1.g-1.j: 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.

Philip J. Katauskas
Administrative Judge