



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



In the matter of:)
)
) ISCR Case No. 19-00582
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Appellant: *Pro se*

February 24, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant incurred a number of debts that he failed to pay in a timely manner. Based upon the record as a whole, Applicant’s evidence was insufficient to mitigate the security concerns raised by his financial behavior. National security eligibility for access to classified information is denied.

Statement of the Case

On September 25, 2017, Applicant submitted a security clearance application (SCA). On March 18, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) setting forth allegations under Guideline F and concluding that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the

adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective for all adjudicative decisions on or after June 8, 2017.

On April 17, 2019, Applicant responded to the SOR, admitting three of the SOR allegations and denying the remaining seven allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On June 18, 2019, the case was assigned to me. DOHA issued a notice of hearing on July 10, 2019, scheduling the hearing on July 25, 2019. The hearing was cancelled and then rescheduled on October 1, 2019, and then again on October 24, 2019. The extensive email communications regarding the scheduling of this hearing are included in the record marked as Hearing Exhibit III. The hearing transcript of the proceedings conducted on October 1, 2019, when Applicant failed to appear, is also included in the record.

I convened the hearing as rescheduled on October 24, 2019. Department Counsel presented four proposed exhibits, which I marked as Government Exhibits (GE) 1 through 4. Applicant offered five proposed exhibits, which I marked as Applicant's Exhibits (AE) A through E. I kept the record open until November 7, 2019, to give Applicant the opportunity to submit additional evidence. On November 6, 2019, he sent me an email submitting nine additional documents for my consideration. I have marked these documents as AE F through N. I marked that email and Department Counsel's response as AE O. I note that AE H and I are duplicates of AE E and D, respectively. I also marked Department Counsel's discovery letter, dated May 8, 2019, and her Exhibit List as Hearing Exhibits I and II, respectively. The exhibits of both parties were admitted without objection. DOHA received the hearing transcript (Tr.) on November 12, 2019.

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony at the hearing, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 45, works as an engineer for a defense contractor. He began this employment in June 2019. He has worked for other defense contractors since April 2016 with the exception of a two-month period in late 2017. Prior to April 2016, he was unemployed for about six months due to being laid off. He received limited unemployment compensation income during that period and took a job in 2016 that paid much less than his prior position. He earned a bachelor's degree in 1997. He has never married, though he was in a long-term relationship and was engaged to be married. That relationship ended in 2015. He has one child, age 19, who recently entered college. Applicant also works at one or more part-time jobs to help support himself and his child. He keeps his living expenses to a minimum. (AE A; AE B; Tr. at 11, 21, 24-28, 79-96.)

Applicant's employment and personal life were stable until 2015 when his fiancé left him and their child and Applicant was laid off in October 2015. These events caused

significant disruptions to Applicant's life and finances. He is still trying to restore his finances to a healthy status. Over the past two or three years, he has consulted with attorneys and credit advisors. They have recommended that he seek help through bankruptcy. Applicant is familiar with Chapter 13 bankruptcy proceedings, but has been advised that if he filed for bankruptcy, he would put his security clearance eligibility at risk. Instead, he has pursued a strategy of disputing his debts with the assistance of a credit-repair firm. (Tr. at 79-96, 103-105.)

GUIDELINE F, Financial Considerations

SOR ¶ 1.a, Mortgage Loan Account Foreclosed – In approximately 2000, Applicant purchased a home for about \$145,000. In 2007, he refinanced his mortgage loan with a new loan in the amount of \$296,989. In 2014, he used some of the additional funds to purchase an investment property from a family member. In late 2014, he began to experience financial difficulties, in part because he lost his tenant for the investment property. He subsequently lost that investment property to foreclosure, which is the subject of SOR ¶ 1.h, discussed below. With his layoff in October 2015, he could no longer pay the mortgage on his home and the bank foreclosed on the loan. The foreclosure was completed in about February 2016. (GE 1 at 32; GE 2 at 2; GE 3 at 1; GE 4 at 5; Tr. at 16, 36-54.)

After the foreclosure, Applicant hired two or more firms to assist him in resolving his numerous financial issues arising from his unemployment. He believes that he owes the bank the entire balance on the mortgage loan, even though the Government's credit reports reflect a zero balance. He has received conflicting information about his obligation on that loan after the foreclosure, but he believes he still owes all or most of this debt. Applicant admitted the SOR allegation regarding the foreclosure, but the SOR did not allege any deficiency debt. The hearing record is otherwise silent as to whether Applicant has any responsibility for a deficiency on his mortgage loan following the foreclosure. The SOR allegation regarding the foreclosure has been proven. (GE 1 at 32; GE 2 at 2; GE 3 at 1; GE 4 at 5; Tr. at 16, 36-54.)

SOR ¶1.b, Car Loan Account Charged-Off in the Amount of \$22,693 – Applicant opened this account in 2014 to purchase a car for his former fiancé. When she ended their relationship in 2015, she took the car. He defaulted on the loan in about September 2017. The lender repossessed the car. He hired a credit-repair firm, which disputed the debt. Applicant provided evidence that the dispute was successful. He admitted this debt, however, in his SOR answer. Furthermore, he testified that even though the debt was removed from his credit report, he still was liable on the debt. He commented that he was working with the creditor to establish a payment plan, but he provided no documentary evidence of that. This debt has not been resolved. (GE 2 at 4; GE 3 at 2; GE 4 at 6; AE D; Tr. at 54-59, 77.)

SOR ¶1.c, Bank Debt Placed for Collection in the Amount of \$2,851 – In his March 2018 background interview, Applicant told the interviewer that he did not recognize this debt, which was owed to a collection agency. He disputed this debt, presumably with the

help of his credit-repair firm, and denied this allegation in his SOR answer. The debt appeared on the Government's initial investigatory credit report, dated October 27, 2017, (GE 4) as a collection account for a bank debt. The original debt was probably incurred as a credit account for a consumer purchase because GE 4 refers to a "Factoring Company Account." The debt is also listed on the Government's December 2018 credit report (GE 3). Applicant has provided no documentary evidence reflecting that this debt has been disputed under the name alleged in the SOR and appearing in the Government's two credit reports in the record. (GE 2 at 3; GE 3 at 2; GE 4 at 8; Tr. at 59-60.) This debt has not been resolved.

SOR ¶1.d, Account with Bank Placed for Collection in the Amount of \$758 – The Government's credit reports identify the bank and its collection agency. Applicant recognized the name of this bank and claims that this debt has been paid. He testified that he does not have a receipt for his payment because he paid this debt some time ago. In February 2018, his credit-repair firm disputed the debt. The debt remains on GE 3, dated December 4, 2018, with a notation that "[Applicant] disputes this account information." Applicant's evidence does not support a finding that this debt has been resolved. (GE 3 at 2; GE 4 at 9; AE L; Tr. at 60-63.)

SOR ¶1.e, Cable Account Placed for Collection in the Amount of \$468 – This bill is for cable service at an address vacated by Applicant in December 2016. He testified that he has paid it, though he did not have a document at the hearing to substantiate his claim. Post-hearing, he provided a copy of a receipt from the creditor reflecting that this debt was paid in full on January 18, 2019. This debt has been resolved. (GE 3 at 2; AE F; Tr. 63-66.)

SOR ¶1.f, Account Placed for Collection in the Amount of \$300 – Applicant did not recognize this debt, which is presently with a collection agency. GE 4 reflects that this debt relates to a returned check. He disputed this debt through his credit-repair firm, but as of the hearing date, he had not received a response to his dispute. After the hearing, he provided a copy of the April 2018 dispute letter. The debt continues to appear on the Government's December 2018 credit report. This debt has not been resolved. (GE 2 at 4; GE 3 at 2; GE 4 at 4; AE J; Tr. 66-67.)

SOR ¶1.g, Credit-Card Account Charged-Off in the Amount of \$101 – Applicant recognized this debt and testified that he paid it three months prior to the hearing. He did not provide a document evidencing this payment. Applicant's evidence does not support a finding that this debt has been resolved. (GE 3 at 2; Tr. 67-68.)

SOR ¶1.h, Mortgage-Loan Account Foreclosed with a Deficiency of \$57,096 – As noted, Applicant purchased an investment property from a relative in 2014 using funds he borrowed against the equity in his home. He initially testified that the purchase price was \$110,000. He subsequently testified that he paid \$90,000 for the house. He made a \$35,000 or \$40,000 down payment. He borrowed an additional \$57,000 from a mortgage lender. Following the closing, his cousin rented the property, but only lived there eight or nine months. The property was vacant before the end of 2014. Applicant managed the

property on his own and was unable to find a new tenant. In 2015, he defaulted on the mortgage payment on the investment property. Following the lender's foreclosure, he believes he owes a deficiency of about \$55,000. Applicant has never made any payments on this debt. GE 4 reflects an account balance of \$57,054. In his March 2018 background interview, he reportedly stated that he was working with his credit-repair firm to develop a payment plan. After the hearing, he submitted a copy of a May 3, 2018 email from that firm in which it requested that this debt be validated by the mortgage lender. No further information or documentation was presented. Applicant admitted this foreclosure and deficiency debt in his April 17, 2019 SOR answer. This debt has not been resolved. (GE 2 at 3; GE 4 at 3; AE K; Tr. at 68-76.)

SOR ¶1.i, Communications Account Placed for Collection in the Amount of \$584 – Applicant opened this account in 2009 and defaulted on it in 2017. He testified that he paid this bill and that it was erroneously included on his credit report. He was unable to locate any documentation to prove that he paid this bill. His credit-repair firm disputed the bill, and it was removed from his credit report on January 8, 2018, according to documentation provided by Applicant after the hearing. The debt does not appear on GE 3, the Government's December 2018 credit report. The evidence supports a finding that this debt has been resolved. (GE 3; GE 4 at 4; AE H; Tr. 76-78.)

SOR ¶1.j, Communications Account Placed for Collection in the Amount of \$1,513 – This account belonged to his former fiancé. He closed the account, and in 2017, it became delinquent and was referred to a collection agency. He is disputing the amount of the debt, although he does not claim that he paid this debt. It was removed from his credit report in January 2018 and does not appear in GE 3. The evidence does not support a finding that this debt has been resolved. (GE 3; GE 4 at 9; AE G; Tr. at 78-79.)

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, his testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline for the ten SOR allegations: AG ¶¶ 19(c) ("a history of not meeting financial obligations") and (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 behavior is recent and frequent. His financial difficulties initially arose when he lost a tenant in his investment property. His problems were then compounded when he was laid off in October 2015 and was unemployed until April 2016. He also incurred a period of unemployment in late 2017. While none of these events are particularly unusual, they did cause Applicant significant hardship. Once he found new employment, he did not try to repay his creditors. Instead,

he hired a credit-repair company to dispute his debts. His actions casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established. Applicant's periods of unemployment were circumstances beyond his control. There was little he could do to avoid the foreclosure on his residence due to his extended unemployment. He received limited unemployment benefits, and he lacked other financial resources at the time of his unemployment.

I note that SOR ¶1.a does not allege that Applicant owes a deficiency on his home mortgage following the 2016 foreclosure. Presumably, the lender resold the property, reducing its loss on the loan or possibly breaking even. Applicant has received inconsistent advice on this issue. The record evidence does not establish that he has any residual liability to the mortgage lender. There is also a possibility that a state anti-deficiency statute may bar the lender from seeking repayment of any deficiency. I conclude that the record does not establish that Applicant has any further obligation to this creditor.

Applicant did not, however, act responsibly with respect to the other potentially disqualifying debts identified in the SOR. His efforts to dispute and remove bills from his credit report may have been an appropriate strategy to improve his credit score, but the Government's security concerns extend beyond a simple credit score. At the same time, the Government is not seeking repayment of all outstanding debts as a condition of receiving or continuing a security clearance. A proper national security eligibility analysis seeks to determine whether under all of the circumstances, an applicant acted responsibly in seeking to honor his commitments to his creditors. Applicant has not carried his burden of meeting that standard under this mitigating condition with respect to debts alleged in SOR ¶¶ 1.b through 1.d, 1.f through 1.h, and 1.j. Applicant produced no evidence that he made any attempt to contact the creditors holding those debts for the purpose of making payment arrangements. He also provided no evidence of a plan to address these debts other than to dispute them, which is insufficient.

AG ¶ 20(c) is only partially established. Applicant sought counselling from both attorneys and credit advisors. Unfortunately, the advice he received did not result in the resolution of his debts or clear indications that his financial problems are under control.

AG ¶ 20(d) is partially established. Applicant has provided evidence that he has paid the debts alleged in SOR ¶¶ 1.e and 1.i.

AG ¶ 20(e) is only partially established. Applicant presented evidence that he is disputing debts through his credit-repair firm. He has not, however, established that he has a good-faith basis to dispute the debts he has disputed. The removal of a debt from a credit report is not the same as the extinguishment of the debt. See ADP Case No. 17-00586 at 3 (App. Bd. Apr. 27, 2018) ("The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt.") Applicant recognized this in connection with the debt alleged in SOR ¶ 1.b,

which he successfully disputed and had removed from his credit report, yet he acknowledged that he remains responsible for that debt.

Whole-Person Analysis

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), specifically: (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 of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. Applicant experienced unfortunate circumstances in 2014 and 2015 that understandably caused him to experience some financial hardships. While he sought counsel from various sources, he did not pursue the simplest remedy, which is to develop a plan to work with his creditors to enter into repayment agreements consistent with his available financial resources. He is sufficiently mature and well educated to have been able to know what was expected of an adult with the significant responsibilities of raising a child, having an engineering position with a government contractor, and holding a security clearance.

Applicant's evidence in mitigation is insufficient to address the security concerns raised by his financial circumstances since 2015. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies.

Formal Findings

Guideline F, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a	For Applicant
Subparagraphs 1.b through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant's national security eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge