



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-01206
)
 Applicant for Security Clearance)

Appearances

For Government: Eric C. Price, Esq., Department Counsel
For Applicant: *Pro se*
01/31/2020

Decision

MARINE, Gina L., 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 (SCA) on July 20, 2017. On May 24, 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 (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on June 24, 2019, and requested a decision on the written record without a hearing. On November 1, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on November 14, 2019, and timely submitted his response, to which the Government did not object. Items

1 and 2 are the pleadings in the case. Items 3 through 7 are admitted into evidence. Applicant's FORM response included documents that are admitted into evidence as Applicant Exhibits (AE) A and B. The case was assigned to me on January 3, 2020.

Procedural Matters

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), his SCA (Item 3), and the summary of his security clearance interview (SI) (Item 5). Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 5 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 5 could be considered as evidence in his case. Applicant did not raise any objections in his FORM response or otherwise.

Findings of Fact

Applicant, age 32, has never married nor has any children. He has cohabited with his girlfriend since 2014. Applicant's education history was not specified in the record. This is his first application for a security clearance. He is no longer employed by the same defense contractor who was sponsoring his security clearance application in July 2017. However, there is no information in the record as to when or why that employment ended or when he began working for his current employer. (Item 2 at 4; Item 4 at 29-30)

In his July 2017 SCA, Applicant reported seven delinquent debts totaling approximately \$19,424, including a \$5,500 judgment for a defaulted loan (unalleged), a \$9,310 auto loan for vehicle that had been repossessed (unalleged), a \$670 credit-card account (unalleged), a \$670 bank account (unalleged), a \$1,544 medical account (SOR ¶ 1.b), a \$1,182 medical account (SOR ¶ 1.c), and a \$543 satellite television account (SOR ¶ 1.d). He also reported that he failed to file his federal income tax returns or pay his federal income taxes for tax years 2014 and 2016. Only the failure to file was alleged in SOR ¶ 1.a. He explained that he had not yet filed his returns because he was unable to locate documents that he apparently believed were necessary for him to file. At that time, he did not know the amount of taxes, if any, that he owed. He attributed his delinquent debts to a period of unemployment that began in approximately January 2015. He asserted that he planned to file his returns and pay his taxes by the end of 2017, and pay his delinquent debts within the next year or two years. (Item 3 at 36-44)

Applicant's August 2017 credit report confirmed the delinquent status of the auto loan, the credit-card account, and the three debts alleged in the SOR. His November 2018 credit report confirmed the delinquent status of the \$1,544 medical debt and that the auto loan had been paid. The reports showed that the debt underlying the judgment was a \$5,500 unsecured loan account opened in 2014. Other record information revealed that the judgment for the defaulted loan was entered in August 2016 for \$6,203

plus interest. The reports confirm that the debts alleged in SOR ¶¶ 1.b through 1.d were sent to collections in November 2015, April 2016, and December 2016, respectively. (Items 6; Item 4 at 11-12)

During his August 2018 SI, Applicant acknowledged that he had not yet filed his returns or paid his taxes for tax years 2014 and 2016. He asserted that he planned to do so before the end of 2018. He claimed that he had paid or satisfied all of the delinquent accounts he reported on his SCA except for the judgment. He averred that the judgment was being collected via a bi-weekly garnishment of 25% of his wages, which was then approximately \$480. Although he recalled that it started in approximately July 2018, other record evidence established that the garnishment started in September 2018. He acknowledged that he had not received any financial counseling, but asserted that his financial situation was good, that he was willing and able to repay all of his debts, and that he was living within his means. He stated that it was highly unlikely that he would experience financial problems in the future. (Item 4 at 11-12; Item 5 at 2-3)

In his March 2019 responses to interrogatories, Applicant acknowledged that he had not yet paid or otherwise resolved the debts alleged in SOR ¶¶ 1.b through 1.d, contrary to the claim he made during his SI. He averred that he could not afford to pay the debts alleged in SOR ¶¶ 1.b and 1.c until after his garnishment ended. He believed that the satellite-television debt alleged in SOR ¶ 1.d had been resolved when he returned equipment to his creditor and promised to investigate the matter and settle the debt after the garnishment ended. As of January 2019, the wage garnishments had reduced the balance of his judgment debt to \$1,313, and he anticipated that it would be fully paid by June 2019. He provided proof that he paid the \$670 credit-card debt in April 2018. The status of his \$670 bank account debt was not addressed. (Item 4 at 2-4, 9, 11-12)

In his March 2019 responses to interrogatories, Applicant did not provide a response to the questions about the status of his tax return filings and tax payments, but he did provide IRS tax records confirming that he had not yet filed his returns for tax years 2014 and 2016. Those records did not address what, if any, taxes were owed for those years. He timely filed his 2015 and 2017 returns and received refunds of \$1,361 in February 2016 and \$864 in February 2018. (Item 4 at 2, 5, 6, 15, 19, 23, 27)

In his June 24, 2019 SOR response, Applicant acknowledged that his returns for tax years 2014 and 2016 remained unfiled. He asserted that he tried to file them on his own, but realized that he needs professional help to do so. He claimed that the returns would be filed "soon." He also admitted that the debts alleged in SOR ¶¶ 1.b through 1.d had not yet been resolved because "of all the other debt that I have paid off in the past year." He did not provide any specific information about the referenced "other debt." He also stated that "I was unaware that I had a crunch in time to get all paid and settled." He averred that he planned to get a personal loan to pay the debts alleged in SOR ¶¶ 1.b through 1.d and any taxes that he owed "by the end of June [2019], beginning of July [2019]." (Item 2)

In his December 2019 FORM response, Applicant proffered that he filed his tax returns and paid the taxes owed for tax years 2014 and 2016, and paid the debts alleged in SOR ¶¶ 1.b and 1.d. He provided proof of the payment for the debt alleged in SOR ¶ 1.d, but not for the debt alleged in SOR ¶ 1.b. He promised to pay the debt alleged in SOR ¶ 1.c “after the holidays.” He did not provide proof of his tax-return filings. While he provided a document purporting to prove the tax payments, it did not show information sufficient to establish that fact. He stated that “if needed, I will request the IRS forms for proof.” He also stated “I really hope I get this clearance so I keep my job but if not it will be a life lesson.” He attributed the further delay in addressing the SOR concerns to his 36-year-old brother’s passing in May 2019 and his unspecified support of his mother who retired sometime after May 2019. (AE A, B)

Applicant has been unemployed three times since January 2015: 1) January 2015 through February 2015, which occurred after he left an employer due to a dispute over his pay rate; 2) October 2015 through April 2016, which occurred after he left another employer due to what he described as “unsatisfactory management;” and 3) March 2017 through July 2017, which occurred after his contract with an employer of 11 months ended. (Item 3 at 10-17; Item 5 at 1)

Applicant’s December 2018 and January 2019 paychecks revealed two loans that were being repaid to his employer, which were not otherwise addressed in the record. The paychecks also showed that the bi-weekly garnishment had been reduced to \$435 in December and \$358 in January. As of January 2019, Applicant estimated that his monthly take-home pay was \$1,741 (after deductions including the loan repayments and garnishment), with monthly expenses totaling \$1,650, leaving a net remainder of \$91. Based on the two paychecks that he provided, his pay may fluctuate with overtime. The record does not contain any information concerning Applicant’s income and expense history from the period immediately preceding January 2015 through January 2019, besides the garnishment. (Item 4 at 8, 11, 29, 30)

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.” (*Egan* 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.” (EO 10865 § 2))

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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 his credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

None of the following potentially applicable mitigating conditions under this guideline are fully established:

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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant resolved the unalleged \$9,310 auto loan and \$670 credit-card debts well before the issuance of the SOR. On the other hand, Applicant waited until after he was prompted by the SOR to pay the debt alleged in SOR ¶ 1.d. The fact that the creditor of Applicant's 2014 loan had to secure a judgment and wage garnishment to recover the debt further fails to exemplify "good-faith effort." Because he did not submit any documentary proof, I cannot conclude that he paid the debt alleged in SOR ¶ 1.b. Even if I were to accept, without proof, that he filed his tax returns sometime after he responded to the SOR, his repeated failure to timely file his 2014 and 2016 tax returns over an extended period of time did not demonstrate responsible action. While Applicant proffered some circumstances that were beyond his control, he did not establish that the

SOR concerns largely resulted from those circumstances or that he acted responsibly to address his delinquent debts and tax returns.

Notwithstanding the foregoing, Applicant's failure to resolve his SOR debts, without more, may not have been sufficiently disqualifying to deny him security clearance eligibility in light of the amount and nature of the debts. However, Applicant failed to establish justifiable reasons for failing to timely file his tax returns. His lack of responsible action to address his SOR debts, together with the persistent procrastination and avoidance surrounding his tax obligations, underscore a pattern of behavior towards his financial commitments and responsibilities that is troubling in the context of evaluating security worthiness. Applicant failed to follow through on any of the promises he made to file his delinquent returns and determine his tax liability for tax years 2014 and 2016 until after being prompted by the SOR. And, even then, he did not provide sufficient proof to establish AG ¶ 20(g).

A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. (See ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)). "Failure to file income tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." (ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). I am left with doubt about his current reliability, trustworthiness, and good judgment. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the 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 that Applicant has not mitigated the security concerns raised by his failure to timely file federal income tax returns and pay delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge