



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-01567
)
 Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2020

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 May 17, 2017. After a background investigation, which included Applicant’s interview by a security investigator in April 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) was unable to find that it was clearly consistent with the national interest to grant his application. On July 17, 2019, the 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 August 16, 2019, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on October 3, 2019. On October 4, 2019, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 23, 2019, and did not respond. The case was assigned to me on January 9, 2020.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d, 1.g-1.i, 1.k, and 1.l. He denied the allegations in SOR ¶¶ 1.e, 1.f, and 1.j. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old employee of a defense contractor and is currently deployed overseas. He has been employed by defense contractors since May 2017. He served on active duty in the U.S. Army from October 1996 to November 2016, when he retired as a sergeant first class (pay grade E-7). He held a security clearance in the Army and retained it as an employee of a defense contractor.

Applicant married in June 1996. He and his wife have three daughters, ages 26, 22, and 21. He has a 13-year-old son from a relationship that occurred while he was separated from his wife in 2005. He pays child support of \$400 per month for his son. (FORM Item 5 at 2.)

Applicant filed a petition for Chapter 13 bankruptcy in May 2002, listing assets of \$22,506 and liabilities of \$20,300. He completed the payment plan and received a discharge in October 2005. (FORM Item 12.) This bankruptcy was not alleged in the SOR.

The SOR alleges four Chapter 13 bankruptcies that he filed between April 2014 and January 2017 (SOR ¶¶ 1.a-1.d). The evidence concerning these bankruptcies is summarized below.

SOR ¶ 1.a. Applicant filed a bankruptcy petition on April 1, 2014, while he was on active duty. (FORM Item 11.) He owned and occupied a home near his military duty station. He was reassigned to another duty station and decided to rent his home. When his tenants stopped paying their rent, Applicant was unable to pay the mortgage loan on the home as well as his rent at the new duty station. He stopped making payments on the mortgage loan in June 2013, and the lender initiated foreclosure proceedings. Applicant filed the bankruptcy petition in April 2014 to stop the foreclosure.

When Applicant filed this petition, his monthly pay and allowances were \$6,435. His wife, a joint debtor, was not employed outside the home. He listed assets of \$213,859 and liabilities of \$296,818. His secured debts were his mortgage loan, home

furniture, and two vehicles. He listed unsecured debts totaling \$28,122, including \$13,975 in student loans.

The petition was dismissed in June 2014. Applicant attributed the dismissal to his attorney's failure to timely file required documents. However, the bankruptcy record reflects that it was dismissed in response to the trustee's objection to confirmation of the payment plan and a motion to dismiss on several grounds, including the following: that Applicant failed to make payments into the plan; that the plan would extend beyond 60 months; that it failed to include Applicant's child-support obligation and his rental expense at his new residence; that it provided for an excessive amount of disposable income toward automobile debt; and that it proposed to retain his rental property with negative equity. (FORM Item 11.)

SOR ¶ 1.b. Applicant filed another bankruptcy petition on July 3, 2014. In his response to the SOR, he asserted that he dismissed this petition because the bankruptcy attorney failed to stop the foreclosure process. However, the bankruptcy record reflects that the bankruptcy was dismissed on motion of the trustee. The trustee objected to the plan on multiple grounds, including the following: that the plan as proposed would extend beyond 60 months; that Applicant had failed to maintain the required payments; that the plan proposed to pay \$29,068 for two automobiles, indicating a lack of good faith by "attempting to refinance an auto purchase through the Chapter 13 plan"; and that Applicant proposed to retain non-residential real property "that only serves as a drain on the estate." The trustee's motion to dismiss the bankruptcy was granted in September 2014, rendering Applicant ineligible to file another bankruptcy petition for 180 days. (FORM Item 10.) The foreclosure of the rental property was completed in July 2015, ten months after this bankruptcy was dismissed. (FORM Item 14.)

SOR ¶ 1.c. Applicant filed another Chapter 13 bankruptcy petition in September 2016, when he was on terminal leave before retiring from active duty in November 2016. It was dismissed in December 2016 on motion of the trustee for several defects in the proposed payment plan and for failure to make the payments. (FORM Item 9 at 2, documents 19 and 23.) In his Answer to the SOR, Applicant stated that he decided not to pursue the bankruptcy because he had a job offer to start work in December 2016. However, his SCA reflects that he was unemployed from November 2016 to May 2017. (FORM Item 4 at 12.)

SOR ¶ 1.d. Applicant filed another Chapter 13 bankruptcy petition in January 2017, which was dismissed in April 2017. In his answer to the SOR, he asserted that he dismissed the petition because he had obtained employment overseas and had begun earning sufficient income to address his financial obligations. The trustee's motion to dismiss cited Applicant's failure to make payments, pointed out that the plan failed to provide for Applicant's monthly \$400 child-support obligation, and pointed out that the plan proposed to pay \$38,617 for four automobiles, indicating a lack of good faith. The petition was dismissed with prejudice, rendering Applicant ineligible to file another petition for 180 days. (FORM Item 9, document 23.)

The SOR also alleges 12 delinquent debts, totaling about \$30,000 (SOR ¶¶ 1.e-1.i). The evidence concerning these debts is summarized below.

SOR ¶ 1.e: auto loan charged off for \$16,706. This debt arose when Applicant co-signed a loan for his daughter. (FORM Item 5 at 4.) It was charged off in January 2019 and was settled in June 2019 for less than the full balance. (FORM Items 6 at 4; FORM Item 13 at 4.)

SOR ¶ 1.f: auto loan charged off for \$4,992. In Applicant's answer to the SOR, he asserted that he had been making monthly payments since 2017 on this debt and that the account was current. The credit report from March 2019 reflects that the debt was charged off for \$10,554 in January 2017, that the debt was disputed, and that a reinvestigation was in process. (FORM Item 6 at 4.) The reduction in the amount charged off supports Applicant's assertion that he had been making payments. The debt is not reflected in the September 2019 credit report and is too recent to have aged off his credit record under the Fair Credit Reporting Act, indicating that the dispute was resolved in Applicant's favor. (FORM Item 13.)

SOR ¶ 1.g: line of credit charged off for \$1,522. This debt was included in the July 2014 and January 2017 bankruptcies. (FORM Items 8 and 10.) In Applicant's answer to the SOR, he asserted that a law firm was assisting him in resolving the debt. It is not resolved.

SOR ¶ 1.h: installment sales contract for furniture, placed for collection of \$1,204. Applicant stopped making payments on this debt in August 2016, and it was included in the January 2017 bankruptcy. (FORM Item 8.) The September 2019 credit report reflects that the debt is charged off. (FORM Item 13.) In Applicant's answer to the SOR, he asserted that a law firm was assisting him in resolving this debt. It is not resolved.

SOR ¶ 1.i: credit-union debt, placed for collection of \$428. This debt was included in the January 2017 bankruptcy. (FORM Item 8.) The September 2019 credit report reflects that the debt is unpaid. (FORM Item 13 at 2.) In Applicant's answer to the SOR, he asserted that a law firm was assisting him in resolving this debt. It is not resolved.

SOR ¶ 1.j: military credit-card account past due for \$106. The September 2019 credit report reflects that this account is current. (FORM Item 13 at 2.)

SOR ¶ 1.k: cellphone account placed for collection of \$3,683. In Applicant's answer to the SOR, he stated that his monthly service bill with his cellphone provider was current, but that this debt is for six cellphones that the provider refused to take back. This account was referred for collection after Applicant's last bankruptcy was filed and dismissed. The March 2019 credit report reflects that this debt is disputed. (FORM Item 6 at 9.) The debt is not reflected in the September 2019 credit report and is too

recent to have aged off his credit record under the Fair Credit Reporting Act, indicating that the dispute was resolved in Applicant's favor. (FORM Item 13.).

SOR ¶ 1.I: credit-union debt, placed for collection of \$428. This debt appears to be a duplicate of the debt alleged in SOR ¶ 1.i.

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).

The Chapter 13 bankruptcy filed in May 2002 was not alleged in the SOR and may not be an independent ground for revoking Applicant's security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the May 2002 bankruptcy for these limited purposes. In this case, the May 2002 bankruptcy reflects Applicant's long history of financial problems and his familiarity with the bankruptcy process that he relied on to abuse it during his four subsequent bankruptcies.

The same debt is alleged in SOR ¶ 1.i alleging the debt to original creditor and SOR ¶ 1.l alleging the debt to the collection agency hired by the original creditor. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.l for Applicant.

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 them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's reassignment while on active duty, the failure of his tenant to pay the rent, and his unemployment for five months after retiring were conditions beyond his control. Although he received retired pay during his five months of unemployment, it was considerably less than his active-duty pay, and he no longer received the non-taxable allowances for housing and subsistence. However, he did not act responsibly. He abused the bankruptcy process by repeatedly failing to make

required payments and proposing unrealistic payment plans. He took no significant actions to resolve his debts after his last bankruptcy was dismissed in April 2017, until he was questioned about his debts by a security investigator in April 2019 and realized that his security clearance was in jeopardy. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(c) is not fully established. Applicant received financial counseling in connection with his bankruptcies, but his financial problems are not yet resolved.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.e, which was resolved shortly after it was charged off; the debt alleged in SOR ¶ 1.f, which has been resolved; and the debt alleged in SOR ¶ 1.j, on which the payments are current. It is not established for the debts alleged in SOR ¶¶ 1.g, 1.h, and 1.i, because Applicant submitted no evidence of payments, payment plans, or other resolution of these debts.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.f and 1.k, which were successfully 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 and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.d and 1.g-1.i: Against Applicant

Subparagraphs 1.e, 1.f, and 1.j-1.l: 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