



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02253
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/14/2020

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 August 30, 2018. On July 31, 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 (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 November 7, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 11, 2020, and the case was assigned to me on July 16, 2020. On July 28, 2020, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 9, 2020. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through F and K through P, which were admitted without objection. Due to a mistake in lettering the exhibits, there are no exhibits designated as AX G through J. I kept the record open until September 25, 2020, to enable Applicant to submit additional documentary evidence. He timely submitted AX Q through BB, which were admitted without objection. The record closed on September 25, 2020. DOHA received the transcript (Tr.) on September 21, 2020.

Findings of Fact

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

Applicant is a 32-year-old field engineer employed by a defense contractor. He served on active duty in the U.S. Navy from May 2009 to May 2015. At the hearing, he described himself as a "great technician but a mediocre sailor." (Tr. 36.) He received nonjudicial punishment in August 2014 for a one-day unauthorized absence. (GX 1 at 19; Tr. 36-37.) He received an honorable discharge but was ineligible to reenlist. (Tr. 27.) He held a security clearance while in the Navy. He was unemployed from May 2015 until he was hired for his current job in March 2016.

Applicant attended a university from August 2006 to December 2007. After his discharge from the Navy, he attended a university from June to November 2015, using his GI Bill benefits, but he did not receive a degree. (Tr. 37-38.) He is currently taking college courses and seeking a bachelor's degree in engineering. (Tr. 34.) (AX C and D.) The GI Bill pays for the college courses and he receives \$1,733 per month for living expenses. (AX K.) His current annual salary is about \$72,000, plus overtime which is usually about ten hours per week. He is paid his regular hourly rate for overtime. (Tr. 42-44)

Applicant married in January 2011 and divorced in October 2011. He married again in February 2015, separated in February 2018, and divorced in December 2019. (Tr. 39.) His second ex-wife obtained a protective order in September 2018 for family abuse in which a weapon was involved. (AX N.) He reported the protective order to his supervisors and stated that his ex-wife obtained it to "seek advantage and get him out of the house." (GX 4.)

Applicant has a nine-year-old child from his first marriage, and two children, ages five and four, from his second marriage. He testified that he was not the father of the five-year-old child but raised her as his own. (Tr. 29.) He pays child support totaling \$1,400 per month for all three children. (Tr. 40.)

Applicant was deployed three times during his second marriage, for periods of six months, two and a half months, and four months. (Tr. 45.) He received a letter of appreciation for his exceptional performance during his last deployment. (AX L.)

The SOR alleges five delinquent debts totaling about \$39,000. The debts are reflected in credit reports from June 2019 and October 2018 (GX 2 and 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: deficiency of \$23,362 after repossession of a vehicle. Applicant purchased this vehicle in August 2017 for his second ex-wife. Applicant signed the loan and his mother cosigned it. Applicant made the first payment and counted on his ex-wife to make subsequent payments. The vehicle was repossessed in January 2018 because his ex-wife did not make any payments even though Applicant sent her the funds for that purpose. He knew when the repossession occurred because his neighbor knocked on the door and told him that the vehicle had just been towed away. He asked his then wife if she had been making the payments and she replied that she had not. (Tr. 46-47.)

In July 2018, Applicant informed his employer about the repossession, some other financial delinquencies, and a protective order against him obtained by his then wife. (GX 4.) When Applicant answered the SOR in November 2019, he stated that he was unable to redeem the vehicle because he was catching up on other bills such as his mortgage payments, utility bills, and car payments that were also three or four months past due. He did not contact the lender for the repossessed vehicle until about a week before the hearing. He testified that he did not contact the lender earlier, because he was waiting until the vehicle was sold so that the amount due could be calculated. (Tr. 46-49.) After the hearing, he contacted the creditor about a payment agreement and made a \$100 payment on this debt. As of the date the record closed, Applicant and the creditor had not reached an agreement on the amount due or a payment plan. (AX Y; AX BB.)

SOR ¶ 1.b: delinquent vehicle loan placed for collection of \$10,996. In April 2018, while Applicant and his then wife were separated, he bought an inexpensive used car for her after the first one was repossessed, because he did not want her and their children to be stranded without transportation. He obtained the loan in his name and his ex-wife's. His ex-wife agreed to make the payments, which were around \$360 per month. He trusted his ex-wife to make the payments, notwithstanding her previous irresponsibility. She surrendered the vehicle instead of making any payments. (Tr. 52-53.) She filed a Chapter 13 bankruptcy petition in January 2019. She converted her bankruptcy to a Chapter 7 in April 2019. The bankruptcy petition was filed solely in his ex-wife's name. (AX P.) Applicant was notified of the bankruptcy filing by mail, because he and his ex-wife are co-owners of the marital home, where Applicant currently lives. (Tr. 64.) He believes he will be responsible for part of the debt even if his ex-wife obtains a Chapter 7 discharge. (Tr. 52-54.) He testified that he expected the bankruptcy to be completed "within the next few months," but that his ex-wife and her bankruptcy attorney refused to give him any information. (Tr. 63-64.) The record does not reflect the status of the bankruptcy. After the hearing, Applicant contacted the creditor in an effort to negotiate

a payment agreement or settlement. As of the date the record closed, he had not yet reached an agreement or made any payments. (AX BB.)

SOR ¶ 1.c: unsecured personal loan charged off for \$1,894. Applicant testified that he obtained this loan early in his Navy service, around 2013. He testified, “I was young, I wasn’t smart with money. I wanted to buy the newest video game system at the time.” He took no action to resolve this debt because he had “other things that kind of took precedence.” (Tr. 56.) He made a \$150 payment on September 1, 2020, and he testified that he intends to continue making payments until the debt is satisfied. (AX M; Tr. 56-57.) He does not have a formal payment agreement. (Tr. 66.) In his post-hearing statement, he promised that the debt will be resolved by the end of October 2020. (AX BB.)

SOR ¶ 1.d: cellphone account placed for collection of \$1,303. The October 2018 credit report reflects that this account was placed for collection in October 2018. (GX 3 at 5.) In his answer to the SOR, Applicant stated that he disputed this debt because he turned off his cellphone while he was deployed while on active duty in 2009 or 2010, but the provider continued to charge him for the service. (Tr. 66-67.) It is not reflected in the June 2019 credit report submitted by Department Counsel or the September 2020 credit report submitted by Applicant. (GX 3; AX O.) At the hearing, he testified that he did not intend to pay this debt, because it was not reflected in the credit reports. (Tr. 75.) After the hearing, he submitted documentary evidence that the debt was paid and that the creditor submitted a request that the account be deleted from his credit record. (AX W.)

SOR ¶ 1.e: cellphone account placed for collection of \$1,501. Applicant testified that he disputed this account because it was in another person’s name who used his Social Security number. (Tr. 66-67.) He testified that he did not intend to pay this debt for the same reason that he did not intend to pay the debt alleged in SOR ¶ 1.d, *i.e.*, it was not reflected in the credit reports. After the hearing, he submitted documentary evidence that he had paid the debt on September 11, 2020. (AX X.)

After the hearing, Applicant submitted evidence that he filed a dispute in February 2020 and another on September 15, 2020. (AX Z.) However, the document does not reflect the debts being disputed, the basis for the disputes, or the results of the disputes.

Applicant’s stepfather testified for Applicant. (He was erroneously identified as Applicant’s father-in-law during the hearing.) He testified that Applicant’s ex-wife called Applicant’s mother while Applicant was deployed and asked for a loan to pay bills. Applicant’s mother lent Applicant’s ex-wife \$2,400 to pay bills and later discovered that she deposited the money in an account and did not pay the bills. (Tr. 20.) Applicant’s stepfather testified that when Applicant returned from deployment he found that his then wife had moved out of the marital home and taken all the furniture with her. (Tr. 23.) Applicant’s stepfather later loaned Applicant about \$7,000 to hire a divorce lawyer. (Tr. 21.)

Applicant recently purchased a seven-year-old vehicle when his old one broke down. He borrowed money from a friend for the down payment. His monthly payments on the loan are \$363. (Tr. 60-61.)

Applicant's personal financial statement from August 31, 2020, reflects net monthly income of \$4,653, expenses of \$4,504, and a net remainder of \$159. It does not include the income of \$1,733 he receives under the GI Bill for living expenses. (Tr. 59-60.) The listed expenses include child support of \$1,400, a \$150 payment to the creditor alleged in SOR ¶ 1.c, and monthly payments on the vehicle that Applicant recently purchased. It also reflects monthly savings of \$50, leaving \$109 in discretionary income. (AX B.) Applicant estimated that he has borrowed about \$2,000 from his mother and has repaid her about \$600 or \$700. (Tr. 61-62.) He has not repaid his father for the \$7,000 loan for attorney's fees. (Tr. 21.) Applicant's FICO scores in September 2020 ranged from 562 to 626, in the "fair" range. (AX Q-U, AA.)

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 evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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 established for the debts alleged in SOR ¶¶ 1.a and 1.b, but not for the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e. Applicant's delinquent debts are numerous and recent. However, the debts alleged in SOR ¶¶ 1.a and 1.b were the result of a failing marriage and his ex-wife's financial irresponsibility. He is now divorced and unlikely to incur future debts caused by his ex-wife.

AG ¶ 20(b) is not established for the debt alleged in SOR ¶ 1.a. Applicant's unemployment from May 2015 to March 2016 may have been a condition largely beyond his control, but it is unclear whether his unemployment from June to November 2015, while he was attending college, was involuntary. Furthermore, his financial problems did not begin until late 2017 or early 2018, well after he was hired for his current job. On the other hand, his marital breakup and his ex-wife's irresponsible conduct were conditions largely beyond his control and the cause of the debt alleged in SOR ¶ 1.a. However, he has not acted responsibly regarding this debt. He did not contact this creditor until a week before the hearing, even though the repossession occurred in January 2018, he was notified immediately by a neighbor that it had occurred, and he reported it to his employer in July

2018. “A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake.” ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018).

AG ¶ 20(b) is not established for the debt alleged in SOR ¶ 1.b. Applicant learned about this debt when he was notified by mail of his ex-wife’s bankruptcy petition in April 2019. He testified that he believed he received the notification because he and his ex-wife are co-owners on the marital home. The disposition of the marital home was still pending at the time of the hearing. However, this debt was not caused by a condition largely beyond his control. It was caused by his bad judgment, deciding to incur another substantial debt and rely on his irresponsible ex-wife to pay it, knowing that she had recently failed to make the mortgage payments, pay the utility bills, and make the payments on the vehicle that had been repossessed three months earlier. He contacted the creditor but had not reached an agreement as of the date the record closed. (AX BB.) The record does not reflect the current status of the bankruptcy. The June 2019 credit report lists the debt as a collection account. (GX2 at 2.)

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial problems are not yet under control.

AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. Applicant made one \$100 payment on the debt alleged in SOR ¶ 1.a but has not reached a payment agreement or demonstrated a track record of payments. He has not made any payments on the debt alleged in SOR ¶ 1.b. Applicant has made one payment of \$150 on the debt alleged in SOR ¶ 1.c, declared his intention to resolve it, and included monthly \$150 payments in his personal budget, but he has not yet established a track record of monthly payments. This mitigating condition is established for the debts alleged in SOR ¶¶ 1.d and 1.e, which have been paid.

AG ¶ 20(e) is not established for the two delinquent cellphone accounts alleged in SOR ¶¶ 1.d and 1.e. Applicant initially disputed these two accounts, and he testified that he believed his disputes were successful, because the debts were not reflected in recent credit reports. Applicant submitted a document reflecting a dispute filed in February 2020 and another in September 2020, after the hearing. However, the document does not identify the debts being disputed or the basis for the disputes. He paid the debt in SOR ¶ 1.d in December 2016 and paid the debt alleged in SOR ¶ 1.e two days after the hearing. The evidence indicates that these debts were deleted from his credit reports because he settled them and not because they were 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). 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.b, and 1.c: **Against Applicant**

Subparagraphs 1.d and 1.e: **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