



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-02656
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2020

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 23, 2015. On January 3, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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 February 10, 2020, 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 June 17, 2020. On July 14, 2020, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 20, 2020. I convened the hearing as scheduled. Applicant waived the 15-day notice required by Directive ¶ E3.1.8. (Tr. 12.) Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant's answer to the SOR included three documents, which have been marked as Applicant's Exhibits (AX) A, B, and C. At the hearing, Applicant testified and submitted AX D. AX A through D were admitted without objection. I kept the record open until August 3, 2020, to enable him to submit additional documentary evidence. He timely submitted AX E through H, which were admitted without objection. DOHA received the transcript (Tr.) on July 29, 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 31-year-old systems administrator employed by a federal contractor since April 2012. In July 2011, he moved from his previous residence, where he lived with his mother, to the city where he now lives. He has lived at his current address since February 2015. He was employed in various private-sector jobs from March 2007 until he was hired by his current employer. He received a security clearance in June 2012.

Applicant attended a community college from September 2009 to January 2010 but did not receive a degree. He attended a technical school from August 2011 to February 2012 and received a certificate in information technology. He has never married. He and his cohabitant have a daughter, born in December 2019. (Answer at 4.)

The SOR alleges three delinquent debts, which are reflected in a credit report from March 2019. The evidence concerning these debts is summarized below

SOR ¶ 1.a: auto loan charged off for \$22,656. Applicant disclosed this debt when he submitted his SCA in February 2015, and he explained that he was trying to set up a payment plan to resolve it. He had purchased a three-year-old used car in April 2013 and financed it with a loan of about \$22,000. (GX 2.) The loan was cosigned by his mother. He neglected to obtain insurance for the car, as required by his loan contract, and the lender bought insurance on his behalf. (AX D.) He made his loan payments on time until about April 2014.

When Applicant applied for a title to the car, he learned that there was an outstanding citation for a fire-lane violation in his previous state of residence, and it cost him about \$1,300 to resolve it. (Tr. 39-40.) About two months after he purchased the car, he damaged the right side when he struck a tree branch, and he incurred repair costs of an unspecified amount. The repairs were poorly done, which depreciated the value of the car. (Tr. 20-21.) At about the same time, his student-loan payments of \$325 per month became due, and he fell behind on his car payments in order to make the student-loan payments. (Tr. 22.)

Applicant parked the car within the condominium property where he resided while he went on vacation for 10 days. When he returned from vacation, he found that the car had been impounded by the condominium association because it was parked in an area requiring a permit. The car was impounded for 43 days, and the condominium charged him about \$150 or \$200 per day for storage, which he could not afford. (Tr. 17, 31-33) The lender for the car loan intended to repossess it, but could not reach an agreement with the condominium association to gain access to it. Applicant testified that he does not know whether the condominium association disposed of the car. He testified that he believed that insurance company from whom the lender purchased insurance treated the car as a total loss and settled the debt with the lender. (Tr. 17.) In April 2014, the lender charged off the loan for \$22,029, and the account was closed. (AX C at 9; AX E.)

In Applicant's answer to the SOR, he stated that the debt was forgiven by the lender, and he was waiting for the lender to send him an IRS Form 1099-C. (Answer at 1.) As of the date the record closed, he had not received the form, because it will be issued for tax year 2021. (Tr. 29.)

Applicant remained in contact with the lender, as evidenced by the lender's correspondence in December 2017, refunding some of the insurance premiums paid to the lender because of overlapping insurance coverage (AX D.) At the hearing, he testified that the lender sent the documentation showing resolution of the debt to his mother, who had cosigned the loan, but that she no longer had the documentation and probably had disposed of it, thinking that the matter was resolved. (Tr. 28.)

SOR ¶ 1.b: delinquent medical bill for \$131. In Applicant's answer to the SOR, he stated that this debt was a co-payment that was paid but not processed because of change of health-insurance companies. It was referred for collection in February 2018. (GX 2 at 2.) In his answer to the SOR, he stated the bill was paid in full on February 6, 2020. He submitted a copy of the bill, on which he had written "paid," but he provided no documentation of payment. (AX A.) In his post-hearing submission, he submitted a credit report reflecting that the account was referred to a collection agency, that the original amount was \$77 (reflected as "high credit" in GX 2), had increased to \$131 in February 2019 (the amount alleged in the SOR and reflected in GX 2), and was paid in full in February 2020. (AX F at 4.)

SOR ¶ 1.c: credit-card account referred for collection of \$45. The date of last activity on this account was in June 2013, and it was referred for collection in February 2015. In Applicant's answer to the SOR, he stated that he paid this bill in full on April 3, 2020. He provided documentation of a zero balance on this account. (AX B.)

Applicant testified that he earns about \$74,000 per year. He owns a car that is debt free, his student loans are paid, and he has no delinquent debts. (Tr. 29.)

Applicant's senior program manager, who has known him for eight years, submitted a statement supporting Applicant's application to continue his clearance. He

stated that Applicant has “grown immensely” as a person and as a technician during the time he has known him and has received multiple promotions because of his hard work and technical skills. (AX G.)

The chief of the regional network center for whom Applicant works has known him since August 2017. He regards Applicant as “extremely dependable,” one of their best employees, and has a work ethic unmatched by his peers. (AX H.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence submitted at the hearing establish two 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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is partially established. Applicant's delinquent debts are recent and multiple. An applicant's ongoing, unpaid debts reflect a continuing course of conduct and, therefore, can be viewed as "recent" for the purposes of the Guideline F mitigating conditions. ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017). Although Applicant's debts are "recent," he receives some mitigating credit based on the passage of time. The delinquent car loan is the main item of concern in this case, and it was incurred more than six years ago and was the result of Applicant's immaturity and inexperience.

Applicant's delinquent debts were incurred under circumstances making them unlikely to recur. The car loan was charged off more than six years ago. He now has a good job and is financially secure. The testimonials of his supervisors indicate that he has matured and become a responsible and dependable employee. He has paid off his student loans, purchased a car that is debt free, and has incurred no other delinquent debts. I am satisfied that his previous financial irresponsibility is unlikely to recur and that the six-year-old charged-off debt alleged in SOR ¶ 1.a does not cast doubt on the his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. Applicant bought a car that he could not afford. He parked it in a restricted area, causing it to be impounded. He incurred a large fine and penalties for a fire-lane violation. These circumstances do not qualify as conditions largely beyond his control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.b and 1.c. Applicant has not submitted documentary evidence that the delinquent debt alleged in SOR ¶ 1.a has been resolved.

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). Applicant was candid, sincere, and credible at the hearing. He has held a security clearance since June 2012, apparently without incident. He has worked steadily to achieve financial stability. He has matured and become financially responsible. He received strong endorsements from his supervisors.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant provided evidence that he has resolved all his delinquent debts except for the debt alleged in SOR ¶ 1.a. He has remained in contact with this creditor and has made good-faith efforts to obtain documentation showing resolution of the debt. The debt is more than six years old and is not indicative of Applicant's current judgment, reliability and trustworthiness. 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 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): FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge