



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-03626
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

10/06/2020

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 (SCA) on April 23, 2019. On February 28, 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 March 2, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 12, 2020, and the case was assigned to me on July 16, 2020. On July 31, 2020, the Defense Office

of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 27, 2020. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until September 11, 2020, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on September 4, 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 47-year-old employee of a defense contractor. He has worked for his current employer since March 2019. He is currently a trainee, awaiting a decision on his application for a security clearance. (Tr. 20.) He graduated from high school in June 1991. He served on active duty in the U.S. Army from July 1991 to March 1997, and in the Army National Guard from March 1997 to August 1998. He received honorable discharges for both periods of service.

Applicant held several non-federal jobs, many of them entry-level or minimum wage, from August 2004 to January 2010, July 2011 to November 2018, and from January to March 2019. He was unemployed from January 2020 to July 2011 and November 2018 to January 2019. His SCA reflects that he has never held a security clearance. (GX 1 at 31.)

Applicant married in February 1994 and divorced in February 2001. He has two children, ages 26 and 22. He was required to pay child support of \$600 per month starting around 1998 or 1999 and ending in 2018. (Tr. 29, 46-47.)

Applicant's SCA reflects that he has no college credits. However, he testified that he attended college for about three years, and his credit reports reflect multiple student loans opened in December 2006. (Tr. 26, 56; GX 2 at 2-3; GX 3 at 203.) He dropped out of college so that he could work full time and pay his child support and living expenses. (Tr. 56-57.)

The SOR alleges four delinquent debts reflected in credit reports from May 2019 and December 2019. (GX 2 and 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: credit-card account placed for collection of \$394, reflected in GX 3 at 4. When Applicant was interviewed by a security investigator in May 2019, he told the investigator that he did not recognize this debt. (GX 4 at 1.) In his answer to the SOR, he admitted it, but it appears that he thought it was another credit-card account that was not alleged in the SOR. At the hearing, he testified that his only credit-card account is current and has never been delinquent. (Tr. 31.) The credit report from May 2019 reflects

two credit cards with the same generic name but issued by different banks. The first credit-card account is listed as current; the second is listed as referred for collection in April 2019. (GX 3 at 2, 4.) The second account is alleged in the SOR. The credit report from December 2019 reflects the first account as current, does not list the second account, and reflects that Applicant has no debts in collection status. (GX 2.)

SOR ¶ 1.b: cellphone account placed for collection of \$1,491, reflected in GX 3 at 5. Applicant admitted that he had an account with this cellphone provider and that he fell behind on his payments. The credit reports reflect that the debt became delinquent in June 2013 and was referred for collection in August 2016. (GX 2 at 1; GX 3 at 5.) When he was interviewed by a security investigator in May 2019, he said that he did not recognize the debt. (GX 4 at 1.) He testified that he had never been contacted by the creditor or a collection agency. (Tr. 32.) After the hearing, Applicant submitted evidence that he paid the collection agency \$497 on September 9, 2020, to settle this debt. (AX B.)

SOR ¶¶ 1.c and 1.d: delinquent student loans, one placed for collection of \$45,640 and the other 180 days past due for about \$9,436. (GX 3 at 2, 4, and 5.) Applicant testified that he believes the debt alleged in SOR ¶ 1.d is included in the debt alleged in SOR ¶ 1.c. (Tr. 35-36.) His belief is supported by the May 2019 credit report and the December 2019 credit report, both of which reflect a zero balance for the debt alleged in SOR ¶ 1.d and recite that the loan was assigned to the government. (GX 2 at 2-3; GX 3 at 4.) When Applicant was interviewed by a security investigator in May 2019, he stated that he fell behind on his student loan payments in 1997, during his divorce proceedings, and he began making payments of \$60 per week in July 2002. (GX 4 at 1.) He submitted no documentary evidence of payments. He testified that his tax refunds have been diverted to pay these debts and his pay has been garnished. He was not sure about the amount of the garnishment. (Tr. 37.) He testified that he has not approached the lenders about a payment plan because he will not have a job if his application for a security clearance is denied. (Tr. 39-40.) After the hearing, he submitted evidence that he had applied for a federal direct consolidation loan on September 9, 2020. (AX A.)

Applicant's current take-home pay is about \$2,400 per month. (Tr. 41.) His net monthly remainder after paying all living expenses is between \$800 and \$900 per month. (Tr. 44.) He has accumulated about \$3,000 in his checking account. He does not have a savings account or any investments. (Tr. 45.) He paid off the loan for his 15-year-old car in 2017. (Tr. 45.) The December 2019 credit report reflects no delinquent accounts except for the cellphone debt alleged in SOR ¶1.b and his student loans.

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 credit-card debt alleged in SOR ¶ 1.a is not established by the evidence. When Applicant admitted this debt, he thought it was another account on which he was making regular payments. The debt alleged in the SOR is not reflected in the December 2019 credit report, and it was placed for collection in April 2019, making it too recent to have "aged off" his credit record under the Fair Credit Reporting Act, which prohibits credit bureaus from listing any accounts placed for collection, charged-off debts, or civil judgments that antedate the credit report by more than seven years or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 15 U.S.C. § 1681c.

The student loan alleged in SOR ¶ 1.d appears to be included in the student loan alleged in SOR ¶ 1.c. 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 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.d in Applicant's favor.

Applicant's admissions and the documentary evidence in the record regarding the debts alleged in SOR ¶¶ 1.b and 1.c are sufficient to 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; 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 not fully established. Applicant's debts are not numerous, but they are recent and were not incurred under circumstances making them unlikely to recur.

AG ¶¶ 20(b) and 20(d) are not fully established. Applicant's divorce, periods of unemployment, and periods of underemployment were conditions largely beyond his control. However, he has not acted responsibly. He took no action to resolve the cellphone debt alleged in SOR ¶ 1.b until after the hearing. "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)). His approach to his student loans has been passive, allowing involuntary diversions of his tax returns and garnishment of his wages instead of actively seeking to resolve them. Payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). Applicant has applied for a consolidation loan, but his application is pending and not yet approved.

AG ¶ 20(c) is not established, Applicant has not submitted evidence of counseling and his financial problems are not under control.

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). I have considered Applicant's honorable military service and his candor and sincerity at the hearing. 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 and 1.d: **For Applicant**

Subparagraphs 1.b and 1.c: **Against 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