



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



In the matter of:)
)
) ISCR Case No. 19-03404
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is granted.

Statement of the Case

On March 11, 2019, Applicant filed a security clearance application (SCA). The Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant on May 4, 2020, detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

Applicant answered the SOR in an undated document (Answer). He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On November 12, 2020, the case was assigned to me. DOHA issued a notice of hearing on February 16, 2021, scheduling the hearing for March 12, 2021.

I convened the hearing as scheduled. Department Counsel presented five proposed exhibits, marked as Government Exhibits (GE) 1 through 5. I marked Department Counsel's exhibit list as Hearing Exhibit I.

Applicant offered five proposed exhibits, marked as Applicant's Exhibits (AE) A through E. I also marked Applicant's exhibit list as Hearing Exhibit II. In the absent of any objections, I have admitted all exhibits into the record. The record closed on March 12, 2021. DOHA received the hearing transcript (Tr.) on March 19, 2021.

Findings of Fact

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including Applicant's admissions in his Answer to all 11 of the SOR allegations, his testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 37 years old, married, and has a young child. He graduated from high school in 2001 and earned an associate's degree in science in October 2011 from a technical institute (the Institute). He began working for a DoD subcontractor in April 2019 and was hired in August 2019 by the DoD contractor to work directly for it as a Test Technician. Both of these positions required that he have a security clearance. In March 2019, he submitted his SCA. He has not previously held a security clearance. (Tr. at 20-21.)

Applicant incurred 14 student loans to pay for his education. He paid the loans when they became due every month until 2016 or 2017. At that time, his wife was a full-time nursing student, and they were living solely on Applicant's income. The monthly payments due on his loans were more than he could afford, and he defaulted. All but two of his loans were owned by the U.S. Department of Education (DOE). Applicant also had two private student loans. The total debt incurred on the private loans was about \$17,500. At the time of his background interview, Applicant estimated that the total amount of his 14 student loans was about \$58,000. (Tr. at 23-25; GE 2 at 3; GE 3 at 2-4; GE 4 at 2-3; GE 5 at 2-4.)

In January 2018, a DOE service provider obtained a garnishment of Applicant's income. The garnishment amount was 20% of each of his paychecks and varied between \$300 and \$400 per pay period. Applicant was under the mistaken impression that the garnishment extended to all of his student loans, including his private loans. In fact, the garnishment only covered his DOE loans. In October 2019, Applicant entered into a rehabilitation payment plan with a second DOE service provider, which required him to

make monthly payments of \$722 for nine months beginning in October 2019. He made all nine payments and successfully rehabilitated his 12 DOE loans. These loans are currently in good standing. Under the federal CARES Act enacted in 2020, his interest rate was temporarily reduced to 0%. He is currently paying \$200 per paycheck on all of his DOE student loans. His total DOE debt is about \$33,000. (Tr. at 23, 25-30; GE 1 at 45; GE 2 at 3, Answer at 1; AE E.)

In August 2020, Applicant began to take college courses part time at a local university. He hopes to continue his education at a major state university. He wants to pursue a bachelor's degree in electrical engineering so that he can qualify for a higher-level job and earn more income to support his family. He and his wife, who is now a practicing nurse at a cancer center, collectively earn a significant income, and he is paying for his college courses out of their earnings without incurring any additional student-loan debt. As a result of Applicant's current status as a part-time student, his obligation to repay his DOE student loans has been deferred to August 2024. Applicant is committed to repaying the DOE loans so that he can maintain his much-improved credit score and demonstrate his commitment to acting responsibly. He appreciates that any failure to do so could negatively affect any security clearance eligibility he may have in the future. (Tr. at 22, 27-28.)

SOR Allegations

Six of Applicant's 12 DOE student loans are alleged in the SOR at ¶ 1.b (\$9,266), ¶ 1.c (\$8,861), ¶ 1.d (\$6,620), ¶ 1.e (\$5,653), ¶ 1.f (\$4,397), and ¶ 1.g (\$4,332). The remaining six loans were not included in the SOR because they did not appear on his credit reports. The total amount of the six alleged loans is about \$39,000. The most recent credit report in evidence, dated November 6, 2020, also reflects a total student loan debt of about \$39,000. With Applicant's successful rehabilitation of these loans and their present status as current and deferred, **these debts are current.**

Applicant's two private delinquent student loan debts are alleged in **SOR ¶ 1.a** and **¶ 1.h**. The total amount of these debts is about \$17,000. A third party filed a lawsuit against the private lender claiming that the debts were unenforceable due to violations of the law by the lender. As a result of a successful resolution of this lawsuit, Applicant received a notice from the lender informing him that the debts were not enforceable and any payments of the debts would be returned to Applicant. Applicant testified that when he learned that these debts were separate from the DOE loans, he made some payments before learning about the lawsuit. **These debts have been resolved.** (Tr. at 24-25; AE B at 1-9.)

The SOR lists three additional allegations of delinquent debts. They are:

SOR 1.i – Collection Account Owed to a Lender in the Amount of \$300. During a period when Applicant and his wife were living solely on his income, he took out several short-term “pay-day” loans. He repaid each of these loans, except he overlooked this one loan. He was advised of this collection account during his background interview on July

10, 2019. He repaid this debt on June 8, 2020 and provided evidence of his payment at the hearing. **This debt is resolved.** (Tr. at 30, 32-33; GE 3 at 10; AE E at 8.)

SOR 1.j – Collection Account Owed to a Medical Provider in the Amount of \$297. This debt arose when Applicant had a tooth extracted. He thought he paid what he owed in addition to his insurance coverage at the time of the dental surgery. He never heard further from the surgeon. He was again advised of this collection account during his background interview. He called the holder of the debt and learned that he owed more than the amount listed on his credit report. He paid the account in two amounts, one for \$125 and a second of \$504. He provided evidence of the payments at the hearing. **This debt is resolved.** (Tr. at 30-31; GE 3 at 10; GE 4 at 1; GE 5 at 1; AE E at 9-10.)

SOR 1.k – Collection Account Owed to a Medical Provider in the Amount of \$61. This debt was for a medical appointment. After the background investigator advised him of this collection account, he paid it in May 2020 and provided evidence of his payment at the hearing. **This debt is resolved.** (Tr. at 31; GE 3 at 11; GE 4 at 1; AE E at 11.)

Overall, Applicant's finances are sound. Together, he and his wife make about \$110,000 per year. Their rent is a modest \$1,500 per month. He and his wife split the family bills between the two of them. He pays their rent, internet charges and cellphone account. His wife keeps a separate bank account and pays the utility bills certain other monthly expenses. He maintains a minimum balance of about \$1,000 in his bank account at all times. They each own a car and pay about \$400 per month on their vehicle loans. The cars were purchased new in 2018. Applicant has one credit-card account with a small credit limit. He uses the card to pay for gas, and he pays the card in full every month. He recently opened a new credit-card account with a higher credit limit. He did this to improve his credit score. He puts aside three percent of his income in his employer's savings plan. The company matches his contributions. (Tr. at 33, 38-39; AE D at 4-9.)

Due to their significant combined earnings and lack of tax deductions, Applicant and his wife ended 2019 with insufficient withholdings to pay all of their federal and state income taxes that were due in 2020. They have entered into payment plans to pay the balances due to the IRS and their state, which totals about \$10,000, and Applicant's wife makes monthly payments on those tax debts. They have adjusted their withholding amounts to avoid any underpayments in the future. These debts were not alleged in the SOR. (Tr. at 34-37.)

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 as follows:

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.

Applicant's admissions in his Answer and his testimony and the documentary evidence in the record 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 guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Five of them have possible applicability to the facts of this case:

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 partially established. Applicant's debts are numerous and recent. His recent actions, however, to address these debts support the conclusion that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established. Applicant's debts arose because of his wife's decision to pursue full-time studies to become a nurse. She has successfully completed her student work and is now fully employed in the field of caring for cancer patients. While these circumstances may not be considered outside of Applicant's control, it was ultimately his wife's decision to forgo her pre-student employment and to study nursing full-time. The result of her decision was that Applicant could no longer afford to pay his student loans. Once his wife finished her degree in nursing and became reemployed, Applicant has rehabilitated his DOE loans and is presently current on those loans.

AG ¶ 20(c) is not established. The record contains no evidence that Applicant sought or received financial counseling.

AG ¶ 20(d) is fully established. Applicant has paid the three collection debts alleged in the SOR and has rehabilitated the six DOE debts alleged. All of his DOE student loan debts are in current status. His two other private student loans have been favorably resolved. Applicant has initiated and is adhering to a good-faith plan to repay formerly overdue debts to creditors.

AG ¶ 20(e) is fully established with respect to the two private student loans alleged in the SOR. While it was not Applicant who disputed the validity of these two debts, he has established that they are unenforceable. Moreover, the documentary evidence in the record established that the creditor is not allowed to receive any payments from Applicant even if he attempted to pay these debts.

Applicant defaulted on his sizable student loans during a period of limited income. Since then, his wife has become reemployed, and Applicant obtained a better-paying job. The couple have recovered a solid financial footing and have responsibly addressed Applicant's student loans. In light of the record as a whole, Applicant satisfied his burden to establish mitigation of the security concerns raised by his delinquent debts.

Whole-Person Analysis

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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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 applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his indebtedness.

Formal Findings

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.k: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

John Bayard Glendon
Administrative Judge