



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02627
)
 Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on December 5, 2016. On December 16, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (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 February 11, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 28, 2020, and the case was assigned to me on October 22, 2020. Scheduling the hearing

was delayed by the COVID-19 restrictions on travel and personal contact. On April 8, 2021, I notified Applicant by email that his hearing would be conducted by video teleconference on April 27, 2021, at 10:00 a.m. The email notice is attached to the record as Hearing Exhibit (HX) I. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not submit any documentary evidence or present the testimony of any other witnesses. I kept the record open until May 11, 2021, to enable him to submit documentary evidence. At his request, I extended the deadline for submitting additional evidence to May 31, 2021. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on May 12, 2021.

Amendment of SOR

At the hearing, Department Counsel moved to amend the SOR by withdrawing SOR ¶ 1.d, alleging a delinquent \$71 medical bill. I granted the motion. (Tr. 7-8.)

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 40-year-old subject-matter expert who installs communications upgrades on ships. He has been employed by a federal contractor since July 2004. He received a security clearance in July 2007. He served on active duty in the U.S. Navy from October 1998 to December 2000 and received an honorable discharge.

Applicant married in October 2000, separated in December 2013, and divorced around 2018. (Tr. 15.) He has lived with a cohabitant since March 2015. He has two children, ages 22 and 15, who live with their mother. (GX 1 at 16, 19-20.)

The SOR alleges six delinquent debts totaling about \$26,000, including the \$71 medical debt in SOR ¶ 1.d, which was withdrawn. The debts are reflected in credit reports from April 2017 (GX 2), April 2019 (GX 3), and April 2021 (GX 4). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: car lease charged off for \$17,410. This debt was incurred when Applicant terminated a car lease early. (Tr. 53-54.) The April 2019 credit report reflects that the account was opened in May 2014, became delinquent in January 2017, and was paid off in February 2020. (GX 4 at 5.)

SOR ¶ 1.b: credit-card account charged off for \$9,300. The April 2019 credit report reflects that this account became delinquent in May 2016, was charged off, and was settled for less than the full balance. (GX 4 at 5.) Applicant's bank statement reflects a check to this creditor dated February 4, 2020 for \$1,860. (AX A.)

SOR ¶ 1.c: delinquent medical bill for \$170. Applicant testified that he could not provide any information about this debt. (Tr.38.) It is reflected in the April 2019 credit report. (GX 3 at 2.) The credit report reflecting this debt does not include an account number, the name of the medical provider, the name of a collection agency, or any other information identifying the debt. The debt is not reflected in the April 2021 credit report. (GX 4.)

SOR ¶ 1.e: utility bill placed for collection of \$36. Applicant testified that he paid this debt. (Tr. 41.) The debt is reflected in the April 2019 credit report but not reflected in the April 2021 credit report. (GX 3 at 2; GX 4.) Applicant continues to receive utilities from the same provider. His most recent bill reflects that the account is current. (AX D.)

SOR ¶ 1.f: cellphone bill placed for collection of \$79. Applicant testified that he paid this debt. It is reflected in the April 2017 credit report, but it is not reflected in the credit reports from April 2019 or April 2021. Applicant testified that he still has service with the same provider, and his monthly statement reflects that the account is current. (AX C; Tr. 50.)

Applicant attributed his delinquent debts to a lengthy marital breakup over a period of about four years. He testified that he paid a divorce lawyer about \$4,000 in 2015, and the lawyer disappeared after taking his money. (Tr. 15, 32.) He and his wife owned two homes, living in one and renting the other. When they separated, Applicant was working overseas, and his wife moved out of the former family home. They began renting both homes and had difficulty paying two mortgages when their tenants failed to pay their rent. (Tr. 29-30.) Applicant was able to dispose of both properties by short sales around 2017 and avoid any delinquencies related to them. (Tr. 31.)

Applicant has not sought or received financial counseling. (Tr. 47-48.) Regarding the debts alleged in the SOR, he testified that he “buckled down,” saved as much money as he could, worked as many hours as possible, and was able to resolve all his delinquent debts. (Tr. 37-38.) He testified that he is working on reducing his financial obligations and has paid down the balance on a credit card (not alleged in the SOR) by about \$6,000. (Tr. 13.) The April 2021 credit report reflects a credit-card account with a credit limit of \$22,000; a balance of \$15,233; and monthly payments of \$308, which are current. (GX 4 at 2.)

Applicant’s take-home pay is about \$6,000 per month. He has invested about \$3,000 in cryptocurrency. He has an average of about \$2,000 in his checking account. He rents his home for \$1,700 per month, including utilities. He owns one vehicle, a high-performance car that he bought to indulge his hobby of competitive driving. He bought it after resolving the debts associated with his divorce. He and his 15-year-old son spend time together watching car races, motocross bikes, and rally cars. (Tr. 23-24.) The April 2021 credit report reflects that he borrowed \$50,651 in May 2020; his monthly payments are \$859; the balance is \$44,745; and the payments are current. (GX 4 at 2.) His net monthly remainder after paying all financial obligations and living expenses is about \$1,500. (Tr. 21-25.)

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 admitted the \$170 medical debt alleged in SOR ¶ 1.c, but he was unable to identify it at the hearing. The SOR and the credit report on which it was based do not set out an account number, the name of a medical provider, the date it was incurred or referred for collection, the name of a collection agency, or any other information identifying the debt. SOR ¶ 1.c falls short of the specificity required by Directive ¶ E3.1.3, which is intended to enable an applicant to respond an SOR. I have resolved SOR ¶ 1.c for Applicant.

Applicant's admissions and the evidence submitted at the hearing constitute substantial evidence sufficient to establish SOR ¶¶ 1.a, 1.b, 1.e, and 1.f and raise two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The evidence regarding SOR ¶¶ 1.e and 1.f is sparse. SOR ¶ 1.e is reflected only in the April 2019 credit report, and SOR ¶ 1.f is reflected only in the April 2107 credit report. Applicant continues to receive service from the providers alleged in SOR ¶¶ 1.e and 1.f, and his billing statements from

both providers show that the accounts are current. The fact that they are not reflected in the April 2019 credit report tends to support his testimony that they were paid, because they are too recent to have “aged off” his credit record under the Fair Credit Reporting Act. In any event, the amounts of these two debts are too small to have security significance.

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 not established. Applicant's debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established. Applicant's marital breakup, the failure of his tenants to timely pay their rent, and the thievery by a divorce attorney were circumstances largely beyond his control. He acted responsibly by selling the rental properties and paying or settling his debts.

AG ¶ 20(d) is established. Applicant resolved the delinquent debts alleged in SOR ¶¶ 1.a and 1.b, totaling \$26,710. He submitted circumstantial evidence that the debts alleged in SOR ¶¶ 1.d and 1.e, totaling only \$115, were resolved. He has a credit-card account and a car loan, both of which are current. An applicant is not required to be debt-free. An applicant is required to act responsibly under the circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” evidencing a serious intent to effectuate the plan. ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant has successfully carried out his plan to “buckle down” and resolve all his delinquent debts.

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 worked as a federal contractor since 2004 and held a security clearance since 2007, apparently without incident. His history of financial delinquency did not begin until his marriage fell apart in 2013. He has gained control of his financial situation. 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.b, 1.c, 1.e, and 1.f: For Applicant

Subparagraph 1.d: Withdrawn

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