



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 20-01833
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*
06/21/2021

Decision

MARINE, Gina L., 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 November 25, 2019. On October 23, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAF acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on a date not reflected in the record, and requested a decision on the written record in lieu of a hearing. On February 17, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 10. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He

received the FORM on March 1, 2021, and did not respond nor otherwise object to FORM or the Government's evidence. Items 1 and 2 contain the pleadings in the case. Items 3 through 10 are admitted into evidence. The case was assigned to me on May 7, 2021.

Findings of Fact

Applicant, age 41, divorced his wife of 7 years in 2013. He has two minor children. He has resided with a cohabitant since 2014. He attended college for three months in 2009, but did not earn a degree. He has been employed by a defense contractor since November 2019. This is his first application for a security clearance. (Item 3)

The SOR alleged 11 delinquent debts totaling \$33,362, including two federal student-loan accounts totaling \$15,383, which were confirmed by the credit reports. In his SOR answer, Applicant admitted each of the alleged debts. (Items 2, 4-10)

In November 2019, Applicant promised to start paying the debts alleged in SOR ¶¶ 1.f and 1.g in December 2019; and the debt alleged in SOR ¶ 1.d via monthly payments of at least \$100 for an unspecified period until fully resolved. The record did not reflect that any of these payments had been made. (Item 3 at 46-48)

In his SOR answer, Applicant admitted that the alleged SOR debts remained unresolved. He also asserted the following: 1) that he was "working toward making the money needed to take care of all these debts;" and 2) that he wants "nothing more than to correct [his] past shortcomings and move forward with [his] life and career within the world of government contracting. He contended that he planned on having "most, if not all, of these unpaid debts taken care of by years end."

While Applicant did not explain why he incurred the SOR debts or why they have persisted, some relevant facts were revealed by the record. The SOR debts were reported delinquent between 2011 and 2019. Since 2011, Applicant has been unemployed three times: 1) from August 2011 through March 2012 (following a layoff); 2) from April 2014 through July 2014 (following a voluntary resignation); and 3) from December 2015 through February 2016 (following a layoff). In 2016, Applicant discovered that he owed \$7,774 for a child-support arrearage due to what he described as an accounting error on the part of his employer. In his November 2019 SCA, he reported that the arrearage was being paid via a wage garnishment. Between March 2018 and June 2020, Applicant opened five credit-card accounts (with limits between \$300 and \$1,500) and one automobile-loan account (with a high credit of \$21,173). As of January 2021, he was current on the automobile-loan account and four of the five credit-card accounts. He was at least two payments past due on one of the credit-card accounts. The unalleged child-support arrearage and late credit-card account will be considered only to evaluate mitigation and the whole-person concept. (Items 2-10)

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

Applicant's admissions and the credit reports establish the following two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

Applicant did not provide evidence to support any of the following potentially applicable mitigating factors: 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).

Not only did Applicant fail to resolve any of the alleged debts, but he owes substantial sums to the federal government for delinquent student-loan accounts. He has continued to rely on credit to pay expenses. I have doubts about whether Applicant

will be willing and able to fulfill his promise of resolving the accounts by years end, as he promised, or to otherwise gain control of his finances in a responsible manner. Therefore, I conclude that Applicant has not mitigated the security concerns raised by his failure to pay delinquent debts.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the 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 that Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge