



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01774
)
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

July 2, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations and personal conduct. Based upon a review of the pleadings and the documentary evidence in the record, national security eligibility for access to classified information is denied.

Statement of the Case

On June 12, 2018, Applicant submitted a security clearance application (SCA). The Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant on November 6, 2020, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 and requested a decision on the administrative record without a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 31, 2020, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included seven documents attached and identified as Items 1-7. A complete copy of the FORM was provided to Applicant. He was afforded the opportunity within 30 days of his receipt of the FORM to file objections to the Government's evidence and a response to Department Counsel's arguments in the FORM. He was also advised that he could submit documents with his response to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He received the FORM on February 6, 2021. He did not respond to the FORM or raise any objections to the Government's evidence.

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 and the documentary evidence in the record, I make the following findings of fact.

Applicant is 50 years old, married, and has one adult child and two adult stepchildren. He was married and divorced four times before his current marriage in 2017. Applicant graduated from high school in 1988. He enlisted in the U.S. Army in August 1988. In November 1989, he was administratively discharged for desertion. He received an Other Than Honorable Conditions discharge. He claimed that his discharge was upgraded to a General discharge under Honorable conditions. Since 2016, he has been the owner and operator of a truck transport business. Prior to that, he was a driver for other trucking companies. He is a first-time applicant for a security clearance. (FORM Item 7 at 2.)

SOR Allegations

1. Under Guideline F, the SOR sets forth two allegations of unpaid debts. In his Answer, Applicant denied the allegations, claiming that the debts had been taken off his credit reports. The details regarding both debts and Applicant's responses to the allegations are as follows.

a. Bank Loan delinquent in the amount of \$50,910 and in collection. In 2005, Applicant borrowed funds in connection with the purchase of a residential property. He subsequently defaulted on the loan. The bank foreclosed on the property. The bank then referred the residual debt to a collection agency. In his SOR answer, Applicant wrote that the bank foreclosed on the defaulted loan in 2011. He commented that he defaulted on the loan due to his inability to find work at that time and the housing crisis of 2008. He also wrote that he made several attempts to negotiate a resolution agreement with the

bank before it foreclosed. He believed that the bank wrote off the debt, and the account was closed and taken off his credit by 2018. In fact, the debt appears on FORM Item 4, Applicant's August 6, 2018 credit report. The debt was reported by two credit bureaus, Experian and TransUnion. The debt does not appear on FORM Item 5, an August 13, 2019 Equifax report obtained by the CAF. In his May 2019 background interview, Applicant disclosed to the investigator the existence of this debt in delinquent status. He advised that he has no intention of paying this debt. Since then he has provided no documentary evidence or written commentary suggesting that he has paid this debt or entered into a payment plan to repay the debt. This debt remains unresolved. (FORM Item 2 at 3; Item 4 at 3; Item 5; Item 7 at 4.)

b. Credit Union loan delinquent in the amount of \$4,145 and in collection. Applicant is a co-obligor on this loan. The other borrower was one of his former wives. Applicant claimed in his SOR answer that his ex-wife was obligated to pay this debt, though he provided no explanation as to why he is not also liable on the loan as a co-maker. He wrote further that he has never been contacted about this account and believed the debt was written off in 2018 and removed from his credit report. This debt also appears on FORM Item 4, as a collection account reported by Experian and TransUnion. The Government's August 13, 2019 Equifax credit report does not list this debt. In his background interview, Applicant failed to disclose this debt to the investigator. When confronted with this debt, he stated that he has no intention of paying it. Since then Applicant has provided no documentary evidence or written commentary suggesting that he has paid this debt or entered into a payment plan to repay the debt. He has also not provided any documentary evidence to support his claim that this debt is solely the responsibility of his ex-wife. This debt remains unresolved. (FORM Item 2 at 3; Item 4 at 3; Item 5.)

2. Under Guideline E, the SOR sets forth one allegation. The details of this allegation and Applicant's response are as follows.

a. The SOR alleges that Applicant failed to disclose the above delinquent debts in his response to a question in Section 26 of his 2018 SCA asking whether he had (1) defaulted on any loans in the last seven years; (2) bills turned over to collection agencies during the same period; or (3) been over 120 days delinquent on any debts. Applicant answered this question in the negative, which was factually incorrect. Applicant wrote in his SOR answer that he denied any intent to falsify his response to the SCA question about his debts. He wrote that he believed these debts had been resolved prior to the seven-year timeframe provided in this question. Accordingly, he argues that he did not intentionally omit the debts in his SCA. (FORM Item 2 at 3; Item 4 at 3; Item 5.)

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.

The record evidence establishes the following potentially disqualifying conditions under AG ¶ 19:

- (a): inability to satisfy debts;
- (b): unwillingness to satisfy debts regardless of the ability to do so; and
- (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. Three of these mitigating conditions possibly apply to the facts of this case:

- (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;
- (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
- (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 not established. The debts arose several years ago, but they still appeared as reported by Experian and TransUnion on the Government's 2018 credit report in the record as unpaid and in collection. Even if the debts had dropped off the credit bureaus' current credit reports, the debts remain unsatisfied in the absence of evidence of resolutions. In the event that the lenders charged off these debts on their financials, the debts are still outstanding and remain the legal obligations of the Applicant. His refusal to honor these debts increases the likelihood that he will refuse to pay future financial obligations. Applicant's ongoing delinquencies on two loans cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is only partially established. Applicant asserts that his residual mortgage debt arose out of lack of employment and the 2008 housing crisis, which were circumstances beyond his control. He has not provided evidence, however, that he acted responsibly once he recovered financially with new employment. Applicant's inability to negotiate a settlement with the mortgage lender does not establish that he acted responsibly under the circumstances. He was obligated to repay the entire debt, even if it had to be paid over time. As for the debt alleged in SOR ¶ 1.b, Applicant's ex-wife's failure to pay the debt does not relieve him of his obligation to pay the debt. He has provided no evidence as to why he did not repay this debt aside from his belief that he should not have to pay the debt even though he co-signed the loan. Overall, Applicant simply walked away from these debts without resolving them.

AG ¶ 20(e) is not established. Applicant wrote in his Answer that he does not believe he owes either of the debts alleged in the SOR. He has not provided, however, a reasonable basis to dispute the legitimacy of these past-due debts. Moreover, he has not provided any documentary evidence showing that he has disputed these debts with the credit bureaus, the original creditors, or the collection agencies. He has submitted no correspondence with the mortgage lender evidencing a dispute as to whether he owes this debt or an acknowledgement from the bank that he owes nothing further on the mortgage loan following the foreclosure on the property. Similarly, he has not submitted his divorce decree reflecting that his ex-wife is solely responsible for the debt alleged in SOR ¶ 1.b. Both debts appear on his 2018 credit report as being reported by two credit bureaus.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline in AG ¶ 16 contains seven conditions that are potentially disqualifying under circumstances involving personal misconduct. One of the conditions has possible applicability to the facts of this case:

(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

This potentially disqualifying condition requires the Government to establish that Applicant was aware of each of these debts in June 2018 when he signed the SCA. Applicant's statements in his SOR answer establish that he was aware of the existence of the debts during the seven years preceding his June 2018 SCA and that he deliberately omitted this derogatory information from his SCA. The fact that he did not believe he was ultimately responsible for the debts does not support a conclusion that he did not intentionally provide false information about the existence of the debts during the preceding seven-year period. AG ¶ 19(a) is established.

The guideline in AG ¶ 17 contains seven conditions that could mitigate security concerns arising from financial difficulties. Two of these mitigating conditions possibly apply to the facts of this case:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is only partially established. In his background interview almost one year after his submission of his SCA, Applicant disclosed the existence of debt 1.a. His disclosure at that time was not timely. Also, Applicant failed to disclose voluntarily debt 1.b before he was confronted with the existence of the debt.

AG ¶ 17(c) is not established. The falsifications are not minor. They appear in Applicant's 2018 SCA, which is under current adjudication. The circumstances of the two omissions are different and are not unique. Applicant has not established that it is unlikely that such behavior will recur. His failure to provide accurate and truthful information to Government security investigators casts doubt on his reliability, trustworthiness, and judgment.

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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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 not mitigated the security concerns raised by his financial considerations and personal conduct.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not 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 denied

John Bayard Glendon
Administrative Judge