



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-02236
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*
07/06/2021

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) raised by his delinquent student and personal loans. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 4, 2018. On November 21, 2020, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 DOD on June 8, 2017.

Applicant answered the SOR and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on February 16, 2021. On February 22, 2021, a complete copy of the file of relevant material (FORM) which included Government Exhibits (GX) 1 through 8, was sent to Applicant. He received the FORM and signed the receipt on March 23, 2021. The Defense Office of Hearings and Appeals (DOHA) transmittal letter, dated February 22, 2021, informed Applicant that he had 30 days after receiving it to file objections and to submit material to refute,

extenuate, or mitigate the Government's evidence. He did not file a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on June 3, 2021.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant has nine delinquent student-loan accounts totaling \$139,859, and one delinquent personal-loan account of \$1,139. Applicant admits each of the allegations. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from February 2021, August 2020, February 2030, and October 2018, listed on his e-QIP, and discussed during his personal subject interviews (PSI). (GX 4 through GX 7; GX 2; GX 8.) Applicant's admissions are incorporated in my findings of fact.

Applicant, 54, is a desktop support engineer currently working for a defense contractor since August 2018. He received his associate's degree in 2015. He and his wife married in 2004. Applicant has two children who are 29 and 13. (GX 3.)

On his e-QIP, Applicant stated that he incurred the student-loan debts for his and his daughter's college educations. He explained that he was working with a collection agency to pay the debts. He also listed three delinquent medical debts totaling approximately \$776, two of which he was making monthly payments of \$50 each, and one of which he was working on setting up a payment plan. He explained that he incurred these debts after undergoing various surgeries and was unable to pay the accounts after being laid off from his job. However, under the employment activities section of the e-QIP, Applicant did not list that he had been laid off by any of his previous employers between 2004 and 2018. He did list that from July until October 2016 he was self-employed as a ride-share driver after having left his previous employer by mutual agreement after being notified of unsatisfactory performance.

In his November 2018 PSI, Applicant discussed his prior employment record, but did not state that he had been laid off from any previous employer. He asserted that he had entered a payment plan and was making monthly payments on his student loans. In a follow-up PSI in January 2019, Applicant clarified that he had set up his payment plan in October 2019. His December 2021 CBR shows that Applicant made some payments on his student loans, but none since April 2019. (GX 4.)

In his answer to the SOR, Applicant attributed his delinquent debts to having been diagnosed with a chronic disease which required several surgeries and ongoing, regular treatments. He did not reference any other cause for his financial difficulties, including having been laid off from a previous employer. He asserted that he had entered a repayment arrangement that would begin on February 28, 2021. The terms of the arrangement were that he would pay \$701 per month on the consolidated total debt amount of his student loans. However, there is no record evidence to support this assertion. All of the delinquent student-loan accounts were assigned to collection

between September 2010 and September 2014. (GX 7.) The debts alleged in SOR ¶¶ 1.a through 1.i remain unresolved.

Applicant also stated in his answer to the SOR that he left four telephone messages between December 2020 and January 2021 for the creditor of the \$1,139 personal loan debt alleged in SOR ¶ 1.j in an effort to arrange a repayment plan, but that the creditor never returned his calls. This debt was assigned to collection in January 2018. This debt remains unresolved.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence establishes 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 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): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

While Applicant's financial issues may have arisen due to circumstances beyond his control, specifically his chronic medical condition, he did not act responsibly under the circumstances. Applicant's student loans went into collection between 2010 and 2014 and remain delinquent. While Applicant made some payments, he has not made any since 2014 and the balance on the delinquent student-loan debts is approximately \$140,000 (SOR ¶¶ 1a through 1.i). Although he asserts that he has entered another repayment plan for his student loans, there is no record evidence supporting this assertion. Applicant's personal-loan debt went into collection in 2018. He did not attempt to contact the creditor until late December 2020, well after having received the SOR. Applicant's financial issues are recent, ongoing, and unresolved. Applicant is legally obligated to pay his student loans and his failure to do so raises concerns about his willingness to abide by rules and regulations, and about his reliability, trustworthiness, and good judgment. Applicant has not made a good-faith effort to resolve his delinquent debts. None of the mitigating conditions apply.

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(a).

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole-person factors set forth in AG ¶ 2(a), I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a – 1.j:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge