



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-03388
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
 For Applicant: *Pro se*
 06/09/2021

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 21, 2019. On December 21, 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 January 6, 2021, 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 6. 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 4, 2021, and did not respond nor object to the Government's evidence. The case was assigned to me on May 7, 2021.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case. Applicant neither responded to the FORM nor objected to Item 4.

Findings of Fact

Applicant, age 41, divorced his wife of 20 years in 2019. He has three children, ages 14, 17, and 21. He married his second wife in March 2020. He earned a bachelor's degree in 2009. He retired from the U.S. Air Force as an E-6 in 2018, after 20 years of service. Since then, he has been steadily employed by defense contractors; his most recent position as an instructor began in August 2019. He has maintained a security clearance since 1998. (Item 3; Item 4 at 2, 3)

The SOR alleged three delinquent debts totaling \$46,519, which were confirmed by the credit reports. In his SOR answer, Applicant admitted each allegation. (Items 2, 5, 6)

Applicant obtained a debt consolidation loan in October 2016, which became delinquent in November 2017. The original creditor charged off the account in the amount of \$31,505, as alleged in SOR ¶ 1.a. It was transferred for collection in August 2020. Applicant claimed to have made three payments of \$850 at some point, which would have reduced the balance to \$28,955. However, in February 2021, the reported balance was \$29,556. (Item 2; Item 3 at 46-48; Item 6)

Applicant asserted that he had ongoing contacts with both the original creditor and the collection company for the debt alleged in SOR ¶ 1.a, but has been unable to reach an affordable agreement to resolve it. He outlined those contacts in his November 2019 SCA, which included an agreement to settle the debt for a lump-sum payment of \$16,000 from the proceeds of the sale of his marital home. Applicant made no mention of the agreement during his March 2020 security clearance interview or in his January 2021 SOR answer. During the interview, he averred that he had been working on a payment plan since 2018, but his creditor would not accept anything less than the full amount owed. In his SOR answer, he reported the most recent settlement offer: a lump-sum payment of 50% of the balance owed. (Item 2; 3 at 46-48; 4 at 4; Item 6 at 6)

Applicant did not maintain any written evidence of his creditor contacts for the debt alleged in SOR ¶ 1.a. He was unable to provide evidence of the three \$850 payments because the account from which he made them was a joint account he maintained with his former spouse, which had been closed following the divorce. The bank where the account was held is unable to retrieve documents from closed accounts. (Item 2; Item 4 at 5)

Applicant obtained an unsecured loan in June 2016. After the account became delinquent in October 2017, the original creditor charged off the account in the amount of \$13,195, as alleged in SOR ¶ 1.b. He has not paid any sums towards satisfaction of this debt. In his January 2021 SOR answer, Applicant asserted that he had ongoing contacts with the original creditor and, beginning in 2019, the collection company. He also maintained that he could not afford to make a lump-sum payment for the full amount, which is all either creditor would accept. (Items 2, 6)

In July 2019, an apartment rental account became delinquent. The original creditor placed it for collection in October 2019 in the amount of \$1,819, as alleged in SOR ¶ 1.c. Applicant averred that he co-signed this account for another person, but acknowledged his responsibility for repaying it. He has not paid any sums towards satisfaction of this debt. In his January 2021 SOR answer, he asserted that he planned to pay the debt “in the next few months” given that that he “now” has the “means to pay” it. (Items 5, 6)

Applicant described his divorce as “complicated.” In May 2017, a court issued a temporary order pending the final divorce that required Applicant to pay his spouse \$1,500 per month for alimony, granted him custody of the children (without a child support award), and assigned him the responsibility for paying the household expenses and marital debts. Pursuant to his May 2019 final divorce, Applicant was ordered to sell the marital home. He did not proffer any more terms of the final decree. (Items 2 at 1; 3 at 46-48; 4 at 4)

Applicant attributed the debts alleged in SOR ¶¶ 1.a and 1.b to his divorce. In his January 2021 SOR answer, he asserted that prior to the May 2017 order, he maintained a net remainder of approximately \$600 per month (despite having characterized his finances during that same timeframe as “living paycheck to paycheck” in his November 2019 SCA). However, he claimed that he was unable to afford to pay both alimony and his ongoing expenses and debts because of the financial strain caused by the May 2017 order. Thus, he made “an analyzed and well thought out decision” that the “lesser of two evils” would be to pay alimony over the debts alleged in SOR ¶¶ 1.a and 1.b to avoid being held in contempt of court. He chose those two accounts because he believed that they were “the least of [his] problems.” In November 2017, Applicant took on a part-time second job to help pay for household expenses and alimony. However, he resigned in February 2018 because the hours he worked were “starting to affect [his] kids, health and primary duties in the military.” (Item 2; Item 3 at 19, 46-48; Item 4 at 4)

Applicant anticipated that he would resolve his debts once his divorce became final and his marital home was sold. The record contains scant details surrounding his

financial history or other facts to establish his inability to pay them. Applicant did not proffer evidence of when or if his marital home was sold, or what, if any, proceeds he received. In his November 2019 SCA, Applicant expected the house to be sold “in the next few months.” His January 2021 credit report suggests that it may have been sold in February 2020, which is the date that his mortgage account was paid and closed. During his March 2020 security clearance interview, Applicant asserted that he had gained more control over his debt and had rebounded since the divorce. He declared that he was then willing and able to pay all debts. In his January 2021 SOR answer, Applicant explained that he is only able to repay his debts via monthly payments. (Item 2; Item 3 at 46-48; Item 4 at 5; Item 6 at 6)

Applicant has not received any financial counseling. His credit reports revealed extensive reliance on consumer credit over the years. Between June 2018 and September 2019, Applicant opened four new credit accounts, including a jewelry charge account (with high credit of \$4,791), and three automobile-loan accounts (with high credits of \$22,165, \$5,261, and \$2,364). As of February 2021, he was current on all four accounts. (Items 5, 6; Item 4 at 5)

In his SOR answer, Applicant argued that the financial struggles stemming from his divorce should be viewed in light of his history of otherwise “perfect” credit and years of service without any security incidents or other trustworthiness concerns. He also stated that the SOR debts were not caused by a “lack of judgment,” but rather an intentional decision to prioritize court-ordered alimony. He deployed to a combat zone in 2009. (Item 2; Item 3 at 11-12)

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).

The following are potentially applicable factors that could mitigate the security concerns raised in the SOR:

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.

Applicant is credited with making some payments to reduce the balance of SOR ¶ 1.a. However, he has substantial delinquent debts that remain unresolved. While he proffered compelling circumstances that undoubtedly impacted his family, he did not meet his burden to establish that the SOR debts were accrued (and have persisted) largely due to those circumstances, or that he acted responsibly to address them.

I considered that Applicant was unable to access certain financial documents. However, that does not fully relieve him of the obligation to substantiate his mitigation claims. I do not have information sufficient to conclude that Applicant exhausted all resources available to him to resolve his debts. I have doubts about whether Applicant is willing and able to fulfill his promise of resolving the debts, especially since he has not yet resolved even the smallest of them (SOR ¶ 1.c/\$1,819). In light of the record before me, I cannot conclude that Applicant has control of his finances or otherwise mitigated the Guideline F concerns.

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) and the personal sacrifice associated with Applicant's service in the U.S. Air Force. 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.c:	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