



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



In the matter of:)
)
) ISCR Case No. 20-03247
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, 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. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is denied.

Statement of the Case

On November 30, 2017, Applicant filed a security clearance application (SCA). The Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on December 7, 2020, detailing national security concerns under Guideline F (Financial Considerations). The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; 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 DoD on June 8, 2017.

On December 23, 2020, Applicant responded to the SOR allegations (Answer). He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 4, 2021, the case was assigned to me. DOHA issued a Notice of Hearing on April 13, 2021, scheduling the hearing for June 7, 2021.

I convened the hearing as scheduled. Department Counsel presented seven proposed exhibits, marked as Government Exhibits (GE) 1 through 7. I marked Department Counsel's exhibit list as Hearing Exhibit I. In the absence of any objections, I admitted the Government's exhibits into the record. (Tr. at 8-13.)

Applicant offered no documentary evidence at the hearing. He also did not request additional time to submit exhibits after the hearing. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 14, 2021.

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, including Applicant's admissions in his Answer to all of the SOR allegations, his testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 48 years old. He has two adult children from his first marriage in 1991. He was divorced in 2003. He remarried in 2009 and has one adult stepchild. He and his wife live in a home he has owned since 2007. He earned his high school diploma in 1991 and an associate's degree from a technical institute in 1996. He enlisted in the U.S. Navy following his high school graduation and served for four year. He was honorably discharged in 1995 at the pay grade of E-3. He presently works as an avionics tech for a DoD contractor. His wife works in a warehouse. (Tr. at 18-22, 32.)

In connection with his employment with DoD Contractor I, Applicant applied for and was granted eligibility for a secret security clearance in 2016. He changed jobs to work for DoD Contractor II in 2017. His current employer asked him to apply for a top secret clearance. He submitted his SCA in November 2017. (Tr. at 7-8, 21-22.)

In November 2015, Applicant began to experience financial problems after he was fired from his job at Employer A. He was terminated for violating company policies regarding computer usage. Employer A paid him a substantial hourly rate, and he was given a significant amount of overtime while working there. As a result, his annual income as an electrician was about \$120,000 for about five years. He earned substantially less at his next two jobs, Employer B and DoD Contractor I. When he moved from Employer B to DOD Contractor I, his earnings increased to about \$50,000 per year. He is presently making about \$75,000 per year working at DoD Contactor II. While working at Employer A, he incurred significant credit-card debts and other debts, even though he made a good income working there. He testified that he ran up debts on the five bank credit cards that are the subject of the SOR allegations and another three cards that he paid off prior to

the issuance of the SOR. In addition, he incurred debts on three retail store cards. (Tr. at 10-11, 22-30, 40-42.)

After losing his job with Employer A and suffering a large reduction in his income, Applicant was unable to continue paying his debts. He defaulted on all of the SOR debts. He also had a vehicle repossessed. All of his credit cards were cancelled and turned over to collection agencies. He was able to avoid foreclosure on his home mortgage, though he got behind on his mortgage payments. He subsequently caught up and is now current on his mortgage. He has cut back on his expenses to avoid incurring any new debt. (Tr. at 30-45, 49.)

Applicant has not created a budget. He is hoping to negotiate lower amounts on his debts so that he can begin to repay them. Some of the collection agencies have sent him settlement plans. He would like to make better deals with his creditors. He is trying to avoid filing for bankruptcy. He currently has about \$10,000 in savings and about \$25,000 in his employer's retirement plan. He has taken out a loan on the funds in the retirement account to pay for car repairs. He has worked hard to avoid creating new financial problems and intends to repay his debts as best as he can when he can in the future. (Tr. at 30-45, 49.)

SOR Debts

In his Answer, Applicant admitted each of the following eight debts alleged in the SOR:

1.a Credit-Card Account Charged Off in the Amount of \$3,383. Applicant opened this account in 2006. His last payment was made in about 2016. The creditor charged off this debt. Applicant has made no further payments. **This debt is not resolved.** (GE 4 at 9; GE 5 at 2; GE 6 at 3; GE 7 at 3.)

1.b Credit-Card Account in Collection in the Amount of \$1,714. Applicant opened this account in 2006. His last payment was made in about 2016. The debt has been charged off. Applicant has made no further payments. **This debt is not resolved.** (GE 4 at 9; GE 5 at 2; GE 6 at 3; GE 7 at 4.)

1.c Retail Credit-Card Account in Collection in the Amount of \$1,660. This debt became delinquent in about 2016, and the creditor assigned it to a collection agency in about 2017. Applicant has made no payments on this debt. **This debt is not resolved.** (GE 5 at 2; GE 6 at 3; GE 7 at 2.)

1.d Credit-Card Account in Collection in the Amount of \$1,101. This debt became delinquent in about 2016, and the creditor assigned it to a collection agency in about 2018. Applicant has made no further payments on this debt. **This debt is not resolved.** (GE 5 at 2; GE 6 at 3; GE 7 at 2.)

1.e Retail Credit-Card Account in Collection in the Amount of \$4,564. This debt became delinquent in about 2016, and the creditor assigned it to a collection agency in about 2017. Applicant has made no payments on this debt. **This debt is not resolved.** (Tr. at 41; GE 4 at 5; GE 5 at 2; GE 6 at 2; GE 7 at 2.)

1.f Auto Loan Charged Off in the Amount of \$11,953. Applicant opened this vehicle loan in September 2015, two months before he was terminated by Employer A. The loan became delinquent in about 2017. The creditor repossessed the vehicle in 2018. The original debt owed at the time of the repossession was \$36,174. After the sale of the vehicle, the debt was reduced to \$11,953. Applicant has made no payments on this debt. **This debt is not resolved.** (Tr. at 31; GE 4 at 8; GE 5 at 2; GE 6 at 2; GE 7 at 2.)

1.g Credit-Card Account Charged Off in the Amount of \$5,284. Applicant opened this account in 2007. His last payment was made in about 2017. The creditor subsequently charged off this debt. Applicant has made no further payments. **This debt is not resolved.** (GE 4 at 9; GE 5 at 2; GE 6 at 2; GE 7 at 3.)

1.h Retail Credit Account Charged Off in the Amount of \$2,309. Applicant opened this account in 2008 and purchased tires for his vehicles on credit. His last payment was made in about 2016. The creditor subsequently charged off the debt. Applicant has made no further payments. **This debt is not resolved.** (Tr. at 32; GE 4 at 6; GE 5 at 2; GE 6 at 3; GE 7 at 4.)

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.

Applicant's admissions in his SOR Answer and testimony and the documentary evidence in the record establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Three of them have possible applicability 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
- (d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are current, likely to recur, and cast doubt on his current reliability, trustworthiness, and good judgment. He suffered a financial setback with his termination from Employer A in 2015. The termination was due to his violation of the company's policies, so the resulting financial problems cannot be viewed as having resulted from conditions largely beyond his control. Also, he has not acted responsibly since 2015 by contacting his creditors and developing plans to repay his debts over time, whether all at the same time or one at a time. As of the date of the hearing, Applicant still had not initiated a good-faith effort to repay his overdue creditors. None of the above mitigating conditions have been established.

Applicant has not taken any significant steps to address his delinquent debts. In light of the record as a whole, Applicant failed to carry his burden to establish mitigation of the security concerns raised by his delinquent debts.

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 Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. Applicant accumulated a significant amount of debt during the years when he earned the most income working at Employer A. Since he began working for DoD Contractor II in 2017 and started to regain a good portion of his prior income, he has taken no steps to seek counseling to help him develop a plan to repay his debts. At that time, he had already been granted a secret security clearance. His failure to take any actions on his debt evidences a lack of responsibility inconsistent with the requirements for eligibility for access to classified information. 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 indebtedness.

Formal Findings

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.h:

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