



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



In the matter of:)
)
) ISCR Case No. 20-01161
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

July 29, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is granted.

Statement of the Case

On August 1, 2019, Applicant filed a security clearance application (SCA) as a first-time applicant. The Department of Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on January 4, 2021, detailing national security concerns under Guideline F (Financial Considerations). The DoD CAF acted under Executive Order (Exec. Or.) 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 January 23, 2021, Applicant responded to the SOR allegations (Answer) and provided a number of supporting documents. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 13, 2021, the case was assigned to me. DOHA issued a Notice of Hearing on April 13, 2021, scheduling the hearing for June 10, 2021.

I convened the hearing as scheduled. Department Counsel presented five exhibits, marked as Government Exhibits (GE) 1 through 5. 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 9-12.)

Applicant offered two exhibits. I marked them as Applicant Exhibits A and B. Both exhibits were admitted into the record without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 17, 2021. (Tr. at 13-16.)

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

Applicant is 56 years old. He was born in Mexico and entered the United States with his family in 1971 at age 6. He became a naturalized U.S. citizen in 1999. He married in 1982 at age 17 and did not graduate from high school. He was widowed in 2009. He and his deceased wife have three adult children. He remarried in 2016. His second wife has three adult children, one of whom lives with Applicant and her mother. Applicant's wife works at a church. Since 2001 he has worked for four different employers as a machinist. In 2019 he began working for his current employer, a major DoD contractor. His current position requires that he have eligibility for a security clearance. (Tr. at 17-21, 40-43.)

Applicant worked for Company A from 2001 until 2015, when the employer went bankrupt. He then worked for Company B for three months until he was unexpectedly terminated. The reason for his termination was that he did not meet the employer's standards. He worked for Company C from 2016 to August 2018. He began working for Company D, the DoD contractor, immediately after terminating his employment with Company C. (Tr. at 17-21; GE 2 at 2.)

Since the death of his first wife, Applicant began to experience financial problems due to excessive credit-card debt. For a long period, he had negative cash flow every month, and he made up the difference with credit cards. His expenses were for his rent, food, car payments, insurance, and other general living expenses of his children while they were growing up. One of his sons went to college, and Applicant paid a lot of the son's expenses with credit cards rather than student loans. He also incurred debts during

the period of his first wife's ultimately fatal illness and for her funeral, which cost about \$10,000. His children continued to live with him until 2016, when he remarried and moved out of the family home. The children also moved out at that time. He got behind on his bills with excessive debts, and he could not recover for several years. His annual income in the 2015-2016 time period when he worked for Company A and Company B was about \$60,000. His income continued at that level until 2018 when he began working for Company D, his current employer. In 2018, his annual income increased to about \$80,000. It was at that time that he was able to begin repaying his debts using the services of a debt-relief company (D/R Company). (Tr.at 25-31, 41-42.)

Applicant reported on his SCA that he was delinquent on 15 credit accounts, consisting primarily of bank credit cards and retail store credit cards. He advised that he had an estimated total delinquent debt of about \$62,500. He reported in his SCA that the financial delinquencies all began in about October 2015. In September 2018, about one year before he submitted his SCA, Applicant hired the D/R Company. To qualify for debt relief, his counselor advised Applicant to stop paying his debts for three months. He followed his counselor's advice, and instead, he began making payments to the bank of the D/R Company. Since 2018, he has been paying the D/R Company \$798 every month (\$399 every two weeks) by automatic bank transfer. The D/R Company initially advised Applicant that it will pay off his debts in about four years, *i.e.*, by late 2022. Applicant has recently been advised that it may take an extra year or two to resolve all of his debts unless he makes a larger monthly payment. He cannot afford to pay more at this time because he is ineligible to work overtime without a security clearance. (Tr. at 32-36.)

SOR Debts

The SOR alleges that Applicant is indebted to 12 creditors in the approximate total amount of \$54,500. In his Answer, Applicant admitted each of the following debts alleged in the SOR:

1.a Credit account in the amount of \$12,236. The D/R Company negotiated a settlement of this debt in the amount of \$8,050 and is paying this debt pursuant to a payment plan. **This debt is being resolved.** (Tr. at 25-27, 33, 37-38; GE 3 at 6; GE 4 at 1; GE 5 at 3-4; Answer at 4; AE B.)

1.b Credit account in the amount of \$10,992. GE 5 reflects that this debt has been paid for less than the full balance. An exhibit attached to the Answer and AE B also reflect that this debt has been paid. **This debt has been resolved.** (GE 3 at 8; GE 4 at 2; GE 5 at 4; Answer at 4; AE B.)

1.c Credit account in the amount of \$4,843. This debt is "enrolled" with the D/R Company to be resolved after other debts have been paid. **This debt will be resolved.** (GE 3 at 6; GE 4 at 2; GE 5 at 4; Answer at 4; AE B.)

1.d Credit account in the amount of \$4,307. The D/R Company has negotiated a settlement of this debt in the amount of \$2,283 and is paying this debt pursuant to a

payment plan. **This debt is being resolved.** (GE 3 at 7; GE 4 at 2; GE 5 at 2-3; Answer at 4; AE B.)

1.e Credit account in the amount of \$3,573. GE 5 reflects that this debt has been paid off for less than the full balance. An exhibit attached to the Answer and AE B also reflect that this debt has been paid. **This debt has been resolved.** (Tr. at 38; GE 3 at 6; GE 4 at 2; GE 5 at 3; Answer at 4; AE B.)

1.f Credit account in the amount of \$3,200. The D/R Company negotiated a settlement of this debt in the amount of \$1,697 and is paying this debt pursuant to a payment plan. **This debt is being resolved.** (GE 3 at 7; GE 4 at 2; GE 5 at 2; Answer at 4; AE B.)

1.g Credit account in the amount of \$3,134. GE 5 reflects that this debt has been paid off for less than the full balance. An exhibit attached to the Answer and AE B also reflect that this debt has been paid. **This debt has been resolved.** (GE 3 at 8; GE 4 at 2; GE 5 at 3; Answer at 4; AE B.)

1.h Credit account in the amount of \$2,255. This debt is enrolled with the D/R Company to be resolved after other debts have been paid off. **This debt will be resolved.** (GE 3 at 7; GE 4 at 2; GE 5 at 2; Answer at 4; AE B.)

1.i. Credit account in the amount of \$2,090. The D/R Company negotiated a settlement of this debt in the amount of \$1,061. AE A evidences payments made in February and March 2021. AE B reflects that this debt has been paid. **This debt has been resolved.** (GE 3 at 8; GE 4 at 2; GE 5 at 2; Answer at 4; AE A; AE B.)

1.j Credit account in the amount of \$1,299. This debt is enrolled with the D/R Company to be resolved after other debts have been paid off. **This debt will be resolved.** (GE 3 at 9; GE 4 at 2; GE 5 at 2; Answer at 4; AE B.)

1.k Credit account in the amount of \$656. GE 5 reflects that this debt has been paid for less than the full balance. This small debt is not identified on the D/R Company's list of Applicant's debts, *i.e.*, AE B. Applicant settled this debt directly with the creditor. **This debt has been resolved.** (GE 3 at 5; GE 4 at 2; GE 5 at 3; Answer at 4; AE B.)

1.l Delinquent credit account. The SOR does not allege a specific amount of this indebtedness. GE 5, which is dated after the SOR was issued, reflects that the amount ultimately charged off was \$6,011. AE B evidences that this debt has been paid. **This debt has been resolved.** (Tr. at 24; GE 3 at 7; GE 4 at 2; GE 5 at 5; Answer at 4; AE B.)

In summary, Applicant Exhibit B evidences that since 2018 Applicant and the D/R Company have paid six of the 12 SOR debts and that the D/R Company is currently paying another three SOR debts. The total amounts of the six paid debts as alleged in the SOR is approximately \$26,500, about one-half of all of the SOR debts of \$54,500. The amounts alleged in the SOR for the three debts currently being paid is about \$20,000. There are three more SOR debts to be paid by the D/R Company. The total of the

amounts alleged in the SOR for these three debts is about \$8,500. In addition, the D/R Company settled one debt with a bank with a charge off of \$7,509 that was not alleged in the SOR, increasing the total completed settlements to about \$34,000. That debt was paid off by the D/R Company prior to the date of the Government's earliest credit report, GE 3, which reflects that this debt was already paid by the date of the report, August 28, 2019. There are two other debts that were not alleged in the SOR and do not appear in the Government's credit reports. These debts have been enrolled with the D/R Company to be negotiated and paid. They total another \$6,000. (GE 3 at 6; Answer at 4; AE B.)

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 his testimony, as well as 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. Four 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts arose as a result of his overspending to pay for the needs of his family, and expenses related to the final illness and funeral of his first wife. While these are not unusual expenses, they are unlikely to recur. His children have grown up and are no longer Applicant's financial responsibility. He has controlled his spending since 2018 when he was given the opportunity to work for a new employer at a higher pay rate. He has been able to pay \$800 per month to the D/R Company for almost three years. Those funds are being productively used to resolve his debts. It is unlikely that he will overspend with credit cards in the future and repeat the costly mistakes of his past. His behavior prior to 2018 does not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(a) is established.

A portion of Applicant's indebtedness was caused by expenses related to the final illness and death of his first wife. This was a circumstance beyond his control. He was married to his wife for 27 years before she died. He did what was necessary to support her and their family during a difficult period. While Applicant was unable to catch up on his debts and repay them until 2018 when he began to earn more income, once he started working for Company D and increased his income by 33 percent, he acted responsibly by contracting with the D/R Company to negotiate and pay his debts. By paying the D/R Company \$800 per month every month, he made a serious commitment to resolve his debts. He acted responsibly under the circumstances. AG ¶ 20(b) is established.

When Applicant finally had the extra income available to him to pay for expert debt relief advice and to begin repaying his creditors, he hired the D/R Company. This financial counseling company has shown by its history of working with Applicant over the past three years that the company is a legitimate and credible source of financial counseling. Moreover, there are clear indications that Applicant's financial problems are being resolved. AG ¶ 20(c) is established.

In 2018 Applicant initiated a good-faith effort to repay his debts. Applicant's good faith is evidenced by the fact that he took the step of hiring the D/R Company one year before he submitted his SCA to seek a security clearance. He has faithfully adhered to the repayment plan developed by the D/R Company by having \$800 automatically withdrawn every month from his bank account. While he has more debts to repay, he has demonstrated with a three year track record that he is determined to finish the repayment plan and become debt free. AG ¶ 20(d) is established.

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). 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 mitigated the security concerns raised by his indebtedness.

Formal Findings

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.i:

For Applicant

Conclusion

I conclude that it is 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 granted

John Bayard Glendon
Administrative Judge