



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-02095
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
 For Applicant: *Pro se*
 08/23/2021

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 May 29, 2019. On January 4, 2021, 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; Department of Defense (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 February 8, 2021, and requested a decision on the written record in lieu of a hearing. On April 28, 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 8. 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 May 17, 2021, and did not respond to the FORM or object to the Government's evidence. The case was assigned to me on July 23, 2021.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 8 are admitted into evidence. Applicant's SOR Answer included evidentiary documents that I admitted into evidence as Applicant Exhibit (AE) A. Item 8 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 8. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 8 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 8 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 8 could be considered as evidence in his case. Applicant did not respond to the FORM or object to Item 8.

Findings of Fact

Applicant, age 53, is married with one adult child. He received a bachelor's degree in 1991 and a master's degree in 1996. He received a Joint Professional Military Education (JPME) phase 1 diploma in 2005. He served the U.S military in multiple branches, including the Navy and the Army National Guard, from June 1986 through June 2013, when he transferred to the retired list as a reservist for the Army National Guard. A defense contractor offered him a position as a manufacturing engineer in May 2019, dependent on him being granted the security clearance for which his 2019 SCA is pending. He previously maintained a security clearance in connection with his military service. (Item 3; Item 8 at 1, 6, 7)

Applicant worked as an aviation instructor from July 2013 through November 2015. He worked as a pilot for various private airlines between November 2015 and February 2019 except for the following periods of unemployment (which followed his voluntary resignations): two months in 2016, one month in 2018, and two months in early 2019 before being offered the position in May 2019. Applicant's current employment status is not indicated in the record. (Item 3)

The SOR alleged four delinquent debts totaling \$30,624, including a \$25,338 credit-card debt, a \$4,190 apartment-rental debt, and two medical debts totaling \$1,101. In his SOR answer, Applicant denied each of the alleged debts. However, the debts were confirmed by his credit reports dated July 2019 and January 2020. (Items 2, 4-6)

Applicant fell behind in his payments on two credit-card accounts in 2011, with approximate balances of \$2,000 and \$25,000. He attributed these delinquencies to a period between 2008 and 2013 when his family exhausted all of their savings due to a combination of his father passing away, him being out of work, and the aftermath of the economic recession. He resolved the \$2,000 account in September 2016. He claimed that he was unsuccessful in his initial attempts to make arrangements to pay the

\$25,000 account (which is the debt alleged in SOR ¶ 1.a) due to a “material disagreement” on the amount owed and a dispute about some charges he attributed to fraudulent use. He did not specify details underlying his fraud claim or the amount he agreed that he owed. He also claimed that he consulted an attorney who advised that, after a certain number of years, Applicant could not be held liable for the debt. The attorney warned that even one small payment could reset the statute of limitations clock and trigger an extension of the time that the creditor could pursue him legally for the debt. Based on this advice, Applicant decided not to pay the debt alleged in SOR ¶ 1.a. He did not proffer any documents corroborating his claims. (Item 3 at 78-80; Item 8 at 7)

In 2013, a person making a repair damaged a sprinkler head, which caused flooding in Applicant’s apartment. The flooding damaged the carpet and its padding, upon which mold began to grow. The managing agent for the property owner refused to repair the damages. After Applicant researched his options, he decided to default on his lease, which he believed was an available legal option. He moved out of the apartment in approximately July 2014. The debt alleged in SOR ¶ 1.b is the amount that Applicant was charged for breaking his lease and for the carpet and padding destroyed by the flooding. Applicant is not willing to pay this debt because he does not believe that he is legally responsible for paying it. He provided pictures of his then recently flooded apartment, including three commercial dehumidifiers that were running. However, he did not proffer evidence of actions he has taken to resolve the issue with either the managing agent or the property owner. (Item 3 at 80-81; Item 8 at 7-8; Item 7)

Applicant is not sure to what expenses the medical debts alleged in SOR ¶¶ 1.c and 1.d refer. He believes one of the debts could relate to a medical bill he incurred in connection with a 2017 car accident. His health insurance paid most of the expenses related to the accident and he received a small settlement from the at-fault driver’s insurance company. However, he had one medical bill (the amount of which he did not recall) that he was waiting to pay once he received the insurance settlement. When he tried to pay that bill, he was told that the account had been sold to another creditor. He never paid that bill because he was unable to locate the new creditor. He believes that one of the two debts could be that account. In August 2019, he told a DOD investigator that he would try to research the two medical debts and pay them if he is able to determine who to pay. Applicant did not proffer any documents corroborating his claims about the medical bill he attributed to his 2017 car accident or any efforts he made to resolve either debt. (Item 8 at 8)

In his August 2019 security clearance interview, Applicant characterized his financial situation as doing great. He stated that he was willing and able to pay his financial obligations and any delinquent debts for which he believed he was responsible. He was not planning on experiencing any financial difficulties in the future. At that point, he managed his finances by paying cash or using his debit card for most purchases. He maintained one active credit card, but tried not to use it. He stated that he had not received any financial counseling. (Item 8 at 8)

In his February 2021 SOR answer, Applicant indicated that he had engaged the services of a law firm to “remove all inaccurate information” from his credit report. He

did not specify any further details concerning that arrangement, including whether the law firm is providing him with any financial counseling or assisting him with paying his debts. He provided a copy of the latest credit report (dated February 2021) that he had received from the law firm. Applicant planned to “challenge and fight inaccurate information” on his credit reports. Without specifying the debts to which he referred, he asserted that the “3 latest hits” were “all garbage” and “rightfully gone;” and “[t]hat company in my book has some culpability, and I am not going to try and unravel it now 8 years later.” He did not provide any other documents corroborating the claims asserted in his SOR answer. (Item 2; AE A)

None of the SOR debts appeared on either his February 2021 or April 2021 credit report. The April 2021 credit report revealed: 1) three credit-card accounts in good standing with balances of \$2,660 (opened February 2021), \$2,775 (opened November 2018), and \$46 (opened April 2014), respectively; and 2) an automobile loan account in good standing with a balance of \$44,747 (opened March 2020). (Items 2, 4; AE A)

In his SOR answer, Applicant acknowledged that he could not promise that he would never experience financial difficulties again. He feels fortunate and grateful that he has maintained financial stability in light of the turbulent times facing the country. He recognized that no one has a right to a security clearance and fully understands the concern. However, he also asserted: “In no case would any financial difficulty cause me to betray my country.” (Item 2)

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))

The delinquent debts reflected in the credit reports dated July 2019 and January 2020 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 mitigating conditions under this guideline:

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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Applicant has reasonable basis to dispute at least some portion of the amount alleged in SOR ¶ 1.b given the proof he provided of the flooding damage. However, he fell short of establishing AG ¶ 20(e) to mitigate the debt alleged in SOR ¶ 1.b. because he failed to provide proof that he was not legally liable for the amount associated with him breaking the lease or of his actions to resolve the issue with either the managing agent or the property owner. Because he did not substantiate a reasonable basis to dispute their legitimacy, AG ¶ 20(e) was also not established to mitigate the debts alleged in SOR ¶¶ 1.a, 1.c, or 1.d.

Applicant is credited with resolving his \$2,000 credit-card account in September 2016, consulting with an attorney about the debt alleged in SOR ¶ 1.a, and engaging the services of a law firm to assist him with repairing his credit report. However, he did not establish that either he or the law firm for him has paid the debts alleged in SOR ¶¶ 1.a, 1.c, or 1.d. He also failed to establish that these debts were removed from his credit reports because he is no longer legally liable for repayment. The mere disappearance of a debt from a credit report does not, without more, absolve him from liability.

I considered the fact that the debts alleged in SOR ¶¶ 1.a, 1.c., and 1.d no longer appear on Applicant's credit report and may be no longer collectible due to the expiration of a statute of limitations. However, the fact that Applicant failed to take action to resolve these debts (which were established by earlier credit reports as his valid debts) during the time that they were legally collectible remains security significant. While the amount and type of debt alleged in SOR ¶¶ 1.c and 1.d might not be disqualifying on their own, they further underscore the overall Guideline F concerns, which Applicant failed to meet his burden of mitigating.

Although he proffered evidence of circumstances that were beyond his control between 2008 and 2013 and his car accident in 2017, Applicant did not establish that his SOR debts were attributable largely to those circumstances or that he acted responsibly to resolve them in the subsequent years. He did not proffer sufficient evidence of the efforts he made to resolve the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d. Applicant's decision not to pay the debt alleged in SOR ¶ 1.a demonstrates a willingness to place his own self-interest above his obligations, which casts doubt as to whether he may also act similarly in the context of his security obligations. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns. AG ¶ 20(a) does not apply. The partial applications of AG ¶¶ 20(b) and (d) do not suffice to mitigate the ongoing 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). 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.d: Against Applicant

Conclusion

I conclude that it is not clearly consistent with interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge