



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-03814
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 1, 2020. On March 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The CAF acted under Executive Order (Exec. Or.) 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 December 10, 2016.

Applicant answered the SOR and requested a decision on the written record without a hearing. His request for a decision on the written record is dated April 17, 2021,

indicating that he had received the SOR on or before that date. His narrative response to the SOR is dated May 3, 2021.

Department Counsel submitted the Government's written case on June 23, 2021. On June 24, 2021, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 3, 2021, but did not respond to it. The case was assigned to me on September 22, 2021.

The FORM included a summary of two personal subject interviews (PSI) conducted on September 4, 2015, and October 20, 2020. (FORM Items 5 and 6.) The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summaries; make any corrections, additions, deletions or updates; or object to consideration of the PSI summaries on the ground that they were not authenticated. I conclude that he waived any objections to the PSI summaries by failing to respond to the FORM. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, 1.h, 2.a, and 2.d. He denied the allegations in SOR ¶¶ 1.c, 1.d, 1.e, 2.b, and 2.c. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old field service representative employed by a defense contractor since March 2020. He attended high school from September 2000 to April 2003. He did not receive a diploma, but received a general educational development (GED) certificate in 2002. (FORM Item 5 at 3.) He served on active duty in the U.S. Army from March 2005 to April 2009 and received an honorable discharge. He received a security clearance in April 2005, which was revalidated in August 2015.

Applicant attended college from January 2016 to January 2017 but did not receive a degree. He married in October 2016. He and his wife have no children.

Applicant was unemployed from the date of his discharge from the Army until December 2009. He was employed from December 2009 to December 2012, unemployed from December 2012 to April 2013, and employed from April 2013 until he was terminated for poor attendance in June 2013. (FORM Item 5 at 3-4.) He was unemployed until November 2013. He was employed from November to December 2013, when he was laid off and unemployed until January 2014. He worked for another employer until he was fired in February 2014 for "talking back" to a supervisor. (FORM Item 5 at 3.) He was unemployed until May 2014. He was employed from May 2014 until August 2015, when he left voluntarily for another job. He was employed from August 2015 until he was fired after a disagreement with a manager in July 2016. He was unemployed

from July to October 2016. He was employed from October 2016 to December 2018, when he voluntarily left for another position. He worked for another employer from December 2018 to October 2019, when he was fired for misusing a company credit card. (FORM Item 8.) His termination in October 2019 is alleged under Guideline F in SOR ¶ 1.a and cross-alleged under Guideline E in SOR ¶ 2.d. He was unemployed from October 2019 until he was hired by his current employer in March 2020.

In addition to Applicant's misuse of a company credit card, the SOR alleges seven delinquent debts totaling about \$8,668, three of which are delinquent student loans totaling about \$6,380. The debts are reflected in credit reports from August 2020 and January 2021. (FORM Items 9 and 10) In his answer to the SOR, Applicant attributed his misuse of the company credit card and delinquent debts to the stress of dealing with his wife's mental breakdowns and suicide attempts. He submitted no evidence of financial counseling. He has not disputed any of the debts alleged in the SOR.

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.b: cellphone bill placed for collection of \$1,292. In Applicant's answer to the SOR, he stated that, on April 20, 2021, he set up a payment plan with a collection agency providing for an initial \$100 payment followed by automatic withdrawal of \$50 per month from his checking account. He did not submit any documentation to support his statement.

SOR ¶¶ 1.c, 1.d, and 1.e: collection accounts for \$279, \$420, and \$297. In Applicant's answer to the SOR, he stated that these debts had been paid in full on April 20, 2021. He provided no documentation of payment.

SOR ¶¶ 1.f: student loans placed for collection of \$2,295; \$2,202; and \$1,883. Applicant's student loans were assigned to the Department of Education (DoEd) in September 2016 and became delinquent in March 2018. In Applicant's answer to the SOR, he stated that he had contacted the collection agency on April 20, 2021, and set up a payment plan providing for monthly payments of \$624 on his total debt of \$7,266, with the first payment scheduled for April 21, 2021. He did not provide any documentation of the payment plans or payments actually made.

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 SOR alleges that Applicant was terminated from employment for misuse of a company credit card (SOR ¶ 1.a), that he has four delinquent consumer debts (SOR ¶¶ 1.b-1.e), and that he has three delinquent student loans (SOR ¶ 1.f-1.h). The security 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. . . . 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

The following mitigating conditions are potentially relevant:

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶¶ 20(b) and 20(d) are not established. Applicant's wife's mental problems were a condition largely beyond his control. Applicant's unemployment from April 2009 to December 2009, after his discharge from the Army, his unemployment from December 2012 to April 2013, and his unemployment from November to December 2013 were conditions largely beyond his control. However, his periods of unemployment from June 2013 to November 2013, February to May 2014, July to October 2016, and October 2019 to March 2020 were due to his misconduct.

Applicant did not act responsibly for the debts incurred due to conditions largely beyond his control. His answer to the SOR admits that he did not take action to resolve his debts until April 20, 2021, after he received the SOR. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). Furthermore, Applicant's assertion that he resolved all his delinquent debts is not supported by documentary evidence. An applicant who asserts that debts have been or are being resolved is expected to present documentary evidence supporting that assertion. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, provided for relief measures on Department of Education (DoEd)-owned federal student loans through September 30, 2020. The CARES act provided for automatic forbearance and zero interest charges during the forbearance. This student-loan debt relief received several extensions. The most recent extension was on January 20, 2021, and the COVID-19 emergency relief measures were extended on DoEd-owned federal student loans through September 30, 2021. Appellant's assertion that he began making payments on his delinquent student loans in April 2021 is not supported by documentary evidence. Furthermore, his student loans had been delinquent for two years when the CARES Act forbearance began, raising serious doubt whether he will comply with any payment agreements when the loans are no longer in forbearance.

Guideline E, Personal Conduct

The SOR alleges that Applicant's employment was terminated in June 2013 for poor attendance (SOR ¶ 2.a), terminated in February 2014 following "arguments in the workplace" (SOR ¶ 2.b), and terminated in July 2016 for "arguments in the workplace"

and poor attendance (SOR ¶ 2.c). The SOR also cross-alleges SOR ¶ 1.a, alleging Applicant's termination for misuse of a company credit card (SOR ¶ 2.d).

The security concern under this guideline is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information" Applicant's admissions and the evidence in the FORM establish the following disqualifying condition under this guideline:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . (2) any disruptive, violent, or other inappropriate behavior; [and] (3) a pattern of dishonesty or rule violations

The following mitigating condition in AG ¶ 17(c) is potentially relevant: "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." This mitigating condition is not established. Some of Applicant's problems in the workplace were minor, but his overall conduct was not infrequent and did not occur under unique circumstances making it unlikely to recur. I conclude that AG ¶ 17(c) is not fully established. No other mitigating conditions are established.

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(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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies and personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.h: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.d: **Against Applicant**

Conclusion

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

LeRoy F. Foreman
Administrative Judge