



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



In the matter of:)
)
) ISCR Case No. 20-03598
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

11/12/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to make sufficient progress resolving ten of the debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated, and eligibility for access to classified information is denied.

Statement of the Case

On December 18, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 2). On March 13, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

The SOR detailed reasons why the CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (Item 1)

On March 18, 2021, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 1) On May 25, 2021, Department Counsel completed a File of Relevant Material (FORM). On September 1, 2021, Applicant received the FORM. Applicant did not respond to the FORM. On October 29, 2021, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Redacted ISCR and ADP decisions and the Directive are available at website https://doha.osd.mil/Doha/doha_sys.aspx.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.d and 1.e, and he denied the SOR allegations in ¶¶ 1.a, 1.b, 1.c, and 1.f through 1.o. Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 45 years old, and he is seeking employment as a security guard. (Item 2 at 7, 15) He was employed as a correctional officer from 2016 to 2018, and he was on active duty in the Army or in the Army Reserve from 2003 to 2015. (*Id.* at 15, 17-21) He received a discharge under honorable conditions. (*Id.* at 22) In 1994, he received a high school diploma. (*Id.* at 13) In 1996, he was awarded an associate's degree in microcomputers, and in 1998, he received an associate's degree in business administration. (*Id.* at 13-14) In 2002, he married. (*Id.* at 25-26)

Financial Considerations

The SOR alleged Applicant has 15 delinquent accounts totaling \$55,056 as follows: SOR ¶¶ 1.a (\$18,986), 1.b (\$9,230), 1.c (\$6,470), 1.f (\$226), 1.h (\$80), and 1.i (\$10,750) are charged-off debts; SOR ¶¶ 1.d (\$1,598), 1.e (\$758), 1.k (\$2,406), 1.l (\$731), 1.m (\$800), 1.n (\$130), and 1.o (\$504) are debts placed for collection; and SOR ¶¶ 1.g (\$176) and 1.j (\$2,211) are delinquent accounts. (Item 1)

Applicant's most recent credit report of record is his August 13, 2020 credit report which showed ten delinquent SOR debts with the following balances: 1.a (\$18,986); 1.b (\$9,230); 1.c (\$6,470); 1.d (\$1,598); 1.e (\$758); 1.f (\$226); 1.g (\$176); 1.h (\$80); 1.i (\$10,750); and 1.j (\$2,211). (Item 5) This credit report did not list the following five SOR debts: 1.k (\$2,406); 1.l (\$731); 1.m (\$800); 1.n (\$130); and 1.o (\$504). (*Id.*)

Applicant's next most recent credit report of record is his February 11, 2020 credit report which showed ten delinquent SOR debts with the following balances: 1.a (\$18,718); 1.b (\$9,230); 1.c (\$6,470); 1.d (\$1,520); 1.e (\$715); 1.f (\$226); 1.h (\$80); 1.i (\$5,393) [The SOR lists the high credit amount instead of the balance amount]; 1.k (\$2,406); and 1.l (\$731). (Item 6) This credit report did not list the following five debts: 1.g (\$176); 1.j (\$2,211); 1.m (\$800); 1.n (\$130); and 1.o (\$504). (*Id.*)

Applicant's oldest credit report of record is his January 24, 2019 credit report which showed 12 delinquent debts with the following balances: 1.b (\$9,230); 1.c (\$6,620); 1.d

(\$1,336); 1.e (\$622); 1.f (\$226); 1.h (\$80); 1.i (\$5,393); 1.k (\$2,406); 1.l (\$731); 1.m (\$800); 1.n (\$130); and 1.o (\$504). (Item 4) This credit report did not list the three debts in SOR ¶¶ 1.a (\$18,986), 1.g (\$176), and 1.j (\$2,211). (*Id.*)

Applicant did not disclose any delinquent debts in his December 18, 2018 SCA. (Item 2 at 36-37) During his March 22, 2019 Office of Personnel Management (OPM) interview, Applicant said: (1) the utility debt in SOR ¶ 1.f (\$226) was the result of identity theft; (2) for several other accounts, such as SOR ¶¶ 1.i (\$5,393), 1.n (\$130), 1.k (\$2,406), 1.l (\$731), 1.m (\$800), and 1.o (\$504), he said he was unaware of the debt, and he would find out about the debt; (3) for still others, such as SOR ¶¶ 1.d (\$1,598) and 1.e (\$758), he was unable to figure out how to pay the debt; and (4) the vehicle-related debt in SOR ¶ 1.c (\$6,470) was not paid because the vehicle was wrecked. (Item 3) The other five SOR debts were not discussed in his OPM interview. (*Id.*)

In the FORM, Department Counsel described Applicant's security-significant behavior and noted the absence of mitigation. The FORM informed Applicant that he had 30 days from the receipt of the FORM "**in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.** . . . If [Applicant does] not file any objections or submit any additional information . . . [his] case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3 (emphasis added)) Applicant did not provide any response to the FORM.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

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

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant described one circumstance beyond his control, which adversely affected his finances. He was the victim of identity theft, and he believed the thief generated the utility debt alleged in SOR ¶ 1.f (\$226). However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). Applicant did not provide a copy of a police report about the identity theft or any correspondence with the creditor or credit reporting company disclosing the identity theft or seeking correction of his financial records.

Another component under AG ¶ 20(a) is whether he maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he maintained contact with his creditors. He did not provide any evidence of any payments to the SOR creditors.

Applicant's most recent credit report did not include five of the SOR debts: 1.k (\$2,406); 1.l (\$731); 1.m (\$800); 1.n (\$130); and 1.o (\$504). I am crediting him with mitigation of these five debts.

Applicant did not provide proof of resolution of the other ten debts totaling \$50,485. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Several of Applicant’s delinquent debts have been either charged off or dropped from his credit report or both. “[A] creditor’s choice to charge-off a debt for accounting purposes does not affect the debtor’s obligation to the creditor.” ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016). “[N]on-collectability of a debt does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication.” ISCR Case No. 15-05049 at 3 (App. Bd. July 12, 2017) (emphasizing security significance of debts despite being charged off).

“[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Applicant did not describe any financial counseling. He did not provide documentary evidence showing he was not responsible for any of the ten unresolved SOR debts or explaining why he was unable to make greater documented progress resolving the ten SOR debts totaling \$50,485 in SOR ¶¶ 1.a through 1.j. There is insufficient evidence showing Applicant’s multiple failures to pay debts were prudent good-faith decisions. He did not establish he was unable to make greater progress sooner in the resolution of his ongoing financial delinquencies totaling \$50,485. He did not establish that his financial delinquencies were unlikely to recur. His finances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 45 years old, and he is seeking employment as a security guard. He was employed as a correctional officer from 2016 to 2018, and he was on active duty in the Army or in the Army Reserve from 2003 to 2015. He was discharged under honorable conditions. In 1994, he received a high school diploma. In 1996, he was awarded an associate's degree in microcomputers, and in 1998, he received an associate's degree in business administration.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater documented progress resolving the ten delinquent SOR debts in SOR ¶¶ 1.a through 1.j. It is unclear why he did not provide evidence about his income, expenses, and efforts to resolve the debts in the SOR. His lack of responsible financial action raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

Formal findings For or Against Applicant 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 through 1.j:	Against Applicant
Subparagraphs 1.k through 1.o:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge