



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



In the matter of:)
)
) ISCR Case No. 19-02528
)
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings and the documentary evidence in the record, national security eligibility for access to classified information is denied.

Statement of the Case

On April 19, 2018, Applicant submitted a security clearance application (SCA). The Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on December 9, 2019, detailing national security concerns under Adjudicative 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 the Department of Defense on June 8, 2017.

On January 21, 2020, Applicant responded to the SOR allegations (Answer). He requested an administrative determination on the written record without a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). In his Answer, he admitted 10 of the 11 allegations set forth in the SOR. He provided no details explaining how he became indebted or the steps he has taken to resolve his debts, except that he claimed one debt was paid in January 2019 (SOR ¶ 1.e) and the amount of another debt had been reduced by \$4,000. (SOR ¶ 1.c.)

On March 30, 2020, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included 11 documents identified as Items 1-11. On April 13, 2020, the FORM and the 11 attachments were sent to Applicant. He received the documents on December 14, 2020. He was afforded an opportunity to file objections and to submit a written response and documents within 30 days of his receipt of the FORM. Applicant provided no response.

The case was assigned to me on February 12, 2021. I have marked Items 1 through 11 attached to the FORM as Government Exhibits (GE) 1-11, respectively, and they are admitted in the absence of an objection.

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 most of the SOR allegations, and the documentary evidence in the record, I make the following findings of fact.

Applicant, age 50, is divorced, and presently cohabitates with his fiancée. He did not list any children in his SCA, but he mentioned having a 16-year-old son in his April 3, 2019 background interview (Interview). He confirmed the accuracy of the investigator's report summarizing the Interview in his response to the Government's interrogatories. He has a high school diploma and earned a graduate certificate in 1993 from the U.S. Navy Nuclear EM A School. He served in the Navy Reserve from 1993 to 1999, when he was honorably discharged. He presently works for a Navy contractor as a deck electrician. He is a first-time applicant for a security clearance. (GE 4 at 2-3, 6.)

Applicant's SCA does not reflect any periods of unemployment, though he was self-employed operating a food truck for nine months in 2017 before he began his current employment. In the Interview, Applicant reported that after he and his fiancée began the food-truck business they encountered several problems. His fiancée's father became ill, and he and his fiancée had to relocate to a different state to care for the father until he died later that year. When the business was in operation, they had difficulty finding places to park the truck to sell food and were forced to move to a new residence because they could not park the truck where they were living. In his Interview, he blamed his non-payment of most of the debts listed in the SOR on his problems with his business in 2017.

Ultimately, Applicant started his current employment in October 2017. His fiancée does not work outside their home. (GE 4 at 5-7.)

SOR Allegations

Applicant admitted each of the allegations in the SOR, except SOR ¶ 1.e. The debts listed in the SOR and the relevant evidence in the record are as follows:

SOR ¶ 1.a, Unfiled Federal and State Income Tax Returns for 2017. Applicant volunteered in the Interview that he had not filed his 2017 tax returns due to procrastination. In 2017, he was self-employed for the first nine months of the year. He intended to file the returns with his 2018 returns, but he admitted the allegation of the unfiled 2017 returns in his January 21, 2020 Answer. **This financial obligation is not resolved.** (GE 2 at 1.)

SOR ¶ 1.b, Judgment Entered in the Amount of \$8,542. On October 15, 2018, a credit union obtained a judgment against Applicant on a debt arising from a car loan. He opened this account in April 2014 and defaulted on the loan in September 2017. In the Interview, he blamed his default on the loan and failure to pay the judgment on problems with his food-truck business. He has made no payments on this debt. **This debt is not resolved.** (GE 4 at 7; GE 5 at 1; GE 9 at 3.)

SOR ¶ 1.c, Judgment Entered in the Amount of \$11,524. On May 15, 2018, a financial company obtained a judgment against Applicant on a debt-consolidation loan that was in default. Applicant was unable to pay this debt due to problems with his food-truck business. The creditor garnished his wages, and as the date of the Interview, it had collected about \$6,000 of the debt. The balance due at that time was about \$14,000. In his January 21, 2020 Answer, Applicant wrote that the amount of the debt had been reduced to \$7,157. The balance due as of the most recent credit report in the file, dated March 30, 2020, was \$4,846. **This debt is not yet resolved.** (GE 4 at 5; GE 6 at 1; GE 9 at 2.)

SOR ¶ 1.d, Judgment Entered in the Amount of \$1,152. On October 25, 2017, a credit union obtained a judgment against Applicant on a credit-card account that was in default. Applicant was unable to pay this debt due to problems with his food-truck business. This account was opened in July 2014. Applicant defaulted on the payments in January 2017. He has made no payments on this judgment since then. **This debt is not resolved.** (GE 4 at 5-6; GE 7 at 1; GE 9 at 3-4; GE 10 at 2.)

SOR ¶ 1.e, Judgment Entered in the Amount of \$2,000. On July 11, 2017, an individual obtained a judgment against Applicant and his fiancée. The record contains no additional information about the debt except that Applicant wrote in his Answer that he paid this judgment on January 12, 2019. He has provided no evidence of the payment. The Government's evidence of this judgment is a printout of the court record, which reflects the date and amount of judgment and that the judgment remains unsatisfied. The printout

was created on September 9, 2019. **Applicant has not established that this debt has been resolved.** (Answer at 2; GE 8 at 1.)

SOR ¶ 1.f, Past-Due Debt Owed to a Credit Union. This credit-card debt is the same debt that was subsequently converted into a judgment and is the subject of SOR ¶ 1.d, discussed above. The record evidence reflects that Applicant only had one credit-card account with this credit union. **This debt is a duplicate of the debt alleged in SOR ¶ 1.d.** (GE 4 at 5-6; GE 9 at 3; GE 10 at 2; GE 11 at 2.)

SOR ¶ 1.g, Collection Account in the Amount of \$422. Applicant defaulted on a credit card and the account was referred to a collection agency. In his Interview, he attributed his failure to pay the credit card to his problems with his food-truck business. He has made no payments on this debt. **This debt is not resolved.** (GE 4 at 6; GE 9 at 2-3; GE 10 at 2; GE 11 at 5.)

SOR ¶ 1.h, Unpaid Bank Overdraft Expense Charged Off in the Amount of \$390. Applicant failed to repay an overdraft on a bank account and the institution charged off the debt. The debt was first listed on a June 2019 credit report in the record. It was not listed on the Government's original investigative credit report so the report in the record summarizing the Interview makes no mention of this debt. In the March 2020 credit report in the record, the debt is shown as unpaid. **This debt is not resolved.** (GE 9 at 3; GE 10 at 2.)

SOR ¶ 1.i, Unpaid Bill for Medical Services in the Amount of \$131. Applicant has an unpaid medical bill. As of the March 2020 credit report in the record, this debt remains unpaid. **This debt is not resolved.** (GE 4 at 6; GE 9 at 2; GE 10 at 2; GE 11 at 5.)

SOR ¶ 1.j, Unpaid Bill for Medical Services in the Amount of \$100. Applicant has a second unpaid medical bill. As of the March 2020 credit report in the record, this debt remains unpaid. **This debt is not resolved.** (GE 4 at 6; GE 9 at 2; GE 10 at 2; GE 11 at 5.)

SOR ¶ 1.k, Collection Account in the Amount of \$376. Applicant has an unpaid bill with an internet or cellphone provider. In his Interview, Applicant reported that he was unaware of this debt and that he had an active account with the same creditor at the time of the Interview. As of the March 2020 credit report in the record, the debt remains unpaid. **This debt is not resolved.** (GE 4 at 6; GE 9 at 2; GE 10 at 2; GE 11 at 5.)

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 the documentary evidence in the record 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(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required,

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Six of them have possible applicability to the facts of this case:

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(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;

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

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts remain unpaid, are frequent, and are likely to recur. They cast doubt on his current reliability, trustworthiness, and good judgment. He suffered a setback with his failed food-truck business. His problems were compounded by the final illness of his fiancée's father. Both were conditions beyond his control. Rather than address his delinquent business debts, Applicant merely walked away from them. He has not acted reasonably under the circumstances. Also, he has not obtained financial counseling or taken any steps to begin repaying his debts in good faith. He disputes one debt claiming it was paid, but failed to provide documentation to support his claim. Lastly, he has not submitted any evidence showing that he filed his 2017 tax returns. None of the above mitigating conditions have been established.

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing. 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). Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.k:	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