



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 20-00937
)
 Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*
01/05/2021

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 July 30, 2018. On September 1, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 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 June 8, 2017.

Applicant answered the SOR on a date not reflected in the record, and requested a decision on the written record in lieu of a hearing. On October 30, 2020, 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 7. 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 November 16, 2020, and timely submitted a response, to which the Government had no objection. Items 1 and 2 contain the pleadings in the case. Items 3, 5, 6, and 7 are admitted into evidence. I sustained Applicant's objection to Item 4 and neither considered nor admitted it into evidence. Applicant's SOR Answer and FORM response included evidentiary documents that I admitted into evidence as Applicant Exhibits (AE) A through G. The case was assigned to me on November 24, 2020.

Procedural Matter

On December 10, 2020, the Government proffered revisions to the FORM due to inadvertent typographical errors. With notice to Applicant, I noted the revisions for the record and appended the related documents to the record as Administrative Exhibit (AE) I.

Evidentiary Matter

The Government amended the SOR to withdraw allegation ¶ 1.h. Thus, SOR ¶ 1.h will neither be considered nor adjudicated.

Findings of Fact

Applicant, age 40, divorced his wife of 12 years in 2016. He remarried in 2017. He has three minor children born of his first marriage. He earned a bachelor's degree in 2013. He has been steadily employed full time since 2009, including with his current defense-contractor employer as of 2018. Although he has been employed by at least one other defense contractor, he did not report having previously held a security clearance. (Item 3)

The SOR, as amended, alleged nine delinquent debts totaling \$61,321, including three student-loan accounts totaling \$27,997 (SOR ¶¶ 1.a, 1.f, and 1.g), one \$10,671 automobile-loan account (SOR ¶ 1.b), four credit-card accounts totaling \$22,507 (SOR ¶¶ 1.c-1.e and 1.l), and one \$146 consumer account (SOR ¶ 1.k). The SOR also alleged two credit-card accounts that were charged off for unspecified amounts – SOR ¶¶ 1.i and 1.j – both of which were referred to collections as alleged in SOR ¶¶ 1.l and 1.d, respectively. In his SOR answer, Applicant admitted all but two of the 11 SOR allegations: SOR ¶ 1.a (\$21,696) and 1.f (\$4,392). Each SOR allegation was confirmed by the credit reports. (Items 2, 3, 6-8)

Applicant has been making monthly payments of \$200 to \$300 since September 2018 towards the federal student-loan debts alleged in SOR ¶¶ 1.a and 1.f. He successfully rehabilitated these two loans in June 2019. He has not made any payments toward any of his other debts, including the private student-loan account alleged in SOR ¶ 1.g, which remain unresolved. (Item 2; AE B, F, G)

Applicant initially contended that he could not afford to pay the remaining debts. In his SCA, he stated that "I don't think it's ok to be delinquent and have every intention

to fix the issue.” However, in his SOR answer, he stated that he does not intend to pay them because it is “not financially advantageous.” He is concerned that, because so much time has passed since the debts were incurred, he risks further damage to his credit score if he were to pay them now. In his FORM response, he declared “I am in a better financial position.” However, based on credit advisors with whom he has spoken, he believes it “makes more financial sense” to wait for his delinquent debts to age off of his credit report rather than pay them. (FORM Response; Item 2; Item 3 at 44-48)

Applicant attributes his indebtedness primarily to financial problems that arose during his first marriage and the costs associated with relocations and his divorce. His first wife did not work outside of the home in order to raise their children (as they had agreed), so they relied solely on Applicant’s income. As their family grew, it became increasingly difficult to maintain financial stability. Their finances became strained beginning in 2012. They chose not to file bankruptcy and, instead, “tried very hard” to keep up with their financial obligations. By 2014, they were no longer able to maintain their finances. He and his first wife disagreed with how to manage and budget their finances, which was a factor in the divorce. They initially separated in 2015. (Item 2)

The marital debts (including state and federal taxes that were neither alleged nor otherwise detailed in the record) were assigned to Applicant in the divorce. He did not contest that assignment to avoid a prolonged court battle and limit the emotional toll on his children. Applicant and his new wife have agreed upon a solid budget plan to manage their finances. Since he remarried, Applicant averred that he has timely paid his expenses, not incurred any new debts, and been able to raise his credit score. His September 2018 and October 2020 credit reports both showed an automobile-loan account that was past due in the amount of \$510. Applicant travelled on cruises in April 2017 and April 2018. (Item 2; Item 3 at 36-38; Item 7 at 4-5; AE A)

Applicant accepted responsibility for his accumulation of debt. He asserted that he has learned from his financial “mistakes.” Following his divorce, he developed a financial management database that he uses to maintain his finances. He and his new wife live below their means and are committed to being financially responsible. He received the “highest score possible” from his employer on his 2019 performance review. His work ethic and character were lauded by a colleague, his wife (who is also a colleague), and his mother-in-law. He assisted his mother-in-law in establishing a budget by sharing his database and the lessons he learned to maintain control of his own finances. With his help, she eliminated her debt within a few short months, enabling her to retire earlier than anticipated. He also educated her on how to save and spend wisely. (Item 2, AE C-E)

The record contains scant details about Applicant’s relevant income and expense history, including the costs associated with his relocations and divorce. He relocated in January 2015 to move closer to family due to his brother’s ailing health and to receive the support of family while he and his first wife struggled with their marriage. In December 2015, he relocated for a “better” employment opportunity. He relocated in June 2018 after his company announced layoffs. Applicant asserted that the cost of the move associated with first relocation led his finances on a “downward spiral of falling

behind on payments.” For his third relocation, he incurred “thousands in costs” while also paying for two homes until the sale of his former primary residence in August 2018. In 2016, Applicant began paying 30% of his income for child support prior to a court order. The record does not indicate whether that amount changed following the divorce. (Item 2; Item 3 at 9-11, 43-48)

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))

Applicant's admissions and his credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so); and AG ¶ 19(c) (a history of not meeting financial obligations).

The following are potentially applicable factors that could mitigate the security concerns raised in the SOR:

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; and

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

Applicant successfully rehabilitated the federal student-loan accounts alleged in SOR ¶¶ 1.a and 1.f and has been paying them as agreed for a substantial period of time. The allegations in SOR ¶¶ 1.i and 1.j refer to the same debts as those alleged in SOR ¶¶ 1.l and 1.d. Thus, I find SOR ¶¶ 1.a, 1.f, 1.i, and 1.j in Applicant's favor. However, he did not meet his burden to mitigate the remaining SOR debts.

AG ¶ 20(a) is not established. Applicant has debts totaling \$35,233 that remain unresolved.

AG ¶ 20(b) is not established. Applicant proffered compelling circumstances beyond his control that undoubtedly had both a monetary and nonmonetary impact on him and his family. I considered his divorce and that he did not acquire the marital debts alone. However, he did not meet his burden to establish that his delinquent debts have persisted largely due to those circumstances, or that he acted responsibly to address them.

AG ¶ 20(c) is not fully established. Applicant consulted with credit advisors and developed a financial management database. He learned enough about finances to avoid accumulating new debts and to assist his mother-in-law with gaining control of her own debts. However, his substantial debts remain unresolved without any resolution plan beyond waiting for them to age off of his credit report.

AG ¶ 20(d) is not fully established. I credit Applicant with successfully addressing his federal student-loan debts, for seeking advice from credit advisors, and for developing tools to help him manage his finances. However, his decision not to pay his delinquent debts, because doing so would not be in his best financial interest, belies a good faith effort to honor his financial obligations. While relying on credit reporting rules and the statute of limitations could be legally permissible options for Applicant to avoid repaying his debts, it raises a concern with respect to his security worthiness. As an individual seeking to obtain the benefit of a privilege and not a right, he is held to a higher standard for actions that might otherwise be considered innocuous in other contexts. Applicant made a choice to protect his self-interest above his legal obligations.

I am, therefore, left with doubt as to whether he may also act similarly with respect to his security obligations.

I have considered the progress that Applicant made in tackling his federal student-loan debts and the fact that he is not required to be debt-free in order to qualify for a security clearance. However, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Withdrawn by the Government
Subparagraphs 1.i – 1.j:	For Applicant
Subparagraphs 1.k – 1.l:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge