



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-01750
)
 Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2021

Decision

FOREMAN, LeRoy F., 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 March 16, 2018. On October 15, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD 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), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on March 15, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on July 1, 2021. On July 6, 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 30, 2021, and did not respond. The case was assigned to me on October 6, 2021.

The FORM included a summary of a personal subject interview (PSI) conducted on September 26, 2018. The PSI summary was 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 summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that Applicant waived any objections to the PSI summary 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.b and 1.c. He denied the allegations in SOR ¶¶ 1.a, 1.d, and 1.e. His admissions are incorporated in my findings of fact.

Applicant is a 32-year-old management analyst employed by a defense contractor since April 2016. He attended college from August 2007 to December 2011 and August 2015 to January 2016 but did not receive a degree. He has never married and has no children.

Applicant served on active duty in the U.S. Army from June 2012 to October 2015 and received an honorable discharge. He served in the Army National Guard (ARNG) from November 2015 to June 2017. In his SCA, he stated that he received an Other than Honorable Discharge from the ARNG. When interviewed by a security investigator, he explained that his ARNG unit was disbanded and that he was discharged because he took too long to find another unit. The accuracy of his disclosure of an Other than Honorable Discharge is suspect, because the record contains no evidence of misconduct or other basis for a less than honorable discharge. The report of investigation states that Applicant provided his discharge papers to the investigator, but they were not included in the CAF file. The SOR does not allege any misconduct during Applicant's military service.

The SOR alleges five delinquent debts totaling about \$20,000. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: judgment for \$1,672. Applicant denied this debt in his answer to the SOR. In his SCA, he stated that his rent payment was late because of "roommate payment issues," but the payments were made, eviction was avoided, and the case was dismissed. (FORM Item 3 at 38.) In the PSI, he stated that the debt was paid, but he provided no documentation. (FORM Item 4 at 4-5.) However, the judgment is not included in the FORM, and it is not reflected in any of the three credit reports in the FORM.

SOR ¶ 1.b: car loan charged off for \$15,164. Applicant admitted this debt in his answer to the SOR. In his SCA, he stated that his car was “totaled,” that the insurance payment was less than the amount owed, and that he was working to resolve the dispute. (FORM Item 3 at 40.) In the PSI, he stated that he was waiting for his insurance company to settle the dispute. (FORM Item 4 at 5.) He provided no evidence to show that the insurance payment was less than required under the terms of the insurance policy. He provided no evidence of negotiations with the insurance company or the original creditor. The debt is reflected in the three credit reports in the FORM.

SOR ¶ 1.c: military credit-card account placed for collection of about \$1,000. Applicant admitted this debt in his answer to the SOR. He did not address it in his SCA. In the PSI, he disagreed with this debt but did not provide any documentation to support his disagreement. (FORM Item 4 at 5.) The debt is reflected in the three credit reports in the FORM.

SOR ¶ 1.d: cellphone account placed for collection of about \$629. Applicant denied this debt in his answer to the SOR. He did not address it in his SCA. In the PSI, he stated that he disagreed with this debt, but he did not articulate the basis for his disagreement. He has provided no evidence that the debt is resolved. The debt is reflected in the May 2018 credit report. (FORM Item 5 at 7.)

SOR ¶ 1.e: delinquent rent payment of about \$1,500. Applicant denied this debt in his answer to the SOR. In his SCA, he stated that he was working with the collection agency to resolve this debt, but it was not yet resolved. In the PSI, he stated that he had made two payments on this debt, but he admitted that he had not made any further payments. He did not provide any documentation of payments or a payment agreement. The debt is not reflected on any of the three credit reports in the FORM.

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:

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).

The evidence in the FORM falls short of establishing the allegation in SOR ¶ 1.a. Applicant denied this allegation in his answer to the SOR, and he asserted in the PSI that he had satisfied the judgment. As noted in *Egan*, the Government has the burden of establishing controverted facts alleged in the SOR. The FORM contains no evidence showing that the judgment is unsatisfied. Thus, I have resolved SOR ¶ 1.a for Applicant.

Applicant's admissions are sufficient to establish the allegations in SOR ¶¶ 1.b and 1.c. He denied the allegation in SOR ¶ 1.d, but the March 2018 credit report is sufficient to establish this allegation. He denied the allegation in SOR ¶ 1.e in his answer to the SOR, but he admitted in his SCA that he was negotiating with the collection agency, and he admitted in PSI that he had made two payments on this debt and then stopped. His admissions are sufficient to establish the allegation in SOR ¶ 1.e.

Applicant's admissions and the evidence in the FORM are sufficient to establish the following 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 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;

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; 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.

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

AG ¶ 20(b) is not fully established. The total loss of Applicant's vehicle was a circumstance largely beyond his control, but he has not acted responsibly. He provided no evidence to show that the insurance payment on his vehicle was less than he was entitled to under the terms of the policy. He submitted no evidence of negotiations with his insurance company or the creditor.

AG ¶ 20(c) is not established. Applicant provided no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. Although Applicant asserted that he made two payments on the debt alleged in SOR ¶ 1.e, he admitted that he had stopped making payments before the debt was resolved.

AG ¶ 20(e) is not established. Although Applicant stated in the PSI that he disagreed with the debts alleged in SOR ¶¶ 1.c and 1.d, he provided no evidence of a factual basis for his disagreement.

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 Guideline F 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 Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

Formal Findings

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

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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.e: 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