



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-03323
)
 Applicant for Security Clearance)

Appearances

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

01/12/2022

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 on September 19, 2018. On February 13, 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 a date not reflected in the record and requested a hearing before an administrative judge. His answer was returned by the CAF on September 17, 2020, because it was incomplete. He submitted his corrected answer on

October 21, 2020. Department Counsel was ready to proceed on February 16, 2021, but scheduling of the hearing was delayed by health precautions imposed in response to COVID-19. The case was assigned to me on September 24, 2021. On October 5, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 20, 2021. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection.

I kept the record open until November 5, 2021, to enable Applicant to submit additional documentary evidence. At Appellant's request, I extended the deadline for submitting additional evidence to December 10, 2021. He timely submitted AX F through K, which were admitted without objection. AX F, the cover memorandum for his supplemental submission, was marked as an exhibit because of its testimonial nature. Although AX F listed several supplemental exhibits, including a tracking document for return of telecommunications equipment, no tracking document was included in his supplemental submission

DOHA received the transcript (Tr.) on October 27, 2021. The record closed on December 10, 2021.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c and denied the allegations in SOR ¶¶ 1.d-1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old information systems developer employed by a federal contractor since May 2018. He married in November 2004, divorced in June 2008, and married his current spouse in July 2010. He obtained a bachelor's degree in computer science in 2002 and a master's degree and a doctorate in theology in May 2018. He has never held a security clearance.

Applicant has five children, ages 22, 21, 19, 14, and 8. The oldest is active-duty military. The second oldest just graduated from college and lives at home while looking for a job. The 19-year-old is in college but is financially self-sufficient.

Applicant testified that he and his wife were both employed in public school systems in 2012. He earned about \$80,000 per year and his wife earned \$50-60 thousand per year, but they did not know how to budget their money. In 2014, they both took pay cuts to work in a charter school. Due to personality conflicts with the director of the charter school, Applicant's wife was fired in December 2015, and he was fired in February 2016. (Tr. 23.) As a result, their car was repossessed and they were evicted from their home. (Tr. 19-20.)

Applicant was self-employed from February 2016 to May 2017, when he was hired by a non-federal employer as a system developer. He was fired in November 2017, because his meticulous manner of working was not consistent with the fast-paced work ethic of his employer. (Tr. 24.) After being fired, he was self-employed until he was hired by his current employer in May 2018.

In response to DOD CAF interrogatories, Applicant submitted a personal financial statement in September 2019 reflecting his net monthly salary of \$5,804; his spouse's net monthly salary of \$4,010; monthly expenses of \$5,910; debt payments of \$2,590; and a net monthly remainder of \$3,910. (GX 2 at 8.) Applicant recently received a raise to about \$110,000 per year. (Tr. 32-33.)

The evidence concerning the allegations in the SOR debts is summarized below.

SOR ¶¶ 1.a and 1.b, failure to file federal and state income tax returns as required for tax years 2012, 2013, 2014, and 2015. Applicant attributed his failure to timely file his federal and state tax returns to procrastination. (AX F.) In response to CAF interrogatories in September 2019, he stated that he had filed all his past-due returns but that his tax preparer had destroyed his copies of them. He stated that he had filed the returns again but had not received the tax transcripts reflecting that they had been filed. (GX 2 at 7.) He attached receipts reflecting that large envelopes had been mailed on September 13, 2019 (the same day that he responded to DOD CAF interrogatories about his delinquent debts and past-due tax returns), to cities where the federal and state tax authorities are located. (GX 2 at 17.)

In Applicant's post-hearing submission, he submitted an unsigned copy of his federal return for 2012, but he submitted no proof that it was mailed or received. (AX I.) He submitted a copy of his state return for 2012. (AX H.) He submitted no proof of mailing or receipt for the state return, but he submitted a document reflecting that his claim for a refund was denied because he did not file his return within three years from the due date. (AX G.) The denial of a claim for a refund indicates that the state return for 2012 was filed. He provided no documentary evidence that the other past-due state returns had been filed.

In September 2020, Applicant submitted a request for an installment agreement for his state tax debt of \$26,884, requesting that it be paid in monthly installments of \$460. (AX J.) He submitted no proof that the request was mailed, received, or accepted. At the hearing, he testified that \$442 has been deducted from his bank account every month since October 2020. (Tr. 63.) He did not submit any documentation to support his testimony.

At the hearing, Applicant testified that he owed about \$4,000 in federal income taxes and that he intended to request a payment agreement. (Tr. 57-58) He submitted no evidence of a payment agreement as of the date the record closed.

Applicant's federal and state tax debts were not alleged in the SOR. Accordingly, I have considered them only for the limited purpose of evaluating his evidence of mitigation and as part of my whole-person analysis.

SOR ¶ 1.c, car loan charged off for \$8,948. The debt is the deficiency after a car was repossessed. (GX 3 at 6.) In September 2021, Applicant offered to settle this debt for a lump-sum payment of \$3,183. When this offer was rejected, he offered to pay \$150 per month, and this offer was accepted. (AX A.) He submitted no evidence that he had made any of the agreed payments as of the date the record closed.

SOR ¶ 1.d, public housing debt referred for collection of \$646. Applicant paid this debt in December 2020. (AX K.)

SOR ¶ 1.e, telecommunications debt referred for collection of \$269. At the hearing, Applicant testified that this debt was incurred when his ex-wife opened a cellphone account in his name and did not pay the bill. He testified that he contacted the cellphone servicer and reported that the account was fraudulently opened by his ex-wife, but they did nothing in response to his report. (Tr. 33-34.) In Applicant's post-hearing submission, he gave a different explanation, stating that this debt was for unreturned telecommunications equipment, that he had returned the equipment, and a tracking record for return of the equipment was attached to his cover letter. However, no tracking record was attached. (AX F.) The debt is not resolved.

SOR ¶ 1.f, medical bill referred for collection of \$162. Applicant disputed this debt because he believed it was covered by his insurance. He submitted documentation that he had medical insurance, but his documentation does not reflect whether the small debt alleged in the SOR was a copayment or some other expense not covered by the terms of his insurance policy. He told a security investigator that his insurance company informed him that the original creditor had not submitted a claim for this bill. (GX 2 at 3.) At the hearing, he testified that he had Medicaid until shortly before he had a routine medical checkup. He told the doctor's office that he was no longer on Medicaid but was covered by his wife's insurance. However, the doctor's office submitted the bill to Medicaid, which refused to cover it. According to Applicant, the doctor's office refused to resubmit the bill. Applicant testified that he offered to pay part of the bill, but the doctor's office insisted on full payment. (Tr. 41-42.) He did not submit any documentation to support his dispute.

Applicant submitted evidence that a credit-card bill for \$2,694, which was not alleged in the SOR, had been paid in full. (AX E) At the hearing, he testified that he submitted this document to demonstrate due diligence in resolving his financial problems. (Tr. 11.)

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).

Applicant's admissions and the evidence submitted at the hearing 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 following mitigating conditions are potentially applicable:

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(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous. The debt alleged in SOR ¶ 1.d was resolved only recently, and the debts alleged in SOR ¶¶ 1.e and 1.f are not resolved. None of the debts were incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant was fired from jobs in February 2016 and November 2017, which were conditions largely beyond his control, but he has not acted responsibly. His repeated failures to timely file his income tax returns were unrelated to his employment. He did not take action to resolve the debt in SOR ¶ 1.c until September 2021, shortly before the hearing. He did not pay the debt in SOR ¶ 1.d until December 2020, well after he received the SOR. He has given conflicting explanations for the unresolved debt alleged in SOR ¶ 1.e. The medical debt in SOR ¶ 1.f is unresolved.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.d, which has been paid. It is not established for the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.f. Applicant submitted no documentary evidence that he was making the agreed payments for the debt in SOR ¶ 1.c or that the equipment that was the basis for the debt in SOR ¶ 1.e had been returned. When an applicant asserts that a debt has been resolved or is being resolved, he or she is expected to present documentary evidence showing resolution of the debts. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established. Although Applicant claimed that he disputed the medical debt in SOR ¶ 1.f, he submitted no documentation showing that his current insurance covered the debt and no documentation that he disputed the debt with the medical office or the credit reporting agencies. The amount of this debt is of minimal security significance, but Applicant's failure to document his dispute or resolve the debt is relevant to his pattern of financial procrastination.

AG ¶ 20(g) is not established. Although Applicant submitted evidence that he mailed envelopes to the federal and state tax authorities, his evidence does not reflect

the contents of those documents. The state tax authority's denial of his claim for a refund for tax year 2012 does not establish that the returns for other years were filed.

Furthermore, even if Applicant filed all the past-due federal and state tax returns, the untimely filings do not end the inquiry. The fact that an applicant has filed past-due returns "does not preclude careful consideration of [an applicant's] security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). A security clearance adjudication is not directed toward inducing an applicant to file tax returns. It is aimed at an applicant's judgment and reliability. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

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 I have considered the factors in AG ¶ 2(d). Applicant was sincere and candid at the hearing, but he is a disorganized procrastinator. He was given substantial time after the hearing to provide documentary evidence in support of his declared intentions to resolve his debts, but he failed to take advantage of that opportunity. 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 repeated failures to timely file his federal and state income tax returns and his failure to resolve his delinquent debts.

Formal Findings

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

Guideline F, Financial Considerations: AGAINST APPLICANT

 Subparagraphs 1.a-1.c, 1.e, and 1.f: Against Applicant

 Subparagraph 1.d: For 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