



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-01748
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
 For Applicant: *Pro se*
 02/07/2022

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 August 9, 2019. On October 14, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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 July 12, 2021, and requested a decision based on the written record in lieu of a hearing. On September 23, 2021, 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 6. 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 October 12,

2021, and did not respond to the FORM or object to the Government's evidence. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on January 7, 2022.

Findings of Fact

Applicant, age 52, married his second wife in 2017. He divorced his first wife of 23 years in 2016. He has four children of his first marriage, three adults and one minor. He has four adult stepchildren of his second marriage. His educational history was not indicated in the record. He has been employed by a defense contractor as an application developer since 2010, when his initial security clearance was granted. He was previously employed by another employer as a programmer from 2004 through 2010. (Item 3)

The SOR alleged 16 delinquent debts totaling \$47,715, including two federal income tax accounts totaling \$9,929, nine federal student loan accounts totaling \$35,086, three medical accounts totaling \$1,506, and two consumer accounts totaling \$1,194. In his SOR answer, Applicant admitted each alleged debt. (Items 1, 2)

Applicant attributed his delinquent debts to his 2016 divorce and 2017 marriage. He stated: "My life was turned upside down during those couple of years. Some things slipped through the cracks during that time. It's not an excuse." He did not proffer any details concerning his income or expense history. (Item 3 at 34, 36)

In his August 2019 SCA, Applicant addressed the debts alleged in SOR ¶¶ 1.e through 1.p, but not the debts alleged in SOR ¶¶ 1.a through 1.d. He planned to contact the creditor "within the next couple of months" to resolve the medical debt alleged in SOR ¶ 1.e, which he attributed to treatment for one of his children. He was "working with the IRS to get everything paid and current," and planned to take out a personal loan to pay his tax debt if the IRS did not accept a payment plan. He maintained that he was not aware of his student loan debt until he received a letter from his lender that his balance had been paid via a wage garnishment. He claimed that he had neither noticed that his wages had been garnished nor received any notification of the garnishments until he reviewed his pay stubs upon receipt of that letter. He verified the garnishments, but did not indicate the amount garnished. He acknowledged that there remained a balance owed, and planned to contact the collection agency to whom the U.S. Department of Education had transferred the accounts to set up a payment arrangement. (Item 3 at 34-40)

Applicant asserted in his August 2019 SCA that he had been rebuilding his credit and paying off his debt "on [his] own," but planned to look into working with a credit counseling service to help "maximize" his and his wife's credit scores so that they could buy a home in 2019. He maintained that his credit score had gone up 115 points and that he was using only two credit cards, the balances of which he paid in full each month. His January 2021 credit report showed two active credit cards in current status with minimal balances, but no mortgage account. It also revealed a reduced balance of \$803 for the consumer debt alleged in SOR ¶ 1.a (\$1,105), and higher balances for each of the student

loan debts alleged in SOR ¶¶ 1.f through 1.n, which then totaled \$35,928. The debts alleged in SOR ¶¶ 1.b through 1.e did not appear in the credit report. (Item 3 at 36)

In about November 2019, Applicant engaged the services of debt resolution company to assist him with resolving his tax and student loan debts. He provided copies of related disclosure forms and email correspondence, dated November 2019. However, he did not proffer any details about the progress, if any, he made on resolving those debts either through the debt resolution company or otherwise. (Item 4)

Applicant was disciplined by his employer in 2016 for violating the terms of his company credit card. He charged approximately \$2,000 on the card, which was apparently not authorized by his company. He stated: "I was going through a divorce. I had put travel expenses on the card. My ex wife [*sic*] cleaned out the bank account, so I was unable to pay it when it was due." He paid the balance due eventually, just not on time. His employer revoked his credit card as a result. (Item 3 at 35-36, 38-39).

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))

The record establishes the following two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following 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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 delinquent debts appear to have largely resulted from circumstances beyond his control. I credit him with the reduced balance of the debt alleged in SOR ¶ 1.a. I also give him credit for initiating action to resolve his student loan and tax debts in November 2019, well before issuance of the SOR. However, without documentary proof, I am unable to conclude that he made any progress with resolving his debts either through the debt resolution company or otherwise.

Applicant failed to meet his burden to establish mitigation because he did not provide sufficient documentary evidence to corroborate his actions to resolve his debts, or to establish his income and expense history. I am unable to conclude that Applicant is adhering to good-faith efforts to resolve his debts or otherwise acted responsibly to address his debts; that he is able to repay his debts; and that his indebtedness is not likely to recur. He demonstrated poor judgment by using his company credit card in a manner not authorized. Collectively, these factors leave me with doubts about Applicant's current reliability, trustworthiness, and good judgment. Thus, I find that he has not mitigated the Guideline F concerns at this time. AG ¶¶ 20 (a), (b), (d), and (g) are not established.

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 commonsense 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 interests of national security 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
Subparagraphs 1.a – 1.p:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge