



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



In the matter of:)
)
) ISCR Case No. 20-03484
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

01/06/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant admitted responsibility for 10 delinquent debts totaling \$85,859. He did not provide enough evidence of progress towards resolution of these delinquent debts. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 1, 2019, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On March 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (HE 2) On June 3, 2021, Applicant provided a response to the SOR and requested a hearing. (HE 3)

On October 13, 2021, Department Counsel was ready to proceed. On October 29, 2021, his case was assigned to me. On November 2, 2021, DOHA issued a notice of hearing, setting his hearing for November 17, 2021. (HE 1) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered six exhibits. (Transcript (Tr.) 21-22; GE 1-6) Applicant did not offer any exhibits. (Tr. 14) Applicant said he did not receive the government documents before the hearing. (Tr. 13) He agreed to go forward with his hearing and to receive the documents after the hearing. (Tr. 13-14) I advised him that he would be permitted to object to the documents after he received them or reopen his hearing if he wished. (Tr. 13-14, 23) On November 29, 2021, DOHA received a transcript of the hearing. Applicant was given 10 days after receipt of the documents to express any objections he may have for the Government's documents. (Tr. 23-24) The record was scheduled to close on December 17, 2021. (Tr. 60, 62) On December 24, 2021, I emailed Applicant and asked whether he had received GEs 1-6 and whether he wished to reopen the hearing or present additional documents. (HE 4)

On December 24, 2021, I called Applicant and then I emailed the following paragraph to Applicant and Department Counsel based on our telephone conversation. I also provided Applicant the opportunity to comment on my message quoted below.

On December 24, 2021, I telephoned Applicant and asked him if he received Department Counsel's exhibits, and he said that he had. I asked if he had any objections to my consideration of them, and he said he did not. I asked if he wanted to [re]open the hearing, and he said he did not wish to reopen the hearing. I asked if he would send me an email about our conversation, and he said he did not wish to do so. He requested three months of delay in the issuance of my decision to enable him to improve his finances, and I denied the request. (HE 4)

Applicant and Department Counsel did not provide any comments in response to this email.

Some details were excluded from this decision to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available on the Internet.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.j with explanations. (Tr. 16; HE 3) Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 62 years old, and he is seeking employment as a translator. (Tr. 6, 8, 26; GE 1) In 1980, he graduated from high school, and in 1984, he was awarded a bachelor's degree. (Tr. 7, 27) He has not served in the military. (GE 1; GE 3) He served in Iraq as a translator from 2010 to 2011, and he held a security clearance at that time. (Tr. 8, 30) He was unemployed for about one year after returning from Iraq. (Tr. 30) In 1999, he married, and in 2018, he divorced. (Tr. 8-9, 26) His four children were born in 2002, 2004, 2006, and 2014. (Tr. 9, 27) There is no evidence that Applicant violated his employer's rules, committed criminal conduct, used illegal drugs, or abused alcohol. (GE 1; GE 2)

Financial Considerations

Applicant attributed his delinquent debts to his divorce, and his decision to take responsibility for the marital debts. (Tr. 19) He was underemployed and lacked sufficient income to pay his debts. (Tr. 19) About four months before his hearing, he sought professional help from a financial advisor with his debts. (Tr. 19) From July through August 2021, he was hospitalized on three occasions. (Tr. 20, 36-37) He was unable to work for four months. (Tr. 35-36) He has been working part time as a translator since 2015. (Tr. 29) He also delivers food for restaurants. (Tr. 30, 54-55) He is currently receiving Social Security payments. (Tr. 55) He does not have any savings or retirement accounts. (Tr. 56-57)

SOR ¶¶ 1.a through 1.j allege that Applicant had 10 delinquent accounts totaling \$85,859 for the following amounts: \$25,651; \$24,161; \$16,858; \$5,545; \$3,495; \$2,851; \$2,517; \$478; \$335; and \$3,968. (HE 2) For 4 of the 10 debts, the creditors attempted to garnish Applicant's pay; however, Applicant did not know the result of the lawsuits. (Tr. 38)

Applicant stopped paying the SOR debts in 2017, except for SOR ¶ 1.b (\$24,161). (Tr. 33, 48, 52) The debts were generated for living expenses at a time when Applicant was unemployed. (Tr. 51-53) Due to lack of income, he did not make any payments on the other SOR debts. (Tr. 37, 48-50) He sought professional help with his debts from a financial advisor. (Tr. 34) His financial advisor is supposed to contact his creditors and discuss the debts with his creditors. (Tr. 36) He does not have a plan for resolving his SOR debts. (Tr. 38) He has given information to his financial advisor; however, he has not signed a contract with the financial advisor for services. (Tr. 50-51) He is relying on the financial advisor for help and advice about what he should do about his debts. (Tr. 38, 49) He has not received financial counseling. (Tr. 54)

As for the debt in SOR ¶ 1.b for \$24,161 for child support, Applicant explained that he provides some financial support to his family. (Tr. 39-44) He has receipts for the

payments he made to support his children. (Tr. 41) He purchased used cars for two of his daughters in 2017 and 2019. (Tr. 42-43) He has a lawyer who is helping with the child support debt. (Tr. 41) He said he is current on his child support debt. (Tr. 45)

I requested that Applicant provide his federal income tax returns for the last five years to show his income. (Tr. 57-58) I requested that he provide documentation showing his history of making child support payments, and documentation concerning his agreement with the professional financial advisor. (Tr. 46-47, 60) He did not provide any post-hearing documentation.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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;

(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;

(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;

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

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

The SOR alleges Applicant has 10 delinquent accounts totaling \$85,859. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Circumstances beyond Applicant's control adversely affected his finances, including medical problems, underemployment, divorce, and unemployment. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he maintained contact with creditors. He indicated he contacted a financial advisor and intended for the financial advisor to contact his creditors and provide a plan for resolution of his delinquent accounts; however, there is insufficient information about his plan to mitigate financial concerns. He did not establish a track record of payments or good-faith mitigation of his delinquent SOR debts.

Applicant did not describe any financial counseling. Applicant said he was responsible for the 10 SOR debts, except he said his child support was current. He did not provide sufficient documentation about why he was unable to make greater documented progress resolving the smaller debts in debts in SOR ¶¶ 1.h for \$478 and 1.i for \$335. He failed to provide updated documentation on the status of the 10 SOR debts, which was especially important for his child support debt because he said that debt was current. He did not provide proof of "in kind" payments for items such as cars sufficient to show they were equivalent to required child support payments. There is insufficient assurance that his financial problems are being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 62 years old, and he is seeking employment as a translator. In 1984, he was awarded a bachelor's degree. He served in Iraq as a translator from 2010 to 2011, and he held a security clearance at that time. He was unemployed for about one year after returning from Iraq. In 2018, he divorced, and he has four children, who were born in 2002, 2004, 2006, and 2014. There is no evidence that Applicant violated his employer's rules, committed criminal conduct, used illegal drugs, or abused alcohol.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. These circumstances have made it very difficult for him to make sufficient income to address his delinquent accounts. He did not provide sufficient details about his income over the last five years to fully mitigate the financial considerations security concerns. Applicant served the United States in Iraq for one year (2010-2011). His contributions toward national defense weigh heavily in his favor. Aside from his finances, Applicant is an excellent candidate for a security clearance.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater documented progress resolving the 10 delinquent SOR debts. His lack of documented responsible financial action raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record

discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

Formal findings For or Against Applicant 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 through 1.j:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge