



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-00435
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
 For Applicant: *Pro se*
 02/14/2022

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 May 14, 2018. On June 25, 2021, the Defense Counterintelligence and Security Agency 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; Department of Defense (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 22, 2021, and requested a decision based on the written record in lieu of a hearing. On October 19, 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 8. 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 26,

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 8 are admitted into evidence. The case was assigned to me on January 7, 2022.

Evidentiary Matter

Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case. As noted above, Applicant neither responded to the FORM nor objected to Item 4.

Findings of Fact

Applicant, age 36, is unmarried with a 13-year-old child who does not reside with him. He received his high school diploma in May 2004, and has been pursuing a bachelor's degree in business administration since June 2009. This is his first application for a security clearance. (Items 3, 4)

The record indicates that Applicant initially applied for a security clearance while employed by Defense Contractor A, with whom he was employed as a warehouse clerk from at least April 2018 through January 2019. On a date not identified in the record, he became employed by another defense contractor, who is currently sponsoring his security clearance application. (Items 3, 4)

The SOR alleged 14 delinquent debts totaling \$35,356, including a \$1,009 judgment for a charged-off credit-card account; three medical accounts totaling \$1,245; and 10 federal student loan accounts totaling \$33,102. In his SOR answer, Applicant admitted each alleged debt. He did not proffer any explanation or documents in response to the SOR allegations. (Items 1, 2)

Applicant attributed his delinquent debts generally to unemployment and the lack of a steady income; and his medical debts more specifically to expenses associated with an emergency-room visit at a time when he did not have health insurance in 2018. He did not proffer any details or corroborating documents concerning his relevant income and expense history or his ability to repay his debts. The record did not indicate whether he provides child support or other financial support for his child. (Items 3, 4)

Following his high school graduation, Applicant was unemployed, for reasons not indicated in the record, until May 2006. He worked full time as a loader/unloader for a warehouse restoration business through January 2011, when the business shut down due to the economic recession. He became unemployed again through May 2013 (except for a month between November 2011 and December 2011 when he found part-time seasonal work as a driver helper/package handler for a shipping company; and two

months between March 2013 and May 2013 when he worked part time for a temporary employment agency). He was employed full time as a machine operator from May 2013 until he was laid off in December 2013. He was unemployed again until he found part-time work in July 2015 as a package handler with another shipping company. He regained full-time employment in August 2016 as a shipping specialist for a communications technology company. He ended his part-time position in March 2017 due to its incompatibility with his full-time work schedule. He left his full-time position in April 2018 for a better job and career advancement opportunity with Defense Contractor 1. (Items 3, 4)

On three occasions in January 2019, Applicant was interviewed in connection with his security clearance background investigation. He described his then financial situation as stable due to his gainful employment. He did not anticipate any further financial problems unless he were to lose his job. He did not receive any financial counseling, but proffered his own plan to better manage his finances by ensuring that he paid his bills on time and working with his creditors to resolve his delinquent debts. (Item 4)

A few weeks after his initial interview in January 2019, Applicant contacted the creditors for his medical and student loan debts, but did not take any action to resolve his credit-card debt. He was unsuccessful in making arrangements to pay his student loan debts because he was not able to make an immediate payment. He anticipated that he would be ready to make a payment the following month. He apparently set up a payment arrangement to pay his medical debts. However, he did not proffer proof of any payment arrangements or payments made towards either his medical or student loan debts. He maintained that his medical debt creditor would only release a statement once there was a \$0 balance. (Item 4)

Applicant's March 2021 credit report revealed no new delinquent debts. However, it showed that he financed the purchase of a \$15,541 automobile in May 2020 with a \$415 monthly payment, which was then in current status. His July 2018, October 2019, and March 2021 credit reports disclosed that two unresolved medical debts, which existed at the time the SOR was issued, were not alleged: a \$36 account and a \$674 account. Applicant attributed them to the same emergency room visit as those alleged in the SOR. (Item 4 at 3; Items 6, 7, 8)

In 2013, Applicant consumed alcohol at a friend's home. On his drive from his friend's home, he was pulled over by a police officer due to him swerving his vehicle. Applicant admitted that he knew it was a bad decision to drive after consuming alcohol, but did so anyway because he wanted to celebrate the fourth of July holiday. He was arrested and charged with misdemeanor driving under the influence (DUI) for which he pled guilty. The court sentenced him to 90 days in jail, which was suspended pending his successful completion of 24 months of probation and payment of a \$1,500 fine. The record did not indicate whether Applicant successfully completed his probation and paid his fine. Applicant asserted that there is zero likelihood of another DUI offense as he will never again drive after consuming alcohol. (Item 4 at 1-2, 4)

Applicant failed to timely pay his federal and state taxes in tax year 2016. He claimed that he did not have money to pay them. He reported that he owed approximately \$130 for his state taxes, but did not specify an amount for his federal taxes. His tax year 2017 refunds were applied to resolve them. (Item 3 at 35; Item 4 at 4)

In 2018, Applicant replaced his expired license plate with a valid license plate he borrowed from his cousin. He received a citation for which he paid a fine and court costs totaling \$387. (Item 4 at 2)

Applicant's 2013 DUI, 2016 tax debt, and 2018 citation were not alleged in the SOR. Thus, I will consider them only to evaluate mitigation and the whole-person concept.

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 evidence establishes the following disqualifying condition under this guideline: 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.

AG ¶ 20(b) applies to the extent that Applicant's medical debts were attributable to his lack of health insurance and other debts to his unsteady work history. However, I am unable to fully apply AG ¶ 20(b) because the record lacked sufficient detail for me to conclude that his debts persisted largely due to circumstances beyond his control or that he acted responsibly to resolve his debts, particularly since he has been gainfully employed since April 2018. Moreover, it is reasonable to assume that his 2013 DUI and 2018 citation, which were not circumstances beyond his control, negatively impacted his finances.

Applicant failed to establish that he resolved any of the delinquent debts alleged in the SOR, including a significant amount of federal student loan debt. His 2016 tax debts were passively resolved via tax refunds. Without documentary proof, I am unable to conclude that he made arrangements or payments towards his student loan and medical debts as he claimed. I also am unable to conclude that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment. Thus, I find that Applicant 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). I also considered the pattern of questionable judgment demonstrated by the circumstances underlying Applicant's 2016 tax debt, 2013 DUI offense, and 2018 citation. 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.n: 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