



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-01176
)
 Applicant for Security Clearance)

Appearances

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

03/31/2022

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 (SCA) on February 18, 2017. On November 23, 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 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), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on November 24, 2020, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on November 30, 2021. On December 9, 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 December 23, 2021 and submitted Applicant's Exhibits A through F, which were admitted without objection. The case was assigned to me on February 15, 2022.

Evidentiary Issue

The FORM included summaries of personal subject interviews (PSI) conducted between May 15, 2018, and August 30, 2018. (FORM Item 4.) The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to submit "a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." However, she did not specifically inform Applicant that FORM Item 4 was not authenticated as required by the Directive, that he was entitled to object to the lack of authentication, and that the FORM Item 4 would not be considered if he objected. Although Applicant submitted a detailed response to the FORM, he did not object to consideration of the PSI. I conclude that Applicant did not knowingly and intelligently waive the authentication requirement. I have considered the fact that Applicant was interviewed about his delinquent debts, but I have not considered the substance of his responses during those interviews.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, with explanations for the debts alleged in SOR ¶¶ 1.i, 1.j, and 1.k His admissions are incorporated in my findings of fact.

Applicant is a 55-year-old graphic designer employed by a federal contractor since September 2015. He has been employed by federal contractors since February 2006. He was cleared for a position of public trust in May 2007 after disclosing delinquent debts in a previous SCA. (FORM Item 5.) He has been married since January 1986 and has four adult children. One of his daughters and her husband lost their jobs due to COVID-19 and moved in with Applicant and his wife from June 2020 to August 2021, which increased Applicant's living expenses.

Applicant disclosed two delinquent debts in his SCA: an unresolved dental bill for \$1,459 from May 2014 and an unresolved car-repair bill for \$7,000 in September 2015. (FORM Item 3 at 29-30.) The creditor for the car-repair bill obtained a judgment against him, which was satisfied in September 2019. (AX F.)

The SOR alleges 11 delinquent debts totaling about \$108,933. The debts are reflected in credit reports from December 2021, March 2020, and April 2017. (FORM Items 6, 7, and 8.)

On April 9, 2019, Applicant hired a law firm to assist him in resolving his debts. He enrolled in a 42-month program with an estimated completion date in October 2022.

(Answer at 4-16; AX C.) He has paid the law firm \$285 per month for two years and has now increased his payments to \$355 per month for the next three and a half years. His estimated completion date is now in 2025. (AX A at 5) The delinquent student loans alleged in the SOR are not included in the law firm's program. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a-1.e: delinquent student loans totaling about \$91,107. The March 2020 credit report reflected that the student loans were delinquent and had been assigned to the government in 2017. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, and it provided for relief measures on Department of Education (DoEd)-owned federal student loans through September 30, 2020. In August 2020, Applicant signed an agreement to participate in a loan rehabilitation program for these loans. In his application for the rehabilitation program, he reported that his monthly income was about \$10,000 per month and his monthly expenses, including \$570 in federal student loan payments, totaled about \$9,470. He agreed to pay \$133 per month for nine months beginning in August 2020. (AX B.)

In Applicant's cover letter to the FORM response, he declared his intention to begin making payments in January 2022, when the CARES Act deferment was scheduled to end. On December 22, 2021, the COVID-19 emergency relief measures were extended on DoEd-owned federal student loans through May 1, 2022. Applicant's student loans have been in forbearance since March 27, 2020. Notwithstanding the forbearance, his student loans were delinquent well before the forbearance went into effect. He has not yet completed a loan rehabilitation program. I am not convinced that he will make the required payments on his student loans when they are no longer in forbearance.

SOR ¶ 1.f: consumer debt placed for collection of \$6,185. This debt was charged off in March 2017. In November 2021, Applicant settled this debt for \$2,918. (AX A at 4.)

SOR ¶ 1.g: consumer debt charged off for \$5,687. This debt was charged off in October 2016. (FORM Item 6 at 4) Applicant's law firm has listed this debt as next in line for resolution. (AX A at 4.)

SOR ¶ 1.h: consumer debt for \$2,730. This debt was charged off in March 2017. (FORM Item 6 at 5.) Applicant's law firm has offered to settle this debt for \$1,228. Negotiations are still in progress. (AX A at 4.)

SOR ¶ 1.i: auto loan charged off for \$620. This debt was charged off in October 2018. In Applicant's answer, he stated that this debt was incurred when he cosigned an auto loan for his son. He promised to resolve it by the end of 2020. A payment was made in June 2021. (FORM Item 6 at 6.) A statement from his law firm reflects that the debt was settled, but it does not reflect that the agreed amount has been paid. (AX A at 5.)

SOR ¶ 1.j: auto loan charged off for \$2,554. This debt was charged off in October 2018. In Applicant's answer, he stated that he was disputing the amount his gap insurance

paid for an auto that was totaled. He promised to resolve this debt by June 2021. A payment was made in August 2021. (FORM Item 6 at 6.) A statement from the law firm reflects that the debt was settled, but it does not reflect that the agreed amount has been paid. (AX A at 5.)

SOR ¶ 1.k: balance of \$50 past due on an auto loan charged off for \$1,073.

This debt was charged off in April 2016. When Applicant answered the SOR in November 2020, he promised that he would pay this debt by the end of 2020. It was still reflected in the credit report from December 2021. (FORM Item 6 at 10.)

In April 2019, Applicant purchased an automobile with a defective engine. In October 2021, he hired a law firm to sue the auto maker under the state's "lemon law," after incurring an expense of \$5,090 to replace a defective engine. (AX F at 3.)

In Applicant's response to the FORM, he submitted evidence regarding another auto loan on which two payments were late. This debt is not alleged in the SOR.

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 establishes two 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 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(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 established. Applicant encountered several conditions largely beyond his control. He cosigned an auto loan for his son, but his son, now an adult, has not fulfilled his legal obligation to pay all or part of the loan. One of Applicant’s automobiles was totaled in an accident, but his insurance did not cover all his financial loss. He purchased a new automobile in 2019 that turned out to be a “lemon,” and he incurred about \$5,090 in expenses not covered by the vehicle warranty. His daughter and her husband lost their jobs in June 2020 and moved in with Applicant and his wife, adding to the household expenses. However, all these situations occurred after the student loans and consumer debts were already delinquent.

AG ¶ 20(c) is not established. Applicant’s law firm negotiates and settles debts, but it does not provide the financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is not established. Applicant has not rehabilitated his student loans or begun to make payments. He did not hire the law firm to assist him in resolving the other

debts or take any other action to resolve his debts until he realized that his security clearance was in jeopardy. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(e) is not established. Applicant disputed the amount his insurance company paid him for the auto which was the collateral for the loan alleged in SOR ¶ 1.j, but he has not disputed the loan.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has worked for federal contractors for many years and has held a public trust position since May 2007. However, he has a long history of delinquent debts that predates his eligibility for a public trust position. He has offered very limited evidence about his overall income and expenses. He has not persuasively explained why so many debts became delinquent in 2017 and 2018, while he was gainfully employed. He has not explained why he did not begin to address his financial problems until April 2019, when he hired the law firm to assist him. He did not take action to address the delinquent student loans until August 2020.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about his apparent lack of attention to his financial obligations. 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

Subparagraphs 1.a-1.k:

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