



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-00303
)
 Applicant for Security Clearance)

Appearances

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

05/31/2022

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 on February 18, 2019. On August 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 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 June 25, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 26, 2021. Scheduling the hearing was delayed by COVID-19. The case was assigned to me on

February 15, 2022. On April 6, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 27, 2022. After Applicant was unable to connect to the teleconference system, the hearing was rescheduled for May 2, 2022. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 3, 5, and 6 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 16, 2022, to enable him to submit additional evidence. He did not submit anything further. DOHA received the transcript (Tr.) on May 12, 2022.

Evidentiary Issue

GX 4 is a summary of an interview of Applicant by a security investigator on March 28, 2019. The summary was not authenticated as required by Directive ¶ E3.1.20. Applicant did not have a copy of GX 4 with him at the hearing, and I deferred a decision on admitting it and gave him until April 16, 2022, to review it and decide if he was willing to waive the authentication requirement. He did not respond. Based on the lack of authentication or a waiver, I have not admitted GX 4.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old electrician employed by defense contractors since May 2008. He has been employed by his current employer since November 2021. He received a security clearance in January 2009.

Applicant testified that he was on paternity leave for six to twelve weeks after his daughter was born in June 2021. He used annual leave for part of the paternity leave and was on unemployment for the remainder. He was unable to be more specific about the length of his paternity leave or the amount of time that was unpaid. (Tr. 30-31.)

Applicant attended college from 2005 to 2008 but did not receive a degree. He earned an associate's degree in computer technology in June 2011. (GX 1 at 12; Tr. 22, 25-26.) He married in July 2019. He has a three-year-old daughter and three stepchildren, ages 16, 14, and 10. (Tr. 24-25.)

The SOR alleges seven delinquent debts totaling about \$45,619. A January 2021 credit report attached to Applicant's answer to the SOR reflected the delinquent debts alleged in SOR ¶¶ 1.a-1.e and five charged-off debts not alleged in the SOR. It also alleged 15 student loans on which payments are current. The debts alleged in the SOR also are reflected in credit reports from March 2019 (GX 2), September 2019 (GX 3) and April 2022 (GX 6.) The status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: debt consolidation loan charged off for \$21,120. Applicant admitted that he has taken no action to resolve this debt. (Tr. 34-37.)

SOR ¶ 1.b: credit-card account charged off for \$14,661. A civil judgment was entered against Applicant for this debt on January 8, 2019. (GX 5.) Applicant testified that he had an agreement to pay \$150 every two weeks on this debt, that he had missed the first payment, but that he had made the next payment. (Tr. 43.) He provided no documentation of a payment agreement or any payments.

SOR ¶ 1.c: electronics store account charged off for \$4,883. Applicant testified that he incurred this debt to buy a television set for his mother and video games for his younger brother. He testified that the debt was settled, but he provided no documentation of a settlement. (Tr. 45.)

SOR ¶ 1.d: clothing store account charged off for \$1,862. Applicant testified that he incurred this debt to purchase clothing. He admitted that he had done nothing to resolve this debt. (Tr. 48-49.)

SOR ¶ 1.e: auto repair account charged off for \$1,532. Applicant testified that he incurred this debt to repair his car, and that he went to the repair shop to make a payment, but that he left without making a \$100 payment because the line was too long. He admitted that he made no further efforts to pay the debt. (Tr. 50-51.)

SOR ¶ 1.f: department store account charged off for \$1,284. Applicant testified that he settled this debt for less than the full amount. (Tr. 53-54.) He submitted no documentation to support his testimony.

SOR ¶ 1.g: telecommunications bill placed for collection of \$327. Applicant testified that he moved to a different residence without resolving this debt. He admitted that he has done nothing to resolve this debt. (Tr. 54-55.)

Applicant testified that the financial assistance he provided to his parents when they were ill made him unable to pay his debts. (Tr. 22.) He provided no details about the amount or duration of financial assistance he provided, except for his testimony that he bought a television set for his mother.

Applicant currently earns about \$28 per hour. He works 32 to 40 hours per week and sometimes works overtime. (Tr. 27-28.) He started using a written budget within the past year. (Tr. 55.) He estimated that his net monthly remainder after paying living expenses is about \$200. (Tr. 59.) He had \$1,200 in his checking account at the time of the hearing, because he had just been paid. He has no savings. (Tr. 60.) He had about \$4,000 or \$5,000 in his retirement account when he left his previous employer and started in his current job. (Tr. 61.)

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 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 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(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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's unemployment after the birth of his daughter was a condition largely beyond his control. The illness of his parents and his financial help to them was a condition beyond his control. However, he has not acted responsibly. He has been employed by federal contractors since May 2008, except for his paternity leave, but he has ignored many of his delinquent debts. He admitted that he has done nothing to resolve the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.g. He offered an unconvincing explanation for his failure to address the debt for car repairs alleged in SOR ¶ 1.e, asserting that the line was too long when he went to the repair shop to make a payment.

The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant's good intentions have not yet morphed into a "reasonable plan," and he has not submitted evidence indicating a serious intent to effectuate it.

AG ¶ 20(c) is not established. Applicant submitted no evidence of the type of counseling contemplated by this mitigating condition, and he has not presented "clear evidence" that his financial problems are under control.

AG ¶ 20(d) is not established. Applicant admitted that he has done nothing to resolve the debts in SOR ¶¶ 1.a, 1.d, and 1.g. He claimed that he had paid or was making payments on the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.f, but he submitted no documentary evidence to support his claims. An applicant who claims to have resolved specific debts is expected to present documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

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 applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions that guideline, 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.g:

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