



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



In the matter of:)
)
) ISCR Case No. 21-02563
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s most recent credit report reflects no delinquent debts. His financial problems in the past were caused by medical problems and unemployment. Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On June 1, 2021, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3). On December 17, 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; 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. (Item 1)

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. (Item 1)

On January 5, 2022, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 2) On February 11, 2022, Department Counsel completed a File of Relevant Material. On March 2, 2022, Applicant received the FORM. Applicant did not respond to the FORM. On May 13, 2022, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a through 1.d. (Item 2) He also provided mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 55-year-old avionics technician who has worked for a defense contractor since May 2021. (Item 3 at 11) From July 2019 to May 2021, he was unemployed "due to Covid-19." (July 26, 2021 Office of Personnel Management (OPM) personal subject interview (PSI) at 3) From January 2014 to July 2019, he was employed in real estate sales. (*Id.* at 13-14;) From July 2008 to January 2014, he was employed as an aviation analyst. (*Id.* at 13-14) From October 1986 to September 2007, he served on active duty in the Air Force. (*Id.* at 15) He received an honorable discharge as a technical sergeant (E-6). (*Id.* at 15-17)

Applicant married in 1990, and he divorced in 1999. (Item 3 at 20) His son was born in 1990. (OPM PSI at 3) There is no evidence of involvement with illegal drugs, security violations, abuse of alcohol, or criminal conduct. (Item 3 at 33-36)

Financial Considerations

Applicant volunteered information about three delinquent credit card accounts during his OPM PSI. (Item 6 at 6) He said he stopped making payments on two credit cards in 2014 due to illness and unemployment. (*Id.*) He stopped making payments on the third credit card on an unspecified date due to lack of income. (*Id.*)

In 2014, Applicant left his position with a DOD contractor because of health issues. (Item 2) The Department of Veterans Affairs determined he was 100 percent disabled. (*Id.*) While he was unemployed, he was living off of his VA disability payments, and Air Force retirement pay. (*Id.*) He fell behind on some debts. (*Id.*)

Applicant's June 26, 2021 credit report (Item 5) and SOR (Item 1) allege four delinquent debts as follows:

SOR ¶ 1.a is a charged-off furniture debt for \$15,087. Appellant borrowed \$35,000 for home furnishings. He paid \$19,000, and stopped making payments for a time. (Item 2) Later, Appellant offered to resume payments, and the creditor rejected this proposal and counteroffered with a request for a single "lump sum" payment. (*Id.*) In July 2019,

Appellant contacted the creditor and collection agent and learned the debt was charged off, and the account could not be reopened. (*Id.*)

SOR ¶¶ 1.b and 1.c are two charged-off credit card debts owed to the same bank for \$2,468 and \$2,448. Appellant said he attempted to make arrangements for reduced payments. (Item 2) The accounts went to collections. (*Id.*) The collection agency wanted a single lump sum payment for each debt. (*Id.*)

SOR ¶ 1.d is a delinquent home loan for \$4,821. Appellant said the account was current when his home was sold in 2019. (Item 2) The creditor wrote “your mortgage loan has been paid off or otherwise satisfied in full.” (*Id.*) He provided a Deed of Trust document with a stamp of “PAID” on it. (*Id.*)

Applicant’s February 4, 2022 credit report shows 22 accounts. (Item 4) Only one account has a balance, and that balance is \$8. (*Id.*) Of the accounts listed 21 of 22 reflect “pays account as agreed” for status. (*Id.*) The only negative entry is his mortgage account, which was a Department of Veterans Affairs guaranteed mortgage loan for \$347,000. (*Id.* at 5) It was at most three payments overdue. (*Id.*)

The FORM indicated the mortgage debt in SOR ¶ 1.d was mitigated. (FORM at 3) However, his history of handling his other three loans warranted denial of his security clearance. (FORM at 4)

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 [or her] 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 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*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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).

Applicant experienced unemployment and illness which were circumstances beyond his control, and they adversely affected his finances. 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)).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. He did not prove that he maintained contact with several of his creditors or that he made offers to make partial payments to them for several years.

Applicant is credited with paying and mitigating the mortgage debt in SOR ¶ 1.d in 2019. He attempted to establish payment plans for the debts in SOR ¶¶ 1.a, 1.b, and 1.c; however, the two creditors wanted a lump sum payment to resolve the three debts. The three accounts were closed and charged off without being paid. After he sold his house in 2019, he contacted the creditors and collection agents, and they refused to reopen the accounts.

Applicant's latest credit report does not indicate any delinquent accounts. This credit report standing alone does not fully establish mitigation of his SOR debts. See ISCR Case No. 20-01004 at 3 (App. Bd. June 28, 2021) ("Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance") (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)); ISCR Case No. 14-03612 at 3 (Aug. 25, 2015) ("Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant's response to his debts or other circumstances that detract from an applicant's judgment and reliability").

In 2014, Applicant left his position with a DOD contractor because of health issues. The VA determined he was 100 percent disabled. He was unable to maintain all of his accounts using his VA disability payments and Air Force retirement pay. Once he obtained employment he attempted to pay his creditors. He paid one debt in 2019. The creditors for the other three accounts declined his payment proposals and charged off the debts. There is no reason to doubt his statements about attempting to pay his creditors. Based on his most recent credit report, there is sufficient assurance that his financial problems are resolved. Under all the circumstances, he established 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 a 55-year-old avionics technician who has worked for a defense contractor since May 2021. From July 2019 to May 2021, he was unemployed "due to Covid-19." (Item 6 at 3) From January 2014 to July 2019, he was employed in real estate

sales. From October 1986 to September 2007, he served on active duty in the Air Force. He received an honorable discharge as a technical sergeant (E-6). There is no evidence of involvement with illegal drugs, security violations, abuse of alcohol, or criminal conduct.

Applicant provided important financial mitigating information. His finances were harmed by several circumstances beyond his control. He paid the debt in SOR ¶ 1.d. His most recent credit report indicates that the status for 21 of 22 accounts is pays as agreed. For one account, he fell behind three months for his mortgage payments, and then he paid the debt in 2019. This credit report reflects a track record of consistent payments (pays as agreed status). His financial history establishes 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)).

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 mitigated 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:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge