



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 20-01344
)
 Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*
07/25/2022

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 July 29, 2019. On August 19, 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 (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.

On March 1, 2021, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On February 2, 2022, 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 6. 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 February 9, 2022, but 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 6 are admitted into evidence. Applicant's Answer included documents that are admitted into evidence as Applicant Exhibits (AE) A and B. The case was assigned to me on April 27, 2022.

Findings of Fact

Applicant, age 43, has five children, including four who share his last name (ages 16, 14, 11, and 7 (born January 2015)) and one with a different last name, age 7 (born November 2014). He was married twice. He divorced his first wife of six years in 2008 and his second wife of three years in 2017. (Item 3)

Applicant served on active duty as an enlisted member of the U.S. Navy from 1999 until 2010, when he was honorably discharged. His education history was not indicated in the record. He has been employed as an avionics technician by the defense contractor sponsoring his SCA since July 2019. He was granted a DOD security clearance in 2003 during his military service, and again in 2014 as employee of another defense contractor. (Item 3)

The SOR alleged 12 delinquent debts totaling \$46,010, including a \$26,388 child support obligation. In his Answer, Applicant admitted 9 of the 12 alleged debts. His admitted debts totaled \$39,698. Each of the SOR allegations were confirmed by Applicant's credit reports, dated September 2019, April 2020, and January 2022. (Items 4-6)

Applicant denied the debts alleged in SOR ¶ 1.a (\$2,696) and SOR ¶ 1.f (\$2,980) on the basis that his ex-wife was responsible for repaying them. He disputed the debt alleged in SOR ¶ 1.g (\$636) on the basis that he was being wrongfully charged for equipment that he returned and for which he received a receipt. He did not proffer any corroborating documents. He asserted that SOR ¶ 1.a related to his "ex-wife's previous rental company." His credit reports listed the debt alleged in SOR ¶ 1.a as a joint account, and SOR ¶ 1.b as an individual account. (Items 4, 5)

Applicant asserted that the medical collection accounts alleged in SOR ¶¶ 1.b (\$119), 1.c (\$36), 1.d (\$105), 1.i (\$1,077), and 1.j (\$358) will be paid by his U.S. Department of Veterans Affairs (VA) disability benefits. He explained: "VA provides me with full coverage due to disabilities." He did not proffer any corroborating documents. The debts alleged in SOR ¶¶ 1.b through 1.d appeared on all three credit reports in the record. Those alleged in SOR ¶¶ 1.i and 1.j only appeared in the 2019 report. The 2022 report also revealed four new medical debts totaling \$613 that went to collections after the SOR was issued. (Item 4,5)

Although he admitted SOR ¶ 1.e (\$26,388), Applicant claimed that he "received court ordered termination" of his child support obligation. Attached to his Answer were two documents purportedly corroborating his claim, one dated July 14, 2021 (AE B) and

the other dated July 19, 2021 (AE A). AE B relates to his child support obligation for three of the children who share his last name, ages 14, 11, and 7. Their mother is identified as Applicant's second ex-wife. AE B is a document terminating a previous income withholding order. AE A is the related court order. Neither AE A nor B establish that Applicant's child support obligation was terminated. They only evince that an income withholding order previously issued to his employer was terminated. Applicant's 2022 credit report listed two child support accounts in collection status: the one alleged in SOR ¶ 1.e with a reduced balance of \$6,189, and another with a balance of \$36,226. Because the \$36,226 account was not alleged in the SOR, I will consider it only in evaluating mitigation and the whole person. (AE A, B; Item 6 at 4 and 6)

Applicant plans to pay the debts alleged in SOR ¶ 1.k and 1.l. With respect to the debt alleged in SOR ¶ 1.h, he reported that the "vehicle was repossessed," without proffering a plan to resolve it. Applicant's credit reports revealed two new loan accounts and six new credit-card accounts opened between October 2019 and December 2021, and that he financed a home purchase in June 2022 with a VA loan. All of the new accounts were reported to be in good standing. The record did not address the reason why Applicant failed to disclose any of his derogatory financial information on his SCA nor was that omission alleged in the SOR. Thus, I will consider it only in evaluating mitigation and the whole person. (Item 3 at 43-44; Item 5 at 1, 4; Item 6 at 6-8)

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). Due to a lack of information in the record, neither AG ¶ 19(a) (inability to satisfy debts) nor AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so) are established.

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

(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;

(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.

The Government presented a *prima facie* case for disqualification under Guideline F. Accordingly, it was incumbent on Applicant to present sufficient information on which application of the mitigating conditions could be based. With the exception of SOR ¶¶ 1.i and 1.j, which I find in Applicant's favor based on the application of AG ¶ 20(d), he failed to do so. Although Applicant raised the potential applicability of the mitigating conditions cited above, he produced no corroborating documentation or other sufficient information to support the application of any of the mitigating conditions as to SOR ¶¶ 1.a through 1.h, 1.k, and 1.l. Accordingly, based on the evidence before me, I cannot conclude that Applicant has provided sufficient evidence to fully mitigate the Guideline F concerns at this time.

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). 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 unresolved 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.h:	Against Applicant
Subparagraphs 1.i – 1.j:	For Applicant
Subparagraphs 1.k – 1.l:	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