



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 21-01383
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

08/25/2022

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 October 12, 2020. On July 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 August 10, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 9, 2021. Scheduling of the hearing was delayed by COVID-19 health precautions. The case

was assigned to me on February 15, 2022. The hearing was tentatively scheduled for April 27, 2022. On April 20, 2022, Applicant requested a postponement of his hearing so that he could hire a lawyer. His request was granted. On May 13, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 14, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until June 30, 2022, to enable him to submit additional documentary evidence. He timely submitted AX G through H, which were admitted without objection. DOHA received the transcript (Tr.) on June 22, 2022. The record closed on June 30, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.c-1.g, and 1.j. He denied the allegations in SOR ¶¶ 1.b, 1.h, and 1.i. His admissions are incorporated in my findings of fact.

Applicant is a 41-year-old help-desk representative employed by defense contractors since November 2016. He was hired by his current employer in February 2022. (Tr. 12.) He held non-federal jobs as a mail clerk from May 2005 to December 2010, a part-time recruiter for a college from July 2013 to November 2016, and a site representative for a major corporation from August 2013 until November 2016, when he was hired by a defense contractor. (GX 1 at 13-17.) His SCA does not reflect whether he was employed between December 2010 and July 2013. He has never married and has no children.

Applicant earned about \$12 per hour and worked 40 hours per week from August 2013 to November 2016. His pay increased to about \$23 per hour when he began working for defense contractors. (Tr. 27-29.)

Applicant attended college from August 1999 to May 2004, January to May 2006, and August 2015 to October 2016. He did not receive a degree, but he received a certificate as a dental assistant in November 2016. (GX 1 at 11-12; AX D.) He recently completed an online course and received a certificate in workplace diversity and inclusion. (Tr. 26.)

Applicant served in the U.S. Air Force Reserve (USAFR) from December 2010 to January 2016 and received an honorable discharge. He was a senior airman (pay grade E-4), serving as an aircraft crew chief. He received a security clearance in February 2012. The document notifying him that his application for a clearance was granted cautioned him about the security concerns raised by his delinquent debts and failure to fully disclose the debts in his SCA. (GX 5.)

Applicant underwent surgery for a brain tumor in December 2019 and was unable to work until early February 2020. (Tr. 32.) His pay was reduced to about 30% to 40% of

his full pay while he was on medical leave. (Tr. 19, 32.) In his most recent resume, he stated that he was able to return to work without limitations and perform at the same high level as he did before his surgery. (AX B.)

The SOR alleges two delinquent student loans (SOR ¶¶ 1.a and 1.j), five delinquent medical debts (SOR ¶¶ 1.c-1.g), and three consumer debts (SOR ¶¶ 1.b, 1.h, and 1.i). The delinquent debts are reflected in credit reports from December 2020, June 2021, and April 2022. (GX 2, 3, and 4.) The evidence concerning the debts is summarized below.

SOR ¶ 1.a: student loan placed for collection of \$62,237. This loan first became delinquent in November 2017 (GX 3 at 3.) Payments on this loan were about \$350 per month. Collection of this loan was deferred until August 31, 2022. Applicant made two payments on the debt that were returned to him because of the deferment. (AX H; Tr. 16.)

SOR ¶ 1.b: credit-card account placed for collection of \$791. This debt first became delinquent in September 2015, and it was charged off in December 2020. (GX 3 at 2). He made a payment on this debt after he was interviewed by a security investigator in February 2021. (GX 6 at 4.) It was paid in full in April 2022. (AX G; Tr. 17-18.)

SOR ¶¶ 1.c-1.g: medical debts for \$809, \$349, \$273, \$225, and \$348, totaling \$2,004, placed for collection by the same collection agency. Applicant testified that these medical debts were incurred in December 2019, when he underwent surgery for a brain tumor. (AX A.) His surgery was covered by his medical insurance, and the amounts alleged in the SOR are copayments. (Tr. 44.) They were referred for collection in December 2020. (GX 2 at 3.) He was making payments on his medical debts when he was interviewed by a security investigator in February 2021. (GX 6 at 3.) He is now paying \$30-\$40 per month to the collection agency. One of the debts has been paid and four debts remain delinquent. (AX I; Tr. 19-20, 40.)

SOR ¶ 1.h: telecommunication service bill placed for collection of \$406. This debt was incurred for failure to return equipment. It was placed for collection in November 2020. (GX 2 at 3.) Applicant paid it in full shortly after he was interviewed by a security investigator in February 2021. (GX 6 at 3; Tr. 21, 39.)

SOR ¶ 1.i: credit-union debt placed for collection of \$499. This debt was charged off in February 2018. (GX 2 at 5.) Applicant told a security investigator that he paid it in 2018. (GX 6 at 2.) However, the evidence he submitted at the hearing reflects that he did not pay it in full until June 2022. (AX C; Tr. 39.)

SOR ¶ 1.j: student loan placed for collection of \$24,370. This student loan was transferred to the same creditor as the loan alleged in SOR ¶ 1.a. (AX J.) It first became delinquent in June 2015. (GX 3 at 3.) Payments on this loan are deferred until August 31, 2022.

On June 10, 2022, the Friday before the hearing on June 14, 2022, following the advice of his attorney, Applicant completed three on-line financial management classes. (AX M; Tr. 42.) He completed a personal income and expense analysis reflecting total monthly income of \$4,483 and expenses of \$3,719. He lives in a rental property and owns a car that is fully paid for. He has budgeted \$375 per month for student loans once the deferment ends. (AX L.)

Applicant's neighbor has known him for about 18 months and considers him a caring and reliable friend, and he trusted Applicant to take care of his apartment during a two-month absence. (AX F at 1.) A technical sergeant in the USAFR regards him as a mentor "who continues to be a voice of reason when I am needing clarity." (AX F at 2.) A friend for 20 years considers him dependable, responsible, honest, courteous and "adored and respected by many." (AX F at 3.) A Navy lieutenant who has known Applicant for 15 years describes him as dependable, responsible, honest, and courteous. (AX K.)

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 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; 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 numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is partially established. Applicant's medical problem was a condition largely beyond his control. However, it is not applicable to his delinquent student loans alleged in SOR ¶ 1.a and 1.j, the debt alleged in SOR ¶ 1.b, or the debt alleged in SOR ¶ 1.i, which were delinquent before his medical problems arose. It is not applicable to the communications debt in SOR ¶ 1.h, because his failure to return equipment was unrelated to his medical problem. It is applicable to the medical debts that were not fully covered by his medical insurance. Applicant has acted responsibly regarding the medical debts by making regular payments on them.

AG ¶ 20(c) is partially established. Applicant sought and received credit counseling. He has resolved the debts alleged in SOR ¶¶ 1.b, 1.h, and 1.i, and he is making payments on the medical debts alleged in SOR ¶¶ 1.c-1.g. He has devised a budget that will enable him to begin making payments on the student loans alleged in SOR ¶ 1.a and 1.j when the deferment ends. Notwithstanding the forbearance, Appellant's student loans had been delinquent for several years before the forbearance went into effect. Accordingly, there is a continuing concern that Appellant will not make the required payments on his student loans when they are no longer in forbearance.

AG ¶ 20(d) is not established. Applicant was warned in February 2012 that his delinquent debts were a concern, but he did not seriously address them until he was questioned about them by a security investigator in February 2021 and he realized that his delinquent debts were an impediment to holding a security clearance. He has been employed steadily since at least August 2013 and his income increased substantially when he was employed by a defense contractor in November 2016. Evidence of past

irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

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). Applicant was sincere and candid at the hearing. I have considered his service in the USAFR and the fact that he held a security clearance in the USAFR.

Applicant demonstrated at the hearing that he is capable of sound financial management, but he has not yet established a track record of doing so. I am not convinced that he will continue his recent responsible conduct after the pressure of keeping his security clearance is removed. 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 and 1.b: Against Applicant

Subparagraphs 1.c-1.g: For Applicant

Subparagraphs 1.h-1.j:

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