



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



In the matter of:)
)
) ISCR Case No. 21-01839
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to make sufficient timely progress resolving the debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 18, 2019, Applicant completed his Electronic Questionnaire for Investigations Processing or security clearance application (SCA). On September 7, 2021, the Defense Counterintelligence and Security Agency (DCSA) 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); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DCSA 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 or denied. Specifically, the SOR set forth security concerns arising under Guideline F. Applicant provided an undated response to the SOR and requested a hearing.

On February 11, 2022, Department Counsel was ready to proceed. On March 18, 2022, the case was assigned to me. On May 20, 2022, the Defense Office of Hearings and Appeals issued a notice setting the hearing date for June 16, 2022. The hearing was held as scheduled using the DOD Microsoft Teams video-teleconference system.

During the hearing, Department Counsel offered eight exhibits (Government Exhibits (GE) 1-8), which I admitted into evidence without objection. Applicant did not offer any exhibits. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation, but no other documents were submitted. On June 24, 2022, DOHA received a copy of the transcript (Tr.).

Findings of Fact

In Applicant's SOR response, he denied all of the allegations (¶¶ 1.a through 1.q).

Applicant is a 67-year-old employee of a DOD contractor who has worked as an engineer for the same employer since February 1984. His current annual salary is about \$125,000, and his spouse earns approximately \$10,000, after taxes, as a nail technician. Applicant earned two bachelor's degrees in 1980 and 1981, and two master's degrees in 1983 and 1995. He has held a DOD security clearance since 1984. He was first married in 1979, and subsequently divorced in 1994. He married again in 2006. He has four adult children and a 17-year-old son. (Tr. 16-26, 64-65; GE 1)

Financial Considerations

The SOR alleges 17 delinquent debts totaling approximately \$71,000, of which 14 debts stem from unpaid medical accounts in the approximate amount of \$25,420. (SOR ¶¶ 1.a-1.j, 1.l, 1.m, 1.p, and 1.q) Two debts are unpaid utility accounts totaling \$267 (¶¶ 1.n and 1.o), and the last debt is a delinquent mortgage account totaling \$44,475. (¶ 1.k) All of the delinquent accounts are established by the credit reports in the record. Applicant stated that his financial problems arose in 2018 following his spinal surgery and six-month recovery. He was unable to properly maintain his financial obligations for several of his rental properties during this time. In 2021, he was diagnosed with multiple myeloma, which he stated in a treatable type of blood cancer. (Tr. 27-35; GE 2-6)

In August 2020, Applicant participated in a background interview with an authorized Department of Defense (DOD) investigator. Applicant's 14 delinquent medical debts from his May 2020 credit report were discussed. Applicant told the investigator that he had paid every medical bill. He denied receiving any communication from any medical provider that an account was overdue. (Tr. 43-46; GE 6)

At the hearing Applicant admitted that he may be responsible for some of the 14 unpaid medical accounts that were incurred in 2018. During that time, he had consulted with approximately 30 doctors, endured surgery, and participated in physical therapy. (¶¶ 1.a-1.j, 1.l, 1.m, 1.p, and 1.q) He surmised that some of the doctor consultations may have been considered an out-of-network provider by his medical insurance, and not fully

covered. He never contacted any of the medical creditors to determine whether he was responsible to pay the outstanding balance. He admitted that he prioritized his physical recovery over addressing and resolving his financial matters. He promised to pay all of the outstanding bills that were his responsibility once he has fully recovered. (Tr. 35-42, 76)

During Applicant's August 2020 background interview, there were two foreclosures listed on the credit report that were discussed. Applicant told the investigator that unbeknownst to him, the bank did not cash his checks for several months and initiated foreclosure proceedings on one of his rental properties. He consulted with an attorney and later decided to allow the property to go into foreclosure because it was located in a declining neighborhood. A second delinquent mortgage loan was reviewed with Applicant, and he denied that he had ever heard of this creditor. He also refuted that he owed any money after a different rental property was repossessed by the bank. (Tr. 43-46; GE 6)

Applicant reiterated during the hearing that he did not owe the mortgage creditor alleged in the SOR in the amount of \$44,475. (¶ 1.k) Applicant was asked if he knew the name of the bank that financed this particular rental property, but he could not recall. He was also asked whether there was any deficiency balance owed to the bank after foreclosure, and Applicant could not recall that information either. Applicant was requested to submit substantiating documentation to support his contention that he is not liable for this debt. No documentation was provided while the record was held open for two weeks. (Tr. 43-51)

Applicant testified that he consistently remained current on all of his financial obligations until he suffered from medical complications beginning in 2018. Department Counsel submitted 11 judgments that had been entered against Applicant from 2000 to 2017. The judgments were from the city's sewer district for unpaid sewer services provided to his rental properties. Applicant stated that he had a good reason for not paying his sewer bills in a timely manner. He purchased several rental properties from the late 1990s to the early 2000s. Many of these properties required rehabilitation. If the electric or water bills were not paid on these properties, the services were soon disconnected. He discovered; however, that if he ignored the sewer bills, the sewer services continued without interruption. He was over-extended financially, and he discovered that postponing these sewer payments allowed him to have additional money to use on the rehabilitation of these properties. (Tr. 51-65, 71-72; GE 6, GE 7)

The city's sewer district started garnishing Applicant's wages in about June 2001, because he failed to voluntarily pay these bills or satisfy the judgments. His pay was garnished on multiple occasions to at least 2017, before his health declined. He stated that he was not aware that his pay had been garnished on multiple occasions, and he was uncertain whether his pay was currently being garnished. He admitted that he had delinquent sewer bills as of the date of the hearing, but he did not know the amount. He said the overdue sewer accounts could possibly be related to about ten of his rental properties, but he was unsure. He asserted that sewer expenses would be paid one way or another. For example, about eight years ago he sold a rental property, and the bank

withheld \$16,000 to pay the city's sewer district before a check was provided to him. (Tr. 51-65, 71-72; GE 6, GE 7)

Applicant stated that only three or four houses were currently rented by tenants, but the remaining rental properties were uninhabited and closed by him. He claimed that his income was reduced by 50 percent due to the loss of rental income. He acknowledged that he is currently working 40 hours a week from home and getting paid his full salary. He intended to retire later this year. Department Counsel suggested that Applicant fill out a personal financial statement (PFS). There were some unanswered questions about his finances since there was no evidence in the record as to Applicant's salaried income, rental income, and monthly expenses, and he could not recall detailed information. Applicant did not provide a PFS by the time the record closed. (Tr. 35-42, 76)

The SOR alleged that Applicant had two overdue utility accounts with AT&T totaling \$267. (¶¶ 1.n and 1.o) Applicant stated during his August 2020 background interview that his youngest son may have used these services, but he would have to look into the matter to determine if he was liable for them. At the hearing, Applicant denied responsibility for these accounts and stated that he had no idea why these two delinquent accounts were listed on his credit report. He admitted that he has not communicated with any of the creditors alleged in the SOR, nor had he settled, paid, or made arrangements to pay on any of the delinquent debts. (Tr. 75-85)

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 SOR alleges 17 delinquent debts totaling approximately \$71,000, which are supported by the credit reports in evidence. 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.

Applicant established several circumstances beyond his control, which adversely affected his finances; however, he did not establish that he acted responsibly under the circumstances. In 2018, he suffered a back injury that required surgery and physical therapy. It took him about six months to recover. Thereafter, he soon suffered other ailments that continue to the present time. Applicant admitted he has prioritized his physical recovery over addressing and resolving his financial delinquencies. He currently works 40 hours a week; however, there is no evidence of a debt-resolution plan or significant steps in furtherance of such a plan. 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). See, e.g., ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

There is no requirement that an applicant immediately resolve all financial issues or make payments on all delinquent debts simultaneously. Rather, a reasonable plan and good-faith efforts to pay delinquent debts, or resolution of such issues, one at a time, is sufficient. An applicant’s mere promises to pay debts in the future, without further confirmed action, are inadequate. In this case, Applicant has not initiated a responsible financial plan or made any good-faith efforts to resolve his delinquent accounts. His promise to pay his outstanding financial obligations at some point in the future is ineffective and holds little value.

Applicant did not provide a monthly budget, PFS, or other documentation about his financial resources, or show he has acted responsibly in addressing his financial delinquencies. The combined salaries of his and his spouse totaled in the six-figure range. At the hearing, he admitted that he is currently delinquent in paying for the sewer services provided to his rental properties. As such, there is insufficient assurance or supporting documentation in the record that his financial problems are under control and will not recur in the future. Under all the circumstances, Applicant failed to establish mitigation of the 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 those guidelines but some warrant additional comment.

Although Applicant did provide some mitigating information of circumstances beyond his control, he did not overcome the security concerns raised by his financial delinquencies. He did not provide documentation about why he was unable to make greater documented progress resolving any of the delinquent SOR debts. Applicant has not initiated a responsible financial plan or made any good-faith efforts to resolve his delinquent accounts. His financial history raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.q:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge