



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-00451
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2022

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 December 17, 2018. On April 30, 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 November 22, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 15, 2021. Scheduling the hearing was delayed by COVID-19 health precautions. The

case was assigned to me on April 12, 2022. On April 25, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 25, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1, 3, 4, and 5 were admitted in evidence without objection. GX 4, an unauthenticated summary of several interviews of Applicant by a security investigator, was not admitted. (Tr. 14.) Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until June 30, 2022, to enable him to submit additional documentary evidence. He timely submitted AX B, which was admitted without objection. DOHA received the transcript (Tr.) on June 8, 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.d, 1.e, 1.g, 1.i, and 1.j, with explanations. He denied the allegations in SOR ¶¶ 1.b, 1.f, and 1.h. His admissions are incorporated in my findings of fact.

Applicant is a 44-year-old test engineer employed by a defense contractor since December 2019. He served on active duty in the U.S. Army from August 1998 to July 2007 and was honorably discharged as a staff sergeant. He worked for federal contractors from July 2007 to August 2013. He was unemployed from August 2013 to January 2014. He worked in private sector jobs from January to July 2014. He has worked for defense contractors from July 2014 to the present.

Applicant received a security clearance in October 2012. His security clearance is currently suspended, and he is on leave without pay. (AX A.)

Applicant married in September 2002, and his wife committed suicide in September 2004. He remarried in July 2007 and divorced in April 2017. He has two children, ages 23 and 12. He received an associate's degree in November 2006.

The SOR alleges nine delinquent debts totaling about \$35,000 and a home foreclosure. The debts are reflected in credit reports from December 2021, November 2019, and February 2019. (GX 3, 4, and 5.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: deficiency after a vehicle repossession charged off for \$18,630. Applicant has not contacted this creditor or taken any action to resolve the debt. (Tr. 46-47.)

SOR ¶ 1.b: delinquent rent payments for an apartment, referred for collection of \$4,456. Applicant testified that he has disputed the amount of this debt with the creditor, and the dispute has not been resolved. (Tr. 48.) He submitted no documentary evidence of the basis for the dispute. The debt is not resolved.

SOR ¶ 1.c: debt to U.S. Government agency placed for collection of \$3,379.

This debt arose when Applicant enrolled in a class using his veteran's benefits, but failed to complete the class. He testified that the debt was partially resolved by diverting his federal income tax refunds and is now being collected by deductions from his disability pay. He believes that the debt has been reduced to about \$1,100. (Tr. 50-53.) He did not provide any documentation showing diversion of his federal entitlements to resolve this debt or any other efforts to resolve the debt.

SOR ¶ 1.d: credit-card account charged off for \$987. Applicant testified that he had not made any payments on this debt but that it was "cleared," because it is no longer reflected on his credit reports. (Tr. 53-54.) It is not resolved.

SOR ¶ 1.e: charge account charged off for \$831. Applicant testified that this debt was for a purchase of tires, and he has been making \$20 payments since January 2022. He did not provide any documentation of payments. (Tr. 54-55.)

SOR ¶ 1.f: debt referred for collection of \$1,221. Applicant testified that he disputed this debt with the credit bureau when it first appeared on his credit report in 2019, and that the dispute is reflected on his credit report. (Tr. 55-56.) The February 2019 credit report reflects the debt and the dispute. (GX 5 at 12.) The credit reports from November 2019 and December 2021 do not reflect the debt. (GX 3; GX 4.) Because the debt is too recent to have "aged off" the credit report, it is likely that the dispute was resolved in Applicant's favor.

SOR ¶ 1.g: utility debt referred for collection of \$169. Applicant testified that he paid this debt and that he currently has service with the same provider. (Tr. 57-58.) He did not provide any documentation of payment or evidence that the account is current.

SOR ¶ 1.h: telecommunications debt referred for collection of \$219. Applicant denied this debt on the ground that he has never had an account with this provider. He testified that he disputed the debt with the credit bureau. (Tr. 58.) The February 2019 credit report reflects that the dispute was resolved. (GX 5 at 12.) The debt is not reflected on the two more recent credit reports. (GX 3; GX 4.) It is resolved.

SOR ¶ 1.i: debt charged off for \$5,106. Applicant testified that this debt was for a personal loan, and that it was satisfied when he obtained another loan from the same lender. (Tr. 56-61.) The February 2019 credit report reflects that this account was closed when the loan was refinanced, and that the account is current. (GX 5 at 9.) This debt is resolved.

SOR ¶ 1.j: home foreclosure. Applicant testified that he fell behind on his payments while he was unemployed, and he contacted the lender and asked to modify the loan because of hardship or to allow a short sale of the property. (AX B.) Both applications were denied, and the lender advised him and his family to move out of the house. They moved out in August 2013 and rented an apartment nearby. After about six months, Applicant drove by the house and noticed a letter on the door, which informed

him that his application to modify the loan was approved. He contacted the lender and asked for 60 days to modify the loan, because he was required to give his landlord 60 days of notice to move out. The bank refused to delay the process, and the house was sold. (Tr. 62-64.) The February 2019 credit report reflects that the loan was foreclosed, the collateral was sold, and that there is no balance due. (GX 5 at 5.) The debt is resolved.

In 2019, Applicant contacted his credit union for advice on how to improve his credit rating and better manage his finances. He was able to purchase a home in April 2021. He missed one payment at the beginning of his mortgage, but his payments now are current. (Tr. 67-70.)

Before Applicant was suspended without pay, his take-home pay was about \$4,400 per month. He is now receiving \$378 per month in unemployment compensation. His payments on his home mortgage loan are \$1,415 per month. He purchased a used vehicle in 2019, and his car payments are \$641 per month. He pays child support of \$1,400 per month. (Tr. 70-72.) He has about \$15,000 in his retirement account. (Tr. 79.) He has no savings. (Tr. 83.) He receives military disability pay. (Tr. 54.) However, he did not submit any evidence of disability pay at the hearing and did not report it in his application for modification of his previous home mortgage.

A former roommate who lived with Applicant a total of five or six years and who served with Applicant on active duty testified that he considers Applicant an “honest, good, and responsible person” who paid his fair share of their living expenses. The roommate is employed by a federal contractor and has held a security clearance since 1996. (Tr. 103.) The roommate was not aware of Applicant’s delinquent debts. (Tr. 98.)

A friend and former supervisor from 2017 to 2019 testified that Applicant was a dedicated, reliable, and trustworthy worker. (Tr. 108.) He also was unaware of Applicant’s delinquent debts. (Tr.108-110.)

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;

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

AG ¶ 20(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;

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 established for the debts alleged in SOR ¶¶ 1.i and 1.j. Applicant's divorce and period of unemployment were conditions largely beyond his control. He has acted responsibly by resolving the debt in SOR ¶ 1.i. He acted responsibly regarding the foreclosure alleged in SOR ¶ 1.j by applying for a loan modification and requesting 60 days to complete the loan modification in order to avoid a penalty for premature termination of a rental contract. When the lender refused to grant him time to complete the loan modification, the debt was satisfied by the foreclosure sale.

AG ¶ 20(c) is not fully established. Applicant obtained financial counseling and was able to improve his credit worthiness to the extent that he was able to obtain a home mortgage loan and purchase another home. However, his current financial situation is not yet under control.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.i, but not for the other debts. Although the debt resulting from the home foreclosure alleged in SOR ¶ 1.j is resolved, it was resolved involuntarily.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.f and 1.h, which Applicant successfully disputed. It is not established for the debt alleged in SOR ¶¶ 1.b, because Applicant did not submit evidence of the basis for the dispute, and the dispute is not resolved. He did not dispute any of the other debts alleged.

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). I have considered Applicant's honorable military service and many years of service while employed by defense contractors. He was sincere and candid at the hearing. He sought and received financial counseling. However, he is not likely to achieve financial stability in the foreseeable future. Even after

receiving additional time to submit evidence, he failed to support his disputes of the debts alleged in SOR ¶¶ 1.b and 1.f and his claims that the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.g were resolved. An applicant who claims that debts have been resolved is expected to support his claims with documentary evidence. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). 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 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For 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