



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 22-00040
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2022

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 November 1, 2020. On February 18, 2022, 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 DOD 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 February 28, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on April 26, 2022. On April 28, 2022, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 4, 2022, and submitted a 13-page response, which is included in the record as Applicant's Exhibit A, without objection by Department Counsel. The case was assigned to me on August 4, 2022.

The FORM included a summary of an interview conducted by a security investigator on April 8, 2021. (FORM Item 3.) The summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summary; make any corrections, additions, deletions or updates; or object to consideration of the summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the summary, nor did he object to it. I conclude that he waived any objections to the interview summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted the four delinquent debts alleged in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 55-year-old information technology expert employed by a defense contractor. He received a bachelor's degree in June 1995 and has worked in the private sector since at least 2010. He married in August 1987, divorced in August 1989, and remarried in November 1989. He has six children, five of whom are adults and one is 15 years old.

Applicant served on active duty in the U.S. Navy from December 1986 to December 1990 and received an honorable discharge. He held a security clearance while on active duty in the Navy and in August 1996 while working on a government contract.

The SOR alleges four delinquent debts that are reflected in credit reports from February 2021 (FORM Item 5) and November 2021 (FORM Item 6). They are a bank loan charged off for \$53,802 (SOR ¶ 1.a); a car debt charged off for \$25,670 (SOR ¶ 1.b); a car debt charged off for \$9,980 (SOR ¶ 1.c); and a telecommunications account referred for collection of \$814 (SOR ¶ 1.d).

During Applicant's interview with a security investigator in April 2021, he attributed the delinquent bank loan to home projects and landscaping. He attributed the first delinquent car debt to leasing a luxury car in April 2013 and the second car debt to leasing another luxury car in December 2015. He voluntarily surrendered both cars when he was unable to afford the payments. (FORM Item 3 at 1.)

Applicant disclosed in his SCA that he traveled outside the United States in October and November 2018. In his security interview in April 2021, he explained that this travel occurred when he, his wife, their youngest daughter, and two cousins went on a one-week cruise. (FORM Item 2 at 40; FORM Item 3 at 9.)

Applicant has worked with a debt resolution agency to explore options for resolving the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. The agency proposed three options:

Option 1: Pay off all three debts in 48 months at \$1,614 per month or in 53 months at \$1,463 per month.

Option 2: Pay off the bank loan in 30 months at \$1,462 per month or in 53 months at \$832 per month.

Option 3: Pay off the two car debts in 30 months at \$1,154 per month.

Applicant decided that all three options were too expensive, and he contacted three home mortgage lenders to explore refinancing his home and using his equity to pay the three debts. When he responded to the FORM, he was scheduled to close on a refinancing of his home on June 17, 2022. His monthly payments on the refinanced mortgage will be \$5,834. (AX A at 11.) He provided no evidence of negotiations, payments, or payment agreements with the creditors in SOR ¶¶ 1.a, 1.b, and 1.c

When Applicant answered the SOR, he was making monthly payments on the telecommunications debt alleged in SOR ¶ 1.d. In his response to the FORM, he submitted evidence that the debt was paid in full.

Applicant's spouse is a two-time cancer survivor. The record does not reflect when her first treatments occurred. The second series of treatments began in 2015. Applicant attributed his financial problems to medical debts that were not covered by insurance. (FORM Item 3 at 1.) He did not provide any information about the amounts of the debts.

In response to DCSA interrogatories, Applicant provided a personal financial statement dated September 15, 2021. He reported that he and his spouse had net monthly income of \$9,331; monthly expenses of \$1,984; and one monthly payment of \$3,584 on the refinanced home mortgage loan. He estimated his net monthly remainder as \$3,762.

Although Applicant has met his goal of refinancing his home, he has not provided any documentary evidence showing affordable payment agreements with the creditors alleged in SOR ¶¶ 1.a, 1.b, and 1.c. Even if he reaches payment agreements, he will need time to establish a track record of compliance with the agreements.

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 in the FORM establish the 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 relevant:

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 debts are ongoing, frequent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's uninsured medical debts were conditions largely beyond his control. However, he has not provided sufficient information to establish that the amounts of uninsured medical debts prevented him from meeting his other financial obligations. He also has not explained the relationship between his leases of expensive luxury cars, his vacation travel in 2018, and his inability to meet the financial obligations alleged in the SOR.

AG ¶ 20(c) is not fully established. Applicant has received financial counseling, but his financial problems are not yet under control.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.d. It is not established for the other debts alleged in the SOR. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In this case, Applicant has taken some preliminary steps to generate additional cash, but he has not yet arrived at a plan to resolve his remaining delinquent debts, nor has he taken significant actions to resolve them.

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

