



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



In the matter of:)
)
) ISCR Case No. 20-00990
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2022

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 5, 2018. On June 22, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 March 10, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on May 24, 2022. On May 31, 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 June 6, 2022, and submitted three exhibits on August 3, 2022. The case was assigned to me on October 3, 2022.

Evidentiary Issue

FORM Exhibit 3 is a summary of a personal security interview (PSI) conducted on January 16, 2019. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the PSI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the PSI; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; object on the ground that the report is unauthenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "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. 12010810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a and denied the allegations in SOR ¶¶ 1.b-d. He did not admit or deny SOR ¶ 2.a in his answer. In a subsequent email exchange with the CAF in April 2022, he answered the allegation, SOR ¶ 2.a, by stating: "I admit there is some charge belong to me but at the time my Equifax did not show up on my credit report when I did e-quip questions. . . . His admissions are incorporated in my findings of fact.

Applicant is a 47-year-old mechanic employed by a federal contractor since June 2018. He received a bachelor's degree in 2005. He served in the Army National Guard from 1998 to 2003, receiving an honorable discharge. He married in 2014 and has no children. The SOR alleges that Applicant has four delinquent debts totaling approximately \$39,575.00, and that he deliberately failed to disclose these debts on his e-QIP. (Exhibit 3 at 37.)

SOR ¶ 1.a: past due account with a balance of \$31,830. In the PSI Applicant states this is a student loan debt. He admits the debt and states he is "working to resolve from Biden's American Rescue Plan To Forgive Student Loan." His most recent credit report, May 2022, shows the current debt as \$31,923. The last activity reported on the credit report is October 2016. (Exhibit 4.)

SOR ¶ 1.b: past due account for \$2,405.00 with a balance of \$17,885.00. Applicant denies the debt and states it is a student loan debt related to the debt alleged in SOR ¶ 1.a. His March 2020 credit report shows this and the debt alleged in SOR ¶ 1.a being held different companies. This debt is not reflected on the May 2022 credit report.

SOR ¶ 1.c: past due account charged off in the amount of \$4,808. Applicant denied the allegation on the basis he was working on a payment plan. In support of his denial he provided correspondence from the credit card company dated April 2021. The credit card company provided him multiple options to resolve the debt. His May 2022 credit report shows the last payment activity as March 2017.

SOR ¶ 1.d: past due account with a balance of \$532. Without explanation or supporting documentation, Applicant denies a medical account debt listed on his March 2020 credit report on the basis it is “wrong charged [sic].”

SOR ¶ 2.a. When Applicant submitted his SCA in November 2018, he answered “No” to all of the questions in response to Section 26 - Financial Record Delinquency Involving Routine Accounts:

Other than previously listed, have any of the following happened? In the past seven (7) years, you had bills or debts turned over to a collection agency? [and] In the past seven (7) years, you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).

He did not admit or deny the allegation in his response to the SOR. The CAF in a subsequent email exchange in April 2022 obtained his answer to the allegation he stated, “I admit there is some charge belong to me but at the time my Equifax did not show up on my credit report when I did e-quip questions In his PSI, he stated that it was an oversight on his part.

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.” See 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 documentary evidence in the record establish the following 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 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(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 them unlikely to recur.

AG ¶ 20(d) is not established. Applicant did not provide evidence to support his assertions that he had resolved his debts or had established a repayment plan. The credit reports reflect inaction on his part. The fact that not all debts are reflected on the May 2022 credit report is not meaningful evidence of the disposition of the debts. See ISCR Case No. 18-1250 at 2 (App. Bd. Feb. 13, 2019). A statement that he was working to resolve a debt in the future based on a loan forgiveness program is not a substitute for a track record of paying debts in a timely manner. He produced no evidence of significant actions to resolve the debts alleged in SOR ¶¶ 1.a-1.d. The three exhibits he submitted in August 2022, show action on other debts, but do not show action on the debts alleged.

AG ¶ 20(e) is not established. Applicant submitted no evidence showing he disputed the legitimacy of these debts or any actions to resolve the issue the debts alleged in SOR ¶¶ 1.a-1.d. The three exhibits he submitted in August 2022, show he disputed a date involving account opened after he completed his SCA, but do not show action on the debts alleged.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition is AG ¶ 16(a):

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. See ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition is established. Applicant made no effort to correct the omissions in his SCA until he was confronted with them during the August 2016 PSI. His falsification is arguably infrequent, but it is recent and it is not "minor" given the amount of debt and that the majority of the debt was accumulated obtaining his college degree, which is not a random debt that may have been overlooked. Falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) Based on the limited record, I am satisfied that

Applicant knew he had delinquent debts when he submitted his SCA. I conclude that AG ¶ 16(a) is established.

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 and applying the adjudicative factors in 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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines F and E, 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 and falsification of his SCA.

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.d: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a: **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.

Charles C. Hale
Administrative Judge