



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-03647
)
 Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2022

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 October 23, 2018. On December 23, 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 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 in an undated document and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on June 22, 2022. On June 23, 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 30, 2022, and did not respond. The case was assigned to me on October 3, 2022.

Evidentiary Issue

The FORM included summaries of personal subject interviews (PSI) conducted on February 12, 2019; March 26, 2019; and April 6, 2019 (FORM Item 3). The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summaries on the ground that they were not authenticated. I conclude that he waived any objections to the PSI summaries 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. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations except the allegations in SOR ¶¶ 1.g and 1.h, which he denied. His admissions are incorporated in my findings of fact.

Applicant is a 28-year-old sheet metal worker employed by a federal contractor since August 2017. He graduated from high school and attended a community college from August to December 2014 but did not receive a degree. He is unmarried and has no children. He has never held a security clearance.

The SOR alleges 15 delinquent debts that are reflected in credit reports from November 2018 (FORM Item 4), December 2019 (FORM Item 5), and June 2022 (FORM Item 6). The evidence concerning the debts is summarized below.

SOR ¶¶ 1.a-1.m, 1.n and 1.o: medical debts placed for collection totaling \$20,495. In the February 2019 PSI, Applicant told an investigator that he was treated for kidney stones in 2016 and 2017. He did not have medical insurance covering any of the medical debts alleged in the SOR. He provided no information about the nature and circumstances of his other medical debts. He provided no evidence of efforts to resolve them.

SOR ¶ 1.f: unsecured personal loan charged off for \$287. In the February 2019 PSI, Applicant told an investigator that this loan became delinquent because he ignored it. (FORM Item 3 at 6.) It is not resolved.

SOR ¶¶ 1.g and h: student loans placed for collection of \$961 and \$1,280. The loans occurred in September 2012 and were charged off and referred for collection

in March 2017. (FORM Item 5 at 2-3; FORM Item 6 at 3-4.) The last payments on both loans were in February 2019. (FORM Item 5 at 2-3.) During the PSI in February 2019, he told an investigator that the loans were satisfied by diversion of his 2018 federal income tax refund. (FORM Item 3 at 3.) In his answer to the SOR, he denied these debts and asserted that they were satisfied by diversion of income tax refunds for three consecutive years. He submitted no documentary evidence to support his assertions.

SOR ¶ 1.i: consumer debt placed for collection of \$1,400. Applicant admitted this debt but provided no evidence of efforts to resolve it.

SOR ¶¶ 1.j and k: consumer debts charged off for \$253 and \$5,963. During the February 2019 PSI, Applicant acknowledged several debts incurred with a department store, which are unresolved. (FORM Item 3 at 5-6.) He provided no evidence of efforts to resolve these debts.

SOR ¶¶ 1.l and 1.n: telecommunications debts placed for collection of \$2,206 and \$1,179. Applicant admitted these debts but provided no evidence of efforts to resolve them.

After the PSI in March 2019, Applicant provided materials from an online program advising him which debts he should pay and in what order. His materials included advice regarding the debts alleged in SOR ¶¶ 1.a-1.c, 1.f, 1.l, 1.m, and 1.o. He provided no information about the nature of the advice or what actions, if any, he took to follow it. He has provided no information about his current income and expenses.

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 two disqualifying conditions: 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;

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.

None of the above conditions are established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. He presented no evidence of circumstances largely beyond his control. He submitted evidence that he consulted an online financial counseling source, but his financial situation is not under control. He submitted no evidence of efforts to resolve his debts. He has not disputed any of the debts. He claimed that the student loans were satisfied by diversion of federal income tax refunds, but he submitted no documentary evidence to support his claim. When an applicant claims that a debt has been resolved, he is expected to present documentary evidence supporting his claim. See ISCR Case

No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Furthermore, involuntary collections do not constitute a good-faith effort to resolve debts. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

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 G 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 or to question him about his debts or his financial situation. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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-1.o:

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