



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



In the matter of:)
)
) ISCR Case No. 21-00942
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

10/17/2022

Decision

CERVI, Gregg A., 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 May 13, 2020. On June 4, 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 DCSA 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 (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on September 10, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on January 31, 2022. On February 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 March 18, 2022. He did not submit any material in response to the FORM, nor did he object to the Government's exhibits. Government Exhibits (GE) 3-7 are admitted into evidence without objection. The FORM marked the SOR and Applicant's Answer to the SOR as GEs 1 and 2, however, they are already part of the record. The case was assigned to me on May 13, 2022.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor, employed since March 2021. When he completed his SCA, he was employed by a Government contractor as a cyber-security consultant. He was unemployed for periods while attending undergraduate and graduate schools. He earned a bachelor's degree in 2013, and a master's degree in 2015. He is unmarried. He was granted a secret security clearance in 2015.

The SOR alleges under Guideline F that Applicant is indebted on five student loans placed for collections, totaling \$22,663 (SOR ¶¶ 1.a-1.d, and 1.f); a charged-off credit account totaling \$3,037 (SOR ¶ 1.e); and two medical collection accounts totaling \$1,541 (SOR ¶¶ 1.g and 1.h). Applicant admitted all of the delinquent accounts except for one medical debt (SOR ¶ 1.h), which he denied as "no longer delinquent." (Ans.) The record evidence is sufficient to support the SOR allegations.

When he completed his SCA, the only delinquencies Applicant reported were \$26,000 in student loans. He noted that he was making payments through a wage garnishment. In his personal subject interview (PSI) by a security investigator, he noted that although he had a garnishment order from March to May 2020, the garnished amount was refunded to him, possibly due to pandemic relief. He was unaware that the student loans were in a collection status and believed his loans were never delinquent. (GE 6) His 2020 credit report shows the student loan accounts as past due since 2017, and sold or transferred by Fedloan, and placed for collections by the U.S. Department of Education in about 2020. (GE 7)

The charged-off credit account was placed for collection in about October 2020. (GE 7) Applicant was unaware of the account when interviewed, but noted an intent to investigate it and pay it if necessary. (GE 6) The two medical debts were placed for collections in about 2020. (GE 7) Applicant was unaware of the debts when he was interviewed. In his Answer to the SOR, he claimed that one medical debt was no longer delinquent, but he provided no evidence in support of his claim.

In his PSI, Applicant acknowledged the debts, and claimed that he was "in pretty good shape financially." He stated that he earns about \$84,000 per year gross, \$54,000 net; has about \$3,025 in monthly expenses; and had about \$340,000 in home value and a checking account with \$3,500. Notably, Applicant vacationed in foreign destinations in 2012 and 2019.

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The documentary evidence in the record and Applicant’s admissions are sufficient to establish the disqualifying conditions in AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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.

None of the above mitigating conditions are established. Applicant has a history of not responsibly meeting financial obligations. He has done little to address his debts despite his apparent ability to pay, or to take appropriate action to investigate and resolve delinquent debts. The guideline 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).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period and that he can obtain and maintain a measure of financial responsibility. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, Applicant's financial responsibility is questionable. He has not shown evidence of attempts to inquire into his debts, or sufficient action to resolve them. No mitigation credit is applicable.

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 student loans, employment history, and current financial status. Because he 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 the circumstances that led to his debts or any action he may have taken to address them. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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, including exceptions available under Appendix C of SEAD 4. I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies.

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.h: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge