



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-01393
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
 For Applicant: *Pro se*
 10/28/2022

Decision

MARINE, Gina L., 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 March 4, 2021. On October 12, 2021, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On December 17, 2021, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On March 15, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including evidentiary documents identified as Items 1 through 5. He was given an opportunity to submit a documentary response setting forth objections, rebuttal,

extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on March 31, 2022, but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on July 21, 2022.

Evidentiary Matters

Item 1 contains the pleadings in the case. Items 2 through 5 are admitted into evidence. Although Item 3 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 3. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 3 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 3 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 3 could be considered as evidence in his case.

Findings of Fact

Applicant, age 42, is married with one 18-year-old child. The record did not indicate his education background. He has not served in the military. This is his first application for a security clearance. (Item 2)

The SOR alleged six delinquent debts totaling \$57,000, including a \$41,110 past-due mortgage account in foreclosure status. In his Answer, Applicant admitted all but one (SOR ¶ 1.c/\$386) of the alleged debts, without explanation. His admitted debts totaled \$56,614. Applicant's March 2021 credit bureau report (CBR) corroborated SOR ¶ 1.c. His September 2021 CBR reported the debt alleged in SOR ¶ 1.f as a paid charge-off with a \$0 balance. He paid an amount not indicated in the record to settle that debt (with a reported balance of \$8,677) for less than the full balance. (Item 4, 5)

Applicant promised to investigate and make payment arrangements to resolve his indebtedness during his March 2021 and April 2021 security clearance interviews (SIs). Because he did not proffer any explanations in his Answer or respond to the FORM, there is no information in the record to confirm whether he followed through on those promises or otherwise resolved the debts alleged in SOR ¶¶ 1.a through 1.e. (Item 3)

During his SIs, Applicant acknowledged that he had been experiencing financial problems for a little over a year, including a mortgage loan, a car loan, and a credit-card account that had become delinquent. He attributed those delinquent accounts to a reduction of income due to a job change and to a lack of income. He did not proffer any further details about his income or expense history during his SIs. (Item 3)

Applicant reported the following employment history on his SCA: 1) employed full time from September 2010 through March 2016, when he was laid off due to "economic down turn;" 2) employed¹ full time from March 2016 through October 2019, when he was

¹ On his SCA, Applicant referenced this employment as "self-employment," but also provided the following reason why he left this employment: "Laid off due to economic down turn." The record did not address this discrepancy.

laid off due to “economic down turn;” and 3) employed by Defense Contractor A from October 2019 through [then] present. The administrative record indicates that Applicant is no longer employed by Defense Contractor A. He was employed by Defense Contractor A when he signed the receipt for the SOR in March 2022. As of October 2022, he appears to be employed by Defense Contractor B, who is his current sponsor. There is no other information in the record to indicate the dates he separated from Defense Contractor A or began his employment with Defense Contractor B, including the reason for the separation or any resulting unemployment. (Item 2)

During his March 2021 SI, Applicant admitted that he answered “no” to all questions about his financial record on his SCA because he was embarrassed. While he claimed that he had no knowledge of the debts alleged in SOR ¶¶ 1.b through 1.d and 1.f, he admitted that he had been delinquent on the aforementioned credit-card account (SOR ¶ 1.a), mortgage loan (SOR ¶ 1.e), and a car loan that was not alleged. Since the SOR did not allege facts involving Applicant’s failure to disclose any delinquent debts on his SCA, I will consider it only to evaluate mitigation and the whole person.

During the March 2021 SI, Applicant maintained that he had taken action to resolve his indebtedness beginning in about February 2021. He claimed that he paid off the past-due balance of the car loan (for his truck) and a credit-card account (not SOR ¶ 1.a). He explained that the truck had been repossessed in about November 2020 due to his monthly payments being about 90 days late in the approximate amount of \$1,800. He claimed after he made a payment to bring the loan account current in February 2021, he was able to retain his truck. He did not proffer any details about the credit-card account. (Item 3)

The March 2021 CBR corroborated that Applicant paid an amount not indicated in the record to settle a credit-card account (with a reported balance of \$360) for less than the full balance. It also corroborated that he brought the 90-day delinquent car loan current and that the account was then in good standing. The September 2021 CBR confirmed that he had then remained current on the car loan. (Items 3, 4)

During the March 2021 SI, Applicant promised to pay more attention to what credit cards he had and to reduce their balances. He acknowledged that his financial situation could be a lot better and anticipated that it would improve once he had a handle on what needs to be paid. He asserted that he wanted to get out of debt and intended to start working on paying off accounts to get caught up with his bills. He averred that there is no reason for anyone to question his ability or willingness to repay his debts or live within his means. (Item 3)

Applicant also answered “no” to the questions in police record section on his SCA, including whether he had ever been charged with an offense involving alcohol or drugs. The police record section included the instruction: “For this section report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed.” During his March 2021 SI, Applicant confirmed his “no” responses. After being confronted, he agreed that he had been charged in January 2000 with driving under the influence (DUI). He explained that

he pled no contest to the charge for which he received a deferred disposition. Upon successfully completing the terms of his six-month probation, the case was dismissed. He maintained that he did not report the DUI on his SCA because he thought it had been expunged from his record once it had been dismissed. (Item 2, 3)

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

With the exception of SOR ¶ 1.f, the record evidence establishes the following disqualifying condition under this guideline: AG ¶ 19(c) (a history of not meeting financial obligations). Because the debt was resolved prior to the issuance of the SOR, I find SOR ¶ 1.f in Applicant's favor.

I considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following 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; 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(b) is established to the extent that Applicant was either underemployed or unemployed due to involuntary layoffs. However, I am unable to fully apply AG ¶ 20(b) because the record lacked sufficient detail for me to conclude that his debts persisted largely due to circumstances beyond his control or that he acted responsibly to resolve his debts. AG ¶ 20(d) is established only to the unalleged car loan and credit-card account that Applicant settled. However, he failed to establish that he paid or otherwise resolved the debts alleged in SOR ¶¶ 1.a through 1.e. I am unable to conclude that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, and judgment. Thus, I find that neither AG ¶¶ 20(a), (b), nor (d) are fully established to mitigate the Guideline F concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Embarrassment is not an excuse to omit security relevant information during the security clearance process. Moreover, Applicant was on notice that he was required to disclose his DUI charge regardless of whether it was dismissed or may have been

expunged from his record. While Applicant's lack of candor with respect to his failure to report any derogatory information on his SCA is troubling, it did not serve as a basis for denying him a security clearance this time. However, Applicant is cautioned that any subsequent failure to be forthright and honest on any future SCA could negatively affect his security clearance worthiness.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge