



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



In the matter of:)
)
) ISCR Case No. 21-00679
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 4, 2019. On April 9, 2021, the Department of 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 (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 July 20, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on August 17, 2022. A complete copy of the file of relevant material (FORM) was

sent to Applicant on August 19, 2022, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received it on October 24, 2022. He responded on November 23, 2022. The case was assigned to me on January 12, 2023.

Evidentiary Issue

FORM Item 3 is a summary of a personal subject interview (PSI) conducted on March 16, 2021. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the ESI 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).

The SOR and the answer (FORM Item 1 and 2) are the pleadings in the case. FORM Items 3 through 7 and the exhibits attached to Applicant's answer will be referred to as Applicant Exhibits (AE) and the page number assigned in Form Item 2. The first exhibit appears on page four. FORM Items 3 through 7 and AE4 through AE13 are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a through 1.i and denied SOR ¶ 1.j. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 39 years old. He served honorably in the United States Marine Corps from April 2010 until May 2018. He earned a bachelor's degree in 2017, and is working towards his master's degree. In his SCA he listed being married and divorced three times and had no children. (Item 3 at 30-33.) In his response to the Government's FORM he noted he was married to a "stay-at-home mother, with two boys...and one girl...." Since May 2018, he has worked as a systems engineer for a defense contractor. He submitted a character statement of his colleague and supervisor a military veteran, with whom he has worked with for over two years. (AE13.) He was granted a security clearance in 2009 and again in 2020.

Applicant's ten delinquent debts total \$33,862. The debts are established by his SCA and multiple credit reports. (FORM Items 3-6.) The specific debts in the SOR are as follows:

SOR ¶ 1.a: past-due account charged-off for \$3,109. FORM Item 4 shows the status of the debt as closed and the last payment date as March 2019. (Item 4 at 6.)

SOR ¶ 1.b: past-due account charged-off for \$3,735. FORM Item 4 shows the status of the debt as closed and the last payment date as November 2019. (Item 4 at 8.)

SOR ¶ 1.c: past-due account charged-off for \$812. FORM Item 4 shows the status of the debt as closed and the last payment date as March 2019. (Item 4 at 7.) Applicant admits the debt and explains that it was incurred after a motorcycle accident. He states the payments should have been covered by the purchase guarantee plan he had bought. He intends to pursue legal action “to have dispute taken care of.” (Item 2 at 3.)

SOR ¶ 1.d: past-due account charged-off for \$2,496. FORM Item 4 shows the account status debt as closed and the last payment date as March 2019. (Item 4 at 4.)

SOR ¶ 1.e: past-due account charged-off as bad debt. FORM Items 4 and 5 show the account status of the debt as closed.

SOR ¶ 1.f: past-due account charged-off for \$9,473. FORM Item 4 shows the account status debt as closed and the last payment date as November 2019. (Item 4 at 14.) Applicant provided July 2021 correspondence from the debt holder indicating he had contacted them to set up payment arrangements. (AE10.)

SOR ¶ 1.g: past-due account charged-off for \$3,596. FORM Item 4 shows the account status debt as closed, the last payment date as March 2019, and a last activity date of May 2019. (Item 4 at 14.) Applicant provided July 2021 correspondence from the debt holder indicating he had contacted them to set up payment arrangements. (AE11.)

SOR ¶ 1.h: past-due account placed for collection for \$1002. FORM Items 4 and 5 show the account closed by Applicant and paying as agreed. (Item 4 at 15 and Item 5 at 3.) Applicant provided his April 2021 statement showing his current balance was now \$14.71. (AE12.)

SOR ¶ 1.i: past-due account placed for collection for \$325. FORM Items 4 and 5 show the account status of the debt as placed for collection. (Item 4 at 1 and Item 5 at 5.) Applicant acknowledges the debt and states he has disputed the charge with the company. He does not understand why it was charged and intends to pursue legal action.

SOR ¶ 1.j: past-due account placed for collection for \$141. FORM Items 4 and 5 show the account status of the debt as placed for collection. (Item 4 at 2 and Item 5 at 5.) Applicant denied the debt on the basis he does not know what “the charge is in relation to.”

Applicant states his former spouse incurred the debts alleged in SOR ¶¶ 1.a through 1.g, while he was deployed in the 2012 to 2013 time period. He states she made purchases outside of his knowledge and continued to make purchases after his

“deployment into 2014.” He explained he intended to utilize his Servicemembers Civil Relief Act (SCRA) checks to resolve his delinquent debts. (AE4-AE9.) However, he explained the reason for why he not acted was that he is not certain who the current debt holder was. He added he now intends to seek legal counsel. He offered that he had received financial counseling while on active duty and would be seeking financial counseling through the Department of Veterans Affairs (VA).

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 documentary evidence in the FORM 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 under AG ¶ 20 are 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; and

(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is partially established. Applicant's delinquent debts occurred under such circumstances that they are unlikely to recur, a military deployment and a motor cycle accident, but they are recent, numerous and ongoing.

AG ¶ 20(b) is partially established. Applicant cites the conduct of his spouse while he was deployed that resulted in large portions of the alleged debt. However, he does not support his claim that he acted responsibly under the circumstances to resolve these either through payment or with legal action. Where he states he disputes the debt and intends to pursue legal action, there is no further evidence of action on his part.

AG ¶ 20 (c) is partially established. Applicant received financial counseling during his active duty service. He stated he intended to seek further financial counseling for the problem from the VA. He has not shown that the problem is being resolved or is under control.

AG ¶ 20(d) is partially established. Applicant provided evidence to support his assertions that he had paid the debt alleged in SOR ¶ 1.h. He provided his SCRA checks to show he was able to make payment plans for the remaining debts. With the exception of SOR ¶ 1.h, the August 2022 credit report and the April 2020 credit report show inaction on his part for the remaining debts. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

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). 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). I considered the character statement of his colleague and supervisor in the context of the whole person. (AE13.) After weighing the disqualifying and mitigating conditions under Guidelines 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	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