



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



In the matter of:)
)
) ISCR Case No. 21-02730
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: Patricia A. Long, Esq.

02/13/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 15, 2021. On December 20, 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 (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) implemented by the DOD on September 1, 2006, and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 25, 2022, and requested a hearing before an administrative judge. The CAF determined the answer was incomplete. Applicant's

counsel submitted a response to the SOR on March 2, 2022, and reaffirmed the in-person hearing request. Included in Counsel's answer were Enclosures 1 through 7. On October 11, 2022, Applicant's counsel, in response to a Department Counsel letter, withdrew the request for an in-person hearing and requested "a decision on the administrative (written) record." (Item 8.) Department Counsel submitted the Government's written case on October 27, 2022. On October 27, 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 November 8, 2022, and his counsel submitted a Response on November 18, 2022, and included Response Exhibits 1 (RE1) through 6 (RE6). The case was assigned to me on January 12, 2023.

The SOR and the Answers (Items 1, 2, 3, and 8) are pleadings in the case. FORM Items 4 through 6; Enclosures 1 through 6; and RE1 through RE6 are admitted into evidence without objection. FORM Item 7 is a summary of an enhanced subject interview (ESI) conducted on September 14, 2021. Counsel raised a timely objection and FORM Item 7 is not admitted into evidence.

Findings of Fact

In Applicant's initial answer to the SOR, he denied SOR ¶¶ 1.a-1.v. Through Counsel he admits the debts and then explains in detail how and why these delinquent accounts are not the result of "intentional fault of his own." (Item 3.) 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 51 years old. He divorced in 2003 and has one daughter of whom he is the custodial parent. He earned his associate's degree in 2009 and was awarded his bachelor's degree in 2011. He has been employed by his sponsor since December 2020. He provided two character letters from colleagues attesting to their full confidence in his integrity, discretion, judgment, and ability to protect classified or sensitive information. (Enclosures 1 and 2.)

After earning his bachelor's degree in 2011 Applicant began making minimal payments on his student loans per the loan holder. In his Answer, he explained after graduation when he was under-employed, and he was unable to pay the full monthly amount of the payment or in some months not at all. (Item 2 at 15.) He states the loan holder suggested he default or enter into forbearance on the student loans as his best course of action. He states through Counsel that even while making payments he engaged the loan holder on numerous occasions to set up payment plan. (Enclosure 6.) He states he now owns his current home and vehicles, and his current salary is \$146,000. (Item 2 and Item 3 at 3.)

Applicant asserts in both Answers that in 2016 he was informed that the loan holder was no longer holding any student loan accounts and that the loan holder was being sued for misrepresentation and fraudulent representation regarding the student loan accounts

it managed. When he did not receive any further information regarding payment of his student loans, he assumed his loans were part of the lawsuits. (Enclosure 7.)

Applicant's 22 delinquent student loans total \$98,728. The debts are established by two credit reports from August 2021 and December 2021 and his Answers. (Items 5, 6, 2, and 3.) After getting his student loans released from the COVID-19 forbearance program he established a payment arrangement with the Department of Education for all the loans in February 2022. (Response at 7.) The agreement would take the loans out of default. In March 2022 Applicant signed a statement of intent, Enclosure 5, to make monthly payments of \$1,139. In the statement of intent, he affirmed he would continue to make all future student loan payments as required until paid in full and that he fully understood that any future failure to pay his student loans would be "grounds for revocation of [his] eligibility for access to classified national security information." (Enclosure 5.)

Applicant's student loans in June 2022 were consolidated into one debt totaling \$94,739. (RE4 at 2.) In August 2022, the Department of Education informed him he had rehabilitated his student loans and that the loans had "been paid in full with the proceeds of the consolidation loan. (RE2.) He is current on his monthly payments. As of November 2022, the balance was \$88,546. His repayment status is listed as "good standing." (RE5.)

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 that he had been unable to pay the full monthly amount of payment or in some months not at all after graduation and that he stopped payments when the lender was sued along with 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; 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 established. Applicant's delinquent debts arose during a period of underemployment shortly after earning his degree. Once the student loans were out of the COVID-19 forbearance program he consolidated the loans. He has established a history of repayment on the consolidated debt.

AG ¶ 20(b) is established. Applicant documents the litigation involving the loan holder and the reason he believed his loans were in litigation. His improved employment status after period of underemployment has coincided with his track record of paying his debts.

AG ¶ 20(d) is established. Applicant provided evidence to support his assertions that he has a plan to resolve his financial problems and has taken significant action to implement that plan. Applicant does not present a perfect case in mitigation, but perfection is not required. Under the limited circumstances of this case, I find that his finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

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. I have considered the character statements, Enclosures 1 and 2, in my whole-person analysis, as well as his statement of intent, Enclosure 5. 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.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-1.v: | For Applicant |

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge