



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



In the matter of:)
)
) ISCR Case No. 22-00783
)
Applicant for Security Clearance)

Appearances

For Government: Gatha L. Manns, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2023

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 November 17, 2021. On June 8, 2022, the Department of Defense 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 16, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on September 15, 2022. A complete copy of the file of relevant material (FORM)

was sent to Applicant on September 29, 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 7, 2022. He did not respond. The case was assigned to me on January 12, 2023.

Evidentiary Issue

FORM Item 7 is a summary of an enhanced subject interview (ESI) conducted on December 15, 2021 and January 18, 2022. The ESI 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 ESI; 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 ESI 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 Items 1 and 2) are the pleadings in the case. FORM Items 3 through 7 are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a-1.h. 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 62 years-old. He has worked as an administrative technician for a defense contractor since December 2012. He has held a security clearance since November 2012. He earned his associates degree in 2012 and is currently attending an online seminary college. He is able to attend cost free because he is a church member.

Applicant has been married for 38 years. He has three adult children. One of his children is currently living at home.

Applicant's eight delinquent debts total over \$378,000. The debts are established by his SCA, two credit reports, and his ESI. (Items 3-4 and 6-7.) The specific debts in the SOR are as follows:

SOR ¶¶ 1.a-1.b: past-due accounts charged-off for \$26,667 and \$20,157 respectively. FORM Item 4 shows the status of the debts as closed and a last activity date of May 2019 and a last activity date of November 2016. (Item 4 at 2 and 3.) The accounts remain delinquent because Applicant states he challenged some aspects of the debts in his state's judicial system, up to his state's court of appeals. The decision did not go in his favor and he is waiting the final disposition instructions from the Court. (Answer at 3.)

SOR ¶ 1.c: past-due account charged-off for \$2,477. FORM Item 4 shows the status of the debt as closed and a last activity date of December 2021. (Item 4 at 3.) Applicant states the account remains delinquent due to the creditor not contacting him in many years, which caused him to believe it had been settled. (Answer at 3.)

SOR ¶ 1.d: past-due account charged-off for \$1,210. FORM Item 4 shows the status of the debt as closed and a last activity date of November 2021. (Item 4 at 4.) Applicant states he believed this debt was going to be included in his new re-financed mortgage. (Answer at 4.)

SOR ¶ 1.e: past-due utility account referred for collection for \$134. FORM Item 4 shows a last activity date of November 2021. (Item 4 at 4.) Applicant states he incurred the debt on a rental property he sold and the debt was not noticed or accounted for prior to the sale. (Answer at 4.)

SOR ¶ 1.f: past-due medical account referred for collection for \$80. FORM Item 4 shows a last activity date of November 2021. (Item 4 at 5.) Applicant states this debt was incurred for services provided to a family member that he believed would be paid under his health insurance policy. (Answer at 4.) He offered a payment summary showing he had paid the debt by credit card in July 2022. (Answer at 8.)

SOR ¶ 1.g: past-due mortgage account for \$164,869, with a total loan balance of \$381,477 that is in foreclosure status. (Item 4 at 6.) Applicant states the mortgage payments were consistently made on time until a credit report error. He notes the account remains delinquent while the lender is pursuing a foreclosure action to re-claim the property. (Answer at 4.)

SOR ¶ 1.h: past-due home equity loan for \$163,126, with a total balance of \$289,018. (Item 4 at 6.) This debt was incurred when he took a loan against his primary residence to obtain funds to start his Limited Liability Company (LLC).

Applicant in his answer explained that in early 2012, he and his brother-in-law formed an LLC “to acquire real estate for the purpose of investment (buy houses cheap, make some needed repairs, then re-sell for a profit).” The LLC was a single member LLC, and he was the sole member. His brother-in-law lacked the financial resources and credit history to be a formal partner. However, his brother-in-law was experienced in buying and selling real estate, so he handled finding properties and securing financing for the LLC. Applicant handled repair work and hiring contractors. However, when Applicant began his career with his sponsor in December 2012, he found he had significantly less time to spend on the LLC to expedite repair work and oversee transactions.

Applicant states in 2014 an erroneous action on the part of a lender resulted in the LLC being unable to secure financing to buy properties and make necessary repairs to attract home buyers. This error and the ramifications of it resulted in the LLC being dissolved in 2017. (Item 7 at 5.)

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).

This case involves an Applicant's inability to pay debts, arising from a series of investment decisions. His admissions and the documentary evidence in the FORM establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); AG ¶ 19 (b) (“unwillingness to satisfy debts regardless of the ability to do so”); AG ¶ 19(c) (“a history of not meeting financial obligations”); and AG ¶ 19 (e) (“consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.”)

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;

(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.

AG ¶ 20(a) is partially established. The erroneous action by the lender, cited by Applicant, may have resulted in the LLC being unable to secure financing to continue the business. The circumstances he claims triggered the largest debts are unlikely to recur, but they are recent, numerous and ongoing.

AG ¶ 20(b) is partially established. Applicant cites being unable to devote time to his business after taking his job with his sponsor. However, he does not support his claim that he acted responsibly under the circumstances to resolve his business obligations. He has not shown the basis for the legal proceedings concerning SOR ¶¶ 1.a and 1.b. He admitted he had not resolved SOR ¶¶ 1.c-1.e and these debts were due to oversights on his part.

AG ¶ 20(d) is partially established. Applicant provided evidence to support his assertion he paid his medical debt, SOR ¶ 1.f. The delinquent medical debt was resolved prior to completing his SCA. He presented no documentary evidence of negotiations or offers of settlement concerning SOR ¶¶ 1.a and 1.b or the other alleged debts. While his Answer provides some evidence of a good-faith effort to resolve the debts, he has not shown that he is pursuing a course of action that has a reasonable chance of success. I conclude that AG ¶ 20(d) is not fully established for the delinquent mortgages and lines of credit or the delinquent accounts.

AG ¶ 20(e) is not established. This mitigating condition is not established because Applicant has not provided documentary evidence to support his claim he disputed any of the debts.

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). 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	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