



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 21-00644
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2023

Decision

FOREMAN, LeRoy F., 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 on November 17, 2019. On August 26, 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 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 26, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 19, 2022.

Scheduling of the hearing was delayed by COVID-19. The case was assigned to an administrative judge on November 1, 2022. On December 6, 2022, the administrative judge notified Applicant by email that his hearing was scheduled for January 18, 2023, in Chesapeake, Virginia.

The case was reassigned to me on December 15, 2022, due to the assigned administrative judge's medical inability to travel to the hearing site. On January 4, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 18, 2023, confirming the earlier email from the original administrative judge. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until January 27, 2023, to enable him to submit additional documentary evidence. He timely submitted AX F through K, which were admitted without objection. DOHA received the transcript (Tr.) on January 26, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 60-year-old ship designer employed by a defense contractor since August 2003. He earned associate's degrees in August 1983 and May 1997 and a bachelor's degree in July 2013. He married in October 2018 and has four adult stepchildren. He received a security clearance in July 2004, which was renewed in April 2010.

In March 2001, Applicant filed a Chapter 13 bankruptcy petition, listing debts totaling \$102,111. The petition was dismissed in March 2004 for failure to comply with a court order. (GX 6.) The bankruptcy is not alleged in the SOR.

The SOR alleges 16 delinquent debts. Thirteen of the debts are student loans. The debts are reflected in credit reports from February 2020, February 2021, and April 2022 (GX 2, 3, and 4.) and in court records from February 2017 through January 2022 (GX 5). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: credit-card account placed for collection of \$7,664. This debt was charged off in April 2015. (GX 3 at 3.) On January 17, 2023, Applicant entered into a payment agreement providing for 307 monthly payments of \$25. (AX A.) On the same day, he settled a second debt with this creditor for an unsecured personal loan, which is not alleged in the SOR, for \$162. (AX B.)

SOR ¶¶ 1.b-1.j: student loans placed for collection by the Department of Education totaling about \$64,900. These loans were placed for collection in 2018. (GX 3 at 2-4.) Applicant made \$50 payments in April, August, and October 2020. (AX H, I, and J.) At the hearing, he was unsure whether they had been in forbearance for any time. (Tr.

21-25.) He took no further action to resolve them until he applied for the one-time Student Loan Debt Relief plan announced by the President on August 24, 2022. (AX C.) On January 24, 2023, he contacted a debt-resolution company for assistance in consolidating and resolving his federal student loans. As of the date the record closed, he had not accepted the terms of the subsequent debt-resolution contract or made the initial payment of \$1,095. (AX K.)

SOR ¶¶ 1.k-1.n: private student loans placed for collection of a total of about \$41,132. These loans were placed for collection in January 2020. (GX 4 at 13-14.) Applicant made one \$50 payment on this debt in May 2020. (AX G.) He submitted no evidence of any further payments or efforts to resolve them.

SOR ¶ 1.o: telecommunications account placed for collection of \$683. This debt was placed for collection in February 2020. (GX 4 at 19.) Applicant testified that he contacted this creditor two or three weeks before the hearing. (Tr. 37-38.) He did not present any evidence of payments or a payment agreement.

SOR ¶ 1.p: medical debt placed for collection of \$193. This debt was placed for collection in March 2017. (GX 4 at 20.) Applicant paid it on January 23, 2023. (AX F.)

Applicant testified that the student loans were in forbearance for a while, but he did not know when the forbearance ended. He was not sure whether he made any payments before the forbearance. (Tr. 19-22.) He did not remember the amounts of any payments that he made. (Tr. 25.) As of the date of the hearing, he did not know the status of the private student loans. (Tr. 26.)

Applicant's annual income is about \$56,000. His spouse earns about \$38,000 per year. (Tr. 39-40.) He has nominal savings but has a retirement account of about \$90,000. He testified that he and his spouse live paycheck to paycheck. (Tr. 43.) Default judgments for unpaid rent on his home were entered against him in March 2021 and January 2022. (GX 5 at 3-6.) These judgments are not alleged in the SOR.

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 bankruptcy in March 2001 and the default judgments for unpaid rent were not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for whole person analysis ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the bankruptcy and judgments for unpaid rent for these limited purposes.

Applicant's admissions and the evidence submitted at and after the hearing establish two 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 are potentially 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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant submitted no evidence of conditions largely beyond his control.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling. He has hired a company to assist him in consolidating his student loans and negotiating a payment plan, but he had not made the initial payment to the company. Furthermore, the company does not provide the type of financial counseling contemplated by this mitigating condition. He submitted no evidence of financial counseling.

AG ¶ 20(d) is not established. Applicant submitted evidence of three \$50 payments on student loans in 2020. He submitted evidence of a payment on one debt not alleged in the SOR, but he did not make that payment until after the hearing. He took no action to resolve the debts alleged in SOR ¶¶ 1.a, 1.o, and 1.p until after the hearing. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

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). Applicant was sincere and candid at the hearing, but it was apparent that he little understanding of his financial situation and no clear plan to address his delinquent debts. He has a long history of financial problems and no clear plan to attain financial stability. I am not confident that he will not revert to his pattern of neglecting financial responsibilities if he is relieved of the pressure to keep his security clearance. After weighing the disqualifying and mitigating conditions under Guideline 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 (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.p:

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.

LeRoy F. Foreman
Administrative Judge