



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-00260
)	
Applicant for Security Clearance)	

Appearances

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

02/28/2023

Decision

MARINE, Gina L., 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 (SCA) on June 25, 2020. On March 30, 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 March 31, 2021, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The Government was ready to proceed on December 6, 2021. The case was assigned to me on July 21, 2022. On July 28, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing

was scheduled for August 15, 2022. I convened the hearing as scheduled via video conference.

At the hearing, I admitted Government Exhibits (GE) 1 through 4, without objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. Applicant testified and submitted Applicant Exhibit (AE) A, which I admitted, without objection. I left the record open until September 7, 2022. Applicant timely provided additional documents that I admitted as AE B through H, without objection. DOHA received the transcript (Tr.) on August 25, 2022. On February 27, 2023, for good cause and without objection from the Government, I reopened the record to receive additional exhibits that I admitted collectively as AE I.

Findings of Fact

Applicant, age 49, married his wife in 2013. He was married to his ex-wife, with whom he has two adult children, from 1996 through 2013. He also has two adult stepchildren, one of whom currently resides with Applicant and his wife. Applicant received his high school diploma in 1991. He attended college in the 1990s for three years without earning a degree. He has been employed as an engineer by a defense contractor since April 2018. He was initially granted a DOD security clearance in about 2006. (GE 1; Tr. at 17, 38-46)

Applicant attributed his indebtedness to a "tsunami of unfortunate events" over the period between about 2016 and 2018, when he was either unemployed or underemployed and his wife suffered from complications after sustaining a serious injury. His wife's injury led to her loss of income and extraordinary medical expenses for which she did not have "very good" medical insurance to cover. Because she was self-employed, she had to close her business and was not eligible for unemployment compensation. In 2018, she briefly worked part time "to help make money for the family." However, soon after she began her part-time employment, she had to quit due to ongoing health issues that precluded her from performing the duties required of the position. As of the hearing, his wife had made progress in recovering from her injury, but remained unemployed due to an ongoing medical condition unrelated to her injury. (Answer; Tr. at 28, 67-69)

While working on the same DOD contract from about 2006 through December 2013, Applicant's salary increased from about \$151,000 to \$160,000. In 2013, he decided not to continue working on that contract because it was acquired by an employer with a bad reputation. Instead, he found employment with another defense contractor from December 2013 through April 2014, earning a salary that was not indicated in the record. He then was employed by a defense contractor to work on another government agency (AGA 1) contract from April 2014 through about February or March 2016, earning an annual salary of \$220,000. During his time with AGA 1, his DOD security clearance had been archived, which he did not realize until he was searching for a new employer. (Answer; Tr. at 29-38)

Applicant remained unemployed through November 2016, when he found an employer willing to sponsor him for a clearance. During that period, he was supported by

his savings and unemployment compensation of about \$1,300 per month. While waiting for his clearance to be reinstated, he worked on a contract for another government agency (AGA 2) from November 2016 through April 2018, earning an annual salary of \$121,000, which he described as “a very significant cut in pay.” His AGA 2 salary was insufficient to meet expenses that were strained by the loss of his wife’s income, increased transportation expenses due to a longer commute to work, and the \$3,000 per month he continued to pay his ex-wife for alimony and child support. He never missed a support payment to his ex-wife, which ended in 2020 when his youngest child turned 20. Attempting to stay current with his financial obligations, he relied on credit cards and depleted his “life savings” of over \$20,000. Eventually, he fell behind and incurred delinquent debts, including those alleged in the SOR. He began earning an annual salary of \$151,000 upon being hired by his current employer in April 2018. That salary increased over time to \$181,000 in about February or March 2022. (Answer; GE 5 at 1; Tr. at 18, 29-38, 44, 103-104)

On July 28, 2020, after he completed his SCA, Applicant was interviewed by an investigator who confronted him with SOR ¶¶ 1.a and 1.b, about which he had no prior knowledge. On August 5, 2020, after completing his own investigation of those debts, Applicant followed up with the investigator to provide the information he learned about them and to profess his intent to pay both debts. He then worked with his wife to develop a budget and a plan to address their finances. At the hearing, he explained that process:

I took the credit report, and we started reviewing everything at that point. We – my wife keeps a running folder of what our accounts are, what the bills are, and she also has a notebook of what's due and what the budget plan is to pay all these items down, and that's where we kind of did a reconciliation of what's what, what needs to be refocused as I started making more money, and also as things are paid off, taking that money that was, let's say, applied to a car payment that is now paid off, we can take that, let's say, \$600 and apply that somewhere else to another bill and pay down faster. (GE 5, Tr. at 48-49)

In August 2020, Applicant resolved an unalleged credit card account that had been charged off (for the same reasons described above) in the approximate amount of \$10,195. He made \$600 monthly payments towards the \$10,195 debt which reduced the remaining balance to \$1,095 as of July 2020. February 2021 and November 2021 CBRs listed a \$0 balance and noted, “paid charge-off.” (Answer; GE 1 at 47-49; GE 2 at 5; GE 4 at 5; GE 5 at 2)

SOR ¶ 1.a (\$11,763) is a charged-off credit card Applicant opened jointly with his wife in 2015 with a \$12,000 credit limit. They fell behind in their monthly payments for the reasons described above. In April 2021, he paid the debt in full via one lump-sum payment using a portion of a \$15,000 gift he received from his mother. He explained that, since his father’s passing in 2004, his mother has occasionally gifted money to him and his sister, in lump-sum amounts ranging from about \$10,000 to \$15,000. The gift is purely discretionary, and he neither expects it nor is allowed to ask for it. There have been years

when he does not receive the monetary gift. The record did not indicate when and how much he had received in prior years. (GE 2 at 3; AE F; Tr. at 46-50, 72-73)

SOR ¶ 1.b (\$22,420) is a charged-off student loan Applicant co-signed with his stepson, in 2017, to help him pay for college. His stepson only attended about one and a half semesters before disenrolling due to poor performance. Initially, the loan was deferred because his stepson planned to reenroll in a local community college. Then, it was deferred due to COVID-19. When the deferral ended, the loan fell into arrears because his son was unable to obtain employment due to COVID-19. Prior to his November 2021 CBR, he made some payments that reduced the remaining balance to \$20,331. At the hearing, Applicant testified that he continued to make payments further reducing the remaining balance to \$5,082. After the hearing, he proffered documentary evidence to corroborate that he consistently paid \$339 per month from November 2021 through January 2023. As of February 24, 2023, the remaining balance was \$3,050. (GE 2 at 4; GE 5 at 4; Tr. at 18-20, 27, 50-55; AE I)

SOR ¶ 1.c (\$13,293) is a charged-off \$29,943 loan Applicant opened, in 2017, to consolidate higher interest credit-card accounts. Those credit cards, which were not in delinquent status at the time of the loan, were used to pay living and medical expenses. He defaulted on the loan for the reasons described above. Upon receipt of a letter from a collection company about the debt, in about 2020, he began making \$832 payments towards the debt. A balance of \$5,389 was reflected on a November 2021 CBR. The creditor confirmed that the debt was paid in full in May 2022. (GE 1 at 48, 49; GE 2 at 4; GE 5 at 4; Answer; AE A, H; Tr. at 19, 57-64)

Appellant's November 2021 CBR and his credible testimony demonstrated that he lives within his means and is responsibly managing his current finances. He has not incurred any delinquent debts beyond what was alleged in the SOR, despite some recent unexpected expenses due to necessary repairs, including \$3,000 to replace a rotted bathroom floor, and \$1,500 to replace a well pump. (GE 2; Tr. at 74)

At the hearing, Appellant expressed regret that he had not taken a larger role in educating himself about his finances and promised to involve himself more. He explained that his wife had been primarily responsible for managing their finances which led to his uncertainty about certain specific details he was asked to provide during the hearing. He stated,

I guess I'd also like to state that I'm happy to take a better role in the financial planning in my family. It's something that's scary to me that I just don't understand, and I should get smarter, and I will. (Tr. at 79, 102)

After the hearing, Applicant declared that he continued to take on "a larger roll [*sic*] in our families [*sic*] financial planning and bill paying." He stated, "I have 150% understanding of all moneys [*sic*] owed and possessed." Applicant provided a copy of his family budget, which showed his salary of \$171,000, a \$1,681 net remainder, and \$5,091 in savings. His listed debts included a \$363 monthly payment towards SOR ¶ 1.b. It also indicated that his alimony and child support obligation had ended. He asserted, "Since

my hearing, we have continued to reduce our debt, grow our credit and improve our financial health better than it has ever been.” (GE 2-4; GE 5 at 3; AE D, H, I; Tr. at 73-75, 81)

Applicant’s former supervisor lauded his “exceptional” work ethic, integrity, and professionalism. He described Applicant as an “exceptional” software engineer and mentor. He stated, “I highly recommend [Applicant] for continued clearance to access classified systems.” Applicant was recognized in March 2022 for his extraordinary work performance, for which he received a \$2,500 monetary reward. (AE B, G)

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* 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 [or her] 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* 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))

The record evidence and Applicant's admissions 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).

I considered each of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following 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.

Applicant has made meaningful progress in addressing the delinquent debts alleged in the SOR. SOR ¶¶ 1.a and 1.b have been resolved. Although not yet resolved, Applicant initiated and is adhering to a good-faith effort to repay SOR ¶ 1.c. He acted responsibly to address his indebtedness in light of circumstances that were beyond his control. He has demonstrated a track record of responsible action that leads me to conclude that he will follow through with his plan to resolve SOR ¶ 1.c. The AGs do not require an applicant to immediately resolve or pay each debt alleged in the SOR, or to be debt free. Applicant established a plan to resolve his financial problems and has made substantial progress implementing his plan. Given the responsible manner in which Applicant has addressed his delinquent debts, I conclude that his finances are under control, unlikely to recur, and no longer cast doubt about his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), and 20(d) apply 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 mitigated the security concerns raised by the debts alleged in the SOR. Accordingly, Applicant has 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.

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: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge