



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 21-02544
)
 Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2023

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 19, 2019. On December 22, 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 24, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11, 2022, and the case was assigned to an administrative judge on November 1, 2022. It was

reassigned to me on December 15, 2022, due to the medical inability of the assigned administrative judge 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 19, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit documentary evidence. I kept the record open until February 10, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. His cover email for the three exhibits listed confirmation numbers for the debts alleged in SOR ¶¶ 1.l through 1.o, but no documentation. Because of the testimonial nature of the email, I have marked it as AX D. DOHA received the transcript (Tr.) on January 27, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 1.f-1.l, and 1.p-1.r. He denied the allegations in SOR ¶¶ 1.d, 1.e, and 1.m-1.o. His admissions are incorporated in my findings of fact.

Applicant is a 32-year-old engineer electrician employed by a defense contractor since November 2018. (Tr. 22.) He served on active duty in the U.S. Navy from May 2010 to April 2013 and received a medical discharge as a result of service-connected injuries. He held a security clearance in the Navy but does not currently have a clearance.

Applicant attended college from July 2013 to May 2015 and received an associate's degree in culinary arts in May 2015. He married in March 2011 and has three children, ages 13, 11, and 9 (Tr. 17.)

The SOR alleges three unsatisfied judgments, 17 delinquent debts, and failures to file federal and state income tax returns for 2016, 2017, and 2018. The unsatisfied judgments alleged in SOR ¶¶ 1.a, 1.b, and 1.c are reflected in court records (GX 3.) The delinquent debts are reflected in credit reports from March 2021 and January 2020 (GX 4 and 5). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a, 1.b, and 1.c: judgments for \$16,634; \$5,379; and \$1,780. During a personal subject interview (PSI) with a security investigator in January 2020, Applicant told the investigator that the three judgments entered against him in 2019 and 2020 were caused by the failure of his tenants in a rental property to pay the rent, which made him unable to make the payments on the mortgage loan. He told the investigator that he had modified the loan and that all payments were current. (GX 2 at 4.)

At the hearing Applicant testified that the judgment for \$16,634 (SOR ¶ 1.a) was for the amount due on an auto loan after the auto was stolen and totaled, and the insurance was insufficient to pay off the loan. (27.) He testified that he established a payment plan "a few months ago" providing for payments of about \$200 per month. He

testified that he has been making the payments when he can. He did not submit any documentation of payments or a payment plan.

At the hearing, Applicant testified that the judgment for \$5,379 (SOR ¶ 1.b) was due to the loss of an auto that was destroyed in a flood. He testified that he intended to resolve it, but he provided no documentation of any steps to carry out his intent.

Applicant testified that the judgment for \$1,780 was for unpaid rent for the family residence, and that it had been resolved. (Tr. 32-33.) The court records reflect that it was for “unlawful detainer,” which is consistent with Applicant’s testimony. (GX 3 at 3.) After the hearing, he submitted a resident ledger showing his payment history from June 2019 to December 2020. (AX B.) The ledger does not reflect the judgment or any steps to resolve it, but it does reflect late charges and legal fees assessed in September 2019, January 2020, February 2020, September 2020, October 2020, November 2020, and December 2020. Applicant submitted no evidence that the judgment has been satisfied.

SOR ¶ 1.d: delinquent child-support payments totaling \$8,300. During the PSI, Applicant stated that he had an agreement to pay \$286 to resolve the arrearage. (GX 2 at 4.) In his answer to the SOR, he stated that he had reduced the arrearage to less than \$3,000. At the hearing, he testified that he had reduced it to about \$1,400. (Tr. 35, 65.) He no longer pays child support because his son is living with him. (Tr. 65.) After the hearing, he submitted his payment history as of February 6, 2023. It reflects that he was paying \$286 monthly, that the last payment was in May 2022, and that the arrearage is \$2,221.62. (AX C.)

SOR ¶ 1.e: delinquent debt charged off for \$45,752. Applicant testified that this debt is a duplicate of SOR ¶ 1.a. (Tr. 37.) The debt was charged off in February 2016, and the judgment alleged in SOR ¶ 1.a was entered in 2019 by the same credit union. The credit reports do not reflect any other auto loans with this creditor.

SOR ¶ 1.f: delinquent debt charged off for \$15,752. In the PSI, Applicant admitted this debt. He stated that it was a joint auto loan account with his wife and that he forgot to make a payment. He stated that he had a payment plan providing for monthly payments of \$525 and that the payments were current. (GX 2 at 7-8.) He provided no documentary evidence of payments or a payment plan. At the hearing, he admitted that that this debt was a deficiency after a repossession and that it was not resolved. (Tr. 40.)

SOR ¶¶ 1.g, 1.h, and 1.k: delinquent debts charged off for \$9,133; \$8,347; and \$1,365. The same credit union is the creditor for all three debts. Applicant testified that he was not sure if they were credit-card accounts or personal loans. He has taken no action to resolve them. (Tr. 41-42.)

SOR ¶ 1.i: delinquent credit-card account placed for collection of \$3,832. This debt was a delinquent credit-card account associated with a military exchange store. Applicant testified that it is being satisfied by garnishment of \$300 per month. (Tr. 42-43, 56.) After the hearing, he submitted a “Confirmation of Authorization for Recurring

Transfers from Account” from a collection agency, dated February 6, 2023. The document reflects Applicant’s credit-card account number and reflects an agreement to pay \$300 per month beginning on February 28, 2023. It does not reflect that any payments have been made.

SOR ¶ 1.j: delinquent debt placed for collection of \$1,365. During the PSI, Applicant stated that he had no knowledge of this debt. (GX 2 at 6.) At the hearing, he testified that it was for a television set or a computer, and that he had taken no action to resolve it. (Tr. 44.)

SOR ¶ 1.i: delinquent debt charged off for \$1,236. Applicant testified that this debt was for furniture, and that he had taken no action to resolve it, but that he intended to resolve it. (Tr. 45.) In his post-hearing submission, he provided a confirmation number but no documentation of any action.

SOR ¶ 1.m: telecommunications debt past due for \$726. Applicant testified that this debt was for unreturned equipment, and that he had paid it two years ago. (Tr. 46.) In his post-hearing submission, he provided a confirmation number but no documentation to support his testimony.

SOR ¶ 1.n: utility bill past due for \$352. Applicant testified that this debt arose when he moved to another residence, and that he paid it in 2020. (Tr. 48.) In his post-hearing submission, he provided a confirmation number but no documentation to support his testimony.

SOR ¶ 1.o: insurance debt past due for \$283. Applicant testified that this debt arose when he switched insurance companies, and that he paid it in 2021. (Tr. 48-49.) In his post-hearing submission, he provided a confirmation number but no documentation to support his testimony.

SOR ¶ 1.p: delinquent debt charged off for \$1,364. In the PSI, Applicant told the investigator that this debt was for the purchase of a television set. (GX 2 at 5.) At the hearing, he testified that he could not identify the debt. (Tr. 49.) The debt is not resolved.

SOR ¶ 1.q: delinquent auto loan charged off for \$7,055. In the PSI, Applicant told the investigator that he had no knowledge of this debt. (GX 2 at 7.) At the hearing, he testified that he learned two years ago that the debt was delinquent but that he had taken no action to resolve it. (Tr. 51.)

SOR ¶ 1.r: failure to file federal and state income tax returns for 2016, 2017, and 2018. During the PSI, Applicant told the investigator that he and his wife had filed joint returns prior to 2016, and he forgot to file his returns for 2016, 2017, and 2018. In the January 2020 PSI, he told the investigator that he had delivered his tax information to a professional tax preparer who would prepare the returns. (GX 2 at 8.) At the hearing, he submitted no evidence that he had filed his returns. He attributed his failure to file his income tax returns to “bad information” he received, leading him to believe that he was

not required to file tax returns if he did not earn a certain amount of money, and that he was unemployed or in school during those three years. (Tr. 18.) His testimony is contradicted by the employment information he provided in his SCA, which reflects that he was employed full time during 2016, 2017, and 2018. (GX 1 at 14-16.)

Applicant's net income is about \$2,400 per month. He receives disability pay of about \$1,600 per month. He had about \$9,000 in his retirement account when he last checked it a year ago. His wife is not employed outside the home, but she is a disabled military veteran and receives about \$4,000 per month in disability pay. They have three automobiles, model years 2012, 2017, and 2022. Their total car payments are about \$1,100 per month, and car insurance is about \$380 per month. They pay \$93 per month for cable and internet, and \$600 for utilities. He estimates that he and his wife have a net monthly remainder of about \$600 after paying their bills. (Tr. 56-65.)

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).

At the hearing, Applicant asserted that the debt alleged in SOR ¶ 1.e is included in the judgment alleged in SOR ¶ 1.a. The debt in SOR ¶ 1.e was charged off in February 2016 and the judgments alleged in SOR ¶¶ 1.a and 1.b were obtained in 2019 by the

same creditor. The credit reports do not reflect that Applicant had any other auto loans with this creditor. I conclude that the debt alleged in SOR ¶ 1.e probably is duplicative.

When the same conduct is alleged twice in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved the debt in SOR ¶ 1.e in Applicant's favor.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's financial delinquencies are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's injury and medical discharge, the failure of his tenants to timely pay their rent, the theft of an automobile, and the destruction of an automobile by flooding were conditions largely beyond his control. However, he provided no evidence of responsible efforts to resolve the judgments against him.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. Applicant submitted no evidence that he is "adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." He provided some evidence of payments on the child-support arrearage, but his evidence reflects that his last payment was in May 2022.

Applicant testified that the debt to the military exchange service was being collected by garnishment, and after the hearing he submitted evidence of a payment plan for the debt to the military exchange service, but it did not reflect that any of the agreed payments had been made. Payment by involuntary garnishment is not a good-faith initiation of repayment by the debtor. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). His payment arrangement initiated after the hearing does not reflect a timely good-faith effort. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Applicant submitted confirmation numbers for the debts alleged in SOR ¶¶ 1.1 through 1.o. Submission of confirmation numbers does not establish anything more than a source of possible information. It would be inappropriate for an administrative judge to contact a creditor to determine what information was confirmed. The Directive makes it clear that it is the responsibility of the parties to present evidence for the administrative judge's consideration. ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011). The Directive does not authorize an administrative judge to act as an investigator for either party in a security clearance proceeding. ISCR Case No. 15-01515 at 3 (App. Bd. Aug. 17, 2016.)

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

AG ¶ 20(f) is not established. Applicant submitted no evidence that any of the past-due tax returns have been filed.

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). I have considered that Applicant served honorably in the U.S. Navy until he was medically discharged, and that his spouse also is a disabled military veteran. Applicant's testimony at the hearing reflected that he does not have a clear understanding of the extent of his financial problems or a credible plan to resolve them. 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 and failures to timely file his federal and state income tax returns.

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.d: **Against Applicant**

Subparagraph 1.e: **For Applicant**

Subparagraphs 1.f-1.r: **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