



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 22-01110
)
 Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2023

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 18, 2021. On July 5, 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 (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 September 7, 2022, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On October 7, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including evidentiary documents identified as Items 1 through 7. He was given

an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on October 14, 2022, but did not respond to the FORM or object to the Government's evidence. Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. The case was assigned to me on January 26, 2023.

Findings of Fact

Applicant, age 33, is divorced with three children, ages 11, 9, and 5. He was married from March 2011 through January 2012. His youngest child resides with him. His eldest child resides at another address in his home state. His middle child, with a different last name, resides in another state. He received his high school diploma in May 2008. He earned a technical degree in February 2018. He has been employed as a mechanic by a defense contractor since May 2021. He previously worked for the same employer from November 2008 through May 2010. In October 2012, he was honorably discharged from the U.S. Air Force. He reported active-duty service dates from May 2012 through October 2013. He was previously granted DOD security clearances in 2009 and 2012. (Item 3)

The SOR alleged 14 debts derived from Applicant's June 2021 and May 2022 credit bureau reports (CBRs). Without explanation, Applicant admitted SOR ¶¶ 1.a through 1.c, 1.e through 1.i, and 1.l, totaling \$26,732; and denied SOR ¶¶ 1.d, 1.j, 1.k, 1.m, and 1.n, totaling \$9,498. An October 2022 credit report revealed that Applicant opened six new credit accounts between May 2020 and June 2022, one of which was in a charged-off status. (Items 4-6)

The record did not indicate the reason why Applicant responded "no" to each question about his financial record and did not otherwise disclose any delinquent debts in his SCA. In April 2022, Applicant responded to interrogatories propounded by the CAF about his finances. He was asked specific questions about SOR ¶¶ 1.e, 1.g, 1.h, and 1.j through 1.n. He disclosed SOR ¶ 1.b in response to a question asking him if he had any other delinquent accounts. He explained, "I finally have a steady job and getting caught up it is just taking longer than planned but I am starting to pay stuff down or off." (Item 3, 7)

In his interrogatory responses, Applicant answered "no" to whether he had paid SOR ¶¶ 1.b, 1.e, 1.g, 1.h, and 1.j through 1.n. He acknowledged SOR ¶ 1.b as an equipment return charge. He attributed SOR ¶¶ 1.e. and 1.n to a third party for which he had cosigned the accounts and asserted that he was "trying to communicate with the other party to get it figured out." He attributed SOR ¶ 1.g to missing a payment and then forgetting about it. He attributed SOR ¶ 1.h to being unable to afford the monthly payment and asserted that he made payment arrangements to resolve it. He maintained that he was not aware of the medical debts in SOR ¶¶ 1.j, 1.k, and 1.m. Without proffering any corroborating documents, he asserted that he was trying to settle SOR ¶ 1.b and that none of the medical debts appeared on a credit report he reviewed. He provided a document confirming that he negotiated a settlement agreement on March 7, 2022, to repay \$3,551 to resolve SOR ¶ 1.h via 24 monthly payments of \$148, beginning April 1, 2022. There was no evidence of any payments in the record. (Item 3, 7)

Included with Applicant's interrogatory responses was a pay stub dated April 8, 2022 and a personal financial statement (PFS) dated March 15, 2022. The pay stub revealed after-tax deductions for two loans. There was no other information in the record about these loans. The pay stub showed that he worked the following year-to-date overtime hours: 57.90 time-and-a-half hours, 94.90 double-time hours, and 8.10 triple-time hours. He also received a \$1,500 award at some point. On his PFS, he reported a net remainder of \$291 and listed two monthly debt payments, a \$868 auto loan, in current status, and \$147 for SOR ¶ 1.h. (Item 7 at 9)

Applicant reported four periods of unemployment on his SCA. He was unemployed from February through May 2012 after he left his retail job to enlist in the Air Force. He was unemployed from April through August 2014 following his relocation from State A to State B. He was unemployed from January 2015 through June 2016 while he attended school. He was unemployed from February through June 2017 after he left his job to focus on school because his grades had been slipping. (Item 3)

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*, 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. 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*, 484 U.S. 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;
- (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.

Applicant did not meet his burden to establish that his debts were largely attributable to his periods of unemployment or other circumstances beyond his control. He also failed to proffer evidence sufficient to demonstrate that he acted responsibly to address his debts or to establish any of the mitigating conditions in AG ¶ 20(a), (b), (d), or (e). He did not proffer a basis to support his denial of SOR ¶ 1.n. He did not substantiate his dispute of the medical debts in ¶ 1.d, 1.j, 1.k, and 1.m or provide other evidence that he has taken action to resolve the issue. He is credited with negotiating a payment arrangement to resolve SOR ¶ 1.h and working overtime hours. However, he did not corroborate any payments he made or otherwise demonstrate meaningful progress in resolving his debts. He opened six new credit accounts between May 2020 and June 2022, one of which is in delinquent status. I am unable to conclude that his finances are under control and unlikely to recur. Accordingly, I have doubts about his reliability, trustworthiness, and judgment.

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 not mitigated the security concerns raised the debts alleged in the SOR. Accordingly, Applicant has not 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.n: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge