



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



In the matter of:)
)
) ISCR Case No. 21-00091
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/20/2023

Decision

HALE, Charles C., 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 September 9, 2020. On April 5, 2022, 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 4, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on August 11, 2022. The Government amended SOR ¶ 1.a to allege failure to file

his return for tax year 2016, based on his 2022 bankruptcy filing. (FORM Item 7 at 72.) The Government also amended SOR ¶ 1.b, based on his 2022 bankruptcy filing, to reflect a delinquent tax amount totaling approximately \$56,121, for tax years 2016 through 2021. (FORM Item 7 at 72.) On August 11, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 30, 2022, but did not respond. The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 10, and Applicant's Internal Revenue Service (IRS) Record of Account, dated July 12, 2022, hereafter referred to as Applicant's Exhibit 1 (AE1), are admitted into evidence without objection. The case was assigned to me on November 22, 2022.

Evidentiary Issue

FORM Item 4 is a summary of an enhanced subject interview (ESI) initially conducted on October 29, 2020, with a brief follow-up interview on November 10, 2020. 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 Government's notice in 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).

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a-f, and did not admit or deny SOR ¶¶ 1.g-h, which were added by the Government in the FORM. SOR ¶¶ 1.g-h will be treated as if he denied the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 49-year-old technician employed by a federal contractor since September 2020. He graduated high school in 1987. He divorced in 2006 after 14 years of marriage and remarried in 2007. He has three adult children, two minor children, and one adult stepchild. He has never held a security clearance.

SOR ¶ 1.a as amended: Applicant's 2022 bankruptcy filings show he failed to file, as required, his federal income tax return for tax year 2016 and that this tax return remains unfiled. (FORM Item 7 at 72.)

SOR ¶ 1.b as amended: Applicant's 2022 bankruptcy filings show he is indebted to the federal government for delinquent taxes in the approximate amount of \$56,121 for tax years 2016 through 2021, and the taxes remain unpaid. (FORM Item 7 at 72.)

SOR ¶¶ 1.c-f: delinquent consumer debts totaling \$6,171. Applicant admitted the debts. He stated without documentation that he had started repayment on SOR ¶ 1.d. He explained in his Answer that the creditors involved in SOR ¶¶ 1.c and e-f, would not work with him during his period of unemployment, and the debts had subsequently been charged off by the respective creditors. As a result of the charge-off, he concluded the respective creditors had moved on. (FORM Item 2 at 1.) The October 2021 credit report shows each debt as delinquent and in collection. (FORM Item 6 at 2-3.)

SOR ¶ 1.g: Applicant's 2022 bankruptcy filings show he was indebted to his state for delinquent state taxes in the approximate amount of \$5,199 for tax years 2018 and 2020. (FORM Item 7 at 24.)

SOR ¶ 1.h: Applicant filed bankruptcy four times: Chapter 13 in 1994, Chapter 7 in 2006, Chapter 13 in 2010, and Chapter 13 in May 2022. At the time the SOR was issued and amended, the 2022 bankruptcy action was still pending. (FORM Items 7, 8, 9, and 10.)

Applicant disclosed in his SCA that he had been fired from his chemical operator position in 2018, after over ten years of employment with the company. (FORM Item 3 at 15.) After his firing, he experienced about six months of unemployment. (FORM Item 3 at 15.) He cited his loss of income on his SCA as the reason for his delinquent debts. (FORM Item 3 at 39-41.) He explained in his Answer that he took a position that paid approximately 75% percent less than his previous position. (FORM Item 2 at 2.) He requests that his "financial hardship in 2017 as well as going through a pandemic" making \$15.54 hourly compared to his previous annually salary from 2008 to 2017 of \$110,000 annually be considered. (FORM Item 2.) He disclosed on his SCA that he had not filed his federal income tax return for tax year 2018. (FORM Item 3 at 38 and FORM Item 4 at 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." *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

Applicant did not file his federal income tax return in tax period 2016. His 2022 bankruptcy filing establishes his federal and state tax delinquencies alleged in SOR ¶¶ 1.b and 1.g. In his answer to the SOR, he admitted the consumer debts. He indicated without documentation that he had started repayment on SOR ¶ 1.d. His explanation

concerning the debts alleged in SOR ¶¶ 1.c and e-f, demonstrates inaction on his part. His ongoing bankruptcy and three previous bankruptcies are indicators of a person who is financially irresponsible.

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. . . .

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 admissions and the evidence in the FORM 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 AG ¶ 20 mitigating conditions are potentially applicable:

(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;

(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;

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

(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

(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 delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Some of the debts alleged in the SOR arguably resulted from circumstances beyond Applicant's control due to COVID, but his firing is a matter under his control. Even though his debts may have occurred due to circumstances beyond his control, he did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. He failed to provide documented proof that he was addressing his debts after he returned to full-time employment status. There is no "meaningful track record" of actual debt reduction through voluntary payment of debts, and implicitly where applicable, the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

AG ¶ 20(c) is not fully established. Financial counseling is a prerequisite for a bankruptcy petition, but Applicant's financial situation is not yet under control.

AG ¶ 20(d) is not established. Applicant has not yet established a track record of adhering to a Chapter 13 payment plan.

AG ¶ 20(e) is not established for the four debts in collection. No evidence of a basis for disputing the debts has been provided.

AG ¶ 20(g) is not established. Aside from action on his 2019 taxes, Applicant has failed to show he has arranged with the appropriate tax authority to file or pay the amount owed, and that he is in compliance with those arrangements.

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 and applying the adjudicative factors in 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 Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns.

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.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