



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-01230
)	
Applicant for Security Clearance)	

Appearances

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

05/10/2023

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 May 16, 2016. On June 3, 2022, the Department of Defense (DOD) 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 June 21, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 8, 2022. Scheduling of the hearing was delayed by COVID-19. The case was assigned to me on March 24, 2023. On April 3, 2023, the Defense Office of Hearings and Appeals (DOHA)

notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 18, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 2, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. Department Counsel's comments regarding AX A through J are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on May 1, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.m, and 1.n. He denied the allegations in SOR ¶¶ 1.d through 1.l. His admissions are incorporated in my findings of fact.

Applicant is a 44-year-old systems engineer employed by defense contractors since October 2015. He served on active duty in the U.S. Navy from May 2000 to October 2010 and received an honorable discharge. He has held a security clearance since September 2007. He received an associate degree in October 2008 and a bachelor's degree in June 2012. He married in July 2002, divorced in November 2004, married again in August 2005, and divorced in 2009. He has three children, ages 19, 11, and 3. (Tr. 26-27)

After Applicant was discharged from the Navy, he worked for a federal contractor from November 2010 to January 2012. He was laid off when his employer's contract was cancelled, and he was unemployed from January to May 2012. He worked for a non-federal employer from May 2012 to August 2013. He worked for a federal contractor from August 2013 to April 2015, when his employer's contract ended. He was unemployed from May to September 2015.

Applicant's income for tax year 2014 was about \$76,000. His income for 2015 dropped to about \$37,700. For tax years 2016 and 2017, his income ranged between \$65,000 and \$75,000.

Between March 5, 2013 and August 31, 2014, Applicant fell behind on his child-support payments. In August 2016, he was court-ordered to begin paying child support of \$837 per month plus \$205 per month toward an arrearage of \$6,051. (AX B)

The SOR alleges 14 delinquent debts totaling about \$29,392, which are reflected in credit reports from April 2020, September 2019, April 2018, July 2016, and September 2006. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: home mortgage foreclosure in 2016. Applicant lived in this home from May 2009 until May 2015, when he became unemployed and moved to another state to seek employment. He rented the house to a friend while he was seeking employment.

In August 2016, he was notified by his mortgage lender that he was two months past due on his mortgage payments. (AX C) He applied for a refinancing of the loan, and the lender refused to accept payments while the application was pending. He held the rental income in a bank account, awaiting a decision on his application for refinancing. (Tr. 41) The application for refinancing was denied. Foreclosure was initiated in 2015, and the house was sold in April 2016. (AX A) There is no evidence that Applicant received any proceeds from the foreclosure sale, nor is there any evidence of a deficiency after the foreclosure sale. (Tr. 42-47; GX 6 at 7)

SOR ¶ 1.b: loan for motorcycle charged off for \$15,393. Applicant purchased a motorcycle in April 2013 and financed the purchase with a loan of \$15,840. (GX 6 at 3) He was unable to make the payments when he became unemployed. He submitted no evidence of contacts with the lender or efforts to avoid defaulting on the loan. The loan was charged off in October 2014. (Tr. 47-49; GX 5 at 2) Applicant testified that it was impossible to deal with the original lender after it was charged off, because they had no record of the debt. He submitted no evidence that he disputed the motorcycle debt with the credit-reporting agencies. It is not resolved.

SOR ¶ 1.c: credit card charged off for \$3,331. This account was opened in April 2012 and charged off in August 2013. The credit reports state, "Consumer disputes after resolution," indicating that he persisted in a dispute after it was resolved against him. (GX 4 at 2; GX 5 at 2) He did not submit any evidence of the basis for the dispute. The debt is not resolved.

SOR ¶¶ 1.d-1.h: student loans placed for collection of \$2,057; \$1,831; \$1,596; \$1,552; and \$817. Applicant obtained these student loans to attend a technical college. (Tr. 57-58) They were assigned to the government for collection on various dates in December 2007, September 2008, and October 2008. (GX 4 at 2) During an interview with a security investigator in November 2017 and at the hearing, Applicant stated that his education was covered by the GI Bill and that no student loans should have been opened. (GX 2 at 10; Tr. 59) I have taken administrative notice that federal student loans that students received to attend the technical college between January 2005 and September 2016 were forgiven by the Department of Education because of widespread fraud by the technical college. See www.ed.gov/news/press-releases, August 16, 2022. (Hearing Exhibit II) All the delinquent federal student loans reflected in the GX 3, the most recent credit report in the record, were initiated in 2007 and 2008, while Applicant was attending the technical college.

SOR ¶ 1.i: delinquent medical debt for \$327. This debt is reflected in credit reports from April 2020 (GX 3) and September 2019 (GX 4). The debt became delinquent in August 2017. Applicant denied this debt in his answer to the SOR, stating it was incurred by his twin brother. Applicant's first name and his brother's first name are the same except for one letter. (Tr. 62-63) However, at the hearing, he testified that he believed the debt was paid from his health savings account. (Tr. 62) He submitted an account statement reflecting that his health account statement had a balance of \$4,903

in February 2023, but the statement did not reflect any transactions related to this medical debt. (AX G) It is not resolved.

SOR ¶ 1.j: telecommunications account placed for collection of \$847. At the hearing, Applicant testified that he disputed this debt because it was his twin brother's debt. The debt is reflected in the credit reports from July 2016 (GX 6) and April 2018 (GX 5), but not in the credit reports from September 2019 (GX 4) and April 2020 (GX 3). The debt is too recent to have aged off the credit reports under the Fair Credit Reporting Act, which suggests that the dispute was resolved in his favor.

SOR ¶¶ 1.k and 1.l: two telecommunications accounts with the same provider, placed for collection of \$454 and \$196. Applicant denied these debts in his answer to the SOR. He claimed that one of the debts probably belonged to his twin brother and the other debt was paid in full. At the hearing, he testified that he did not recognize these debts and could not remember if he disputed them. (Tr. 65) He provided no documentary evidence that they were resolved.

SOR ¶ 1.m: medical debt referred for collection of \$515. Applicant admitted this debt in his answer to the SOR. At the hearing, he claimed that he paid it. (Tr. 65) He provided no documentary evidence to support his claim.

SOR ¶ 1.n: debt placed for collection of \$476. Applicant admitted this debt in his answer to the SOR, but he testified at the hearing that he did not recognize it. (Tr. 66) He provided no evidence of payments, payment agreements, or other resolution of the debt.

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).

The evidence establishes the 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 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; 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 recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant encountered circumstances largely beyond his control, *i.e.*, unemployment, underemployment, two divorces, fraudulent student loans, and mistaken identity due to having a brother with an almost identical name. He acted responsibly regarding the home mortgage alleged in SOR ¶ 1.a, renting the home while he sought employment in another state and applying for refinancing of the loan. He did not act responsibly regarding the motorcycle loan alleged in SOR ¶ 1.b. He failed to keep in contact with the lender until the loan was charged off and tracking the collection agencies holding the loan became difficult. He disputed the fraudulent student

loans alleged in SOR ¶¶ 1.d-1.h when he was interviewed by a security investigator, in his answer to the SOR, and at the hearing, and they have been forgiven.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling.

AG ¶ 20(d) is not established. Applicant presented no evidence of voluntary payments or payment plans.

AG ¶ 20(e) is not established for the credit-card debt alleged in SOR ¶ 1.c, because Applicant submitted no evidence of the basis for the dispute. It is established for the telecommunications debt alleged in SOR ¶ 1.j, which Applicant successfully disputed as a case of mistaken identity.

Applicant bears the burdens of production and persuasion in mitigation. He is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Applicant has not met his burden. Except for his recital of the facts regarding the mortgage loan and the motorcycle loan, he offered vague and inconsistent explanations for his financial situation. He does not appear to have a good grasp of his overall financial situation, and I am not confident that he will avoid future financial pitfalls.

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). 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 financial delinquencies.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b and 1.c:	Against Applicant
Subparagraphs 1.d-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.n:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge