



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 22-02193
)	
Applicant for Security Clearance)	

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2023

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 (SCA) on February 16, 2021. On November 18, 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 January 4, 2023. Department Counsel submitted the Government’s written case on January 24, 2023, and sent Applicant a complete copy of the file of relevant material (FORM), giving him an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant received the FORM on February 1, 2023, and did not respond. The case was assigned to me on April 26, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 57-year-old consultant employed by a defense contractor since June 2017. He served on active duty in the U.S. Air Force from March 1986 to April 2011, when he retired as a master sergeant (pay grade E-7). He held a security clearance while he was in the Air Force. He was unemployed from April 2011 until he was hired by his current employer. He received a bachelor's degree from an online university in May 2017.

Applicant married in June 1986 and divorced in September 2006. He has two adult children from his marriage, and a 20-year-old daughter from a subsequent relationship. He has provided financial support totaling about \$30,000 to his youngest daughter.

The SOR alleges that Applicant failed to file federal and state income tax returns for tax years 2018, 2019, 2020, and 2021. (SOR ¶¶ 1.a and 1.b) In his SCA, he disclosed his failure to file federal and state returns and stated that he was unsure whether he owed any taxes. He stated that he had "no legitimate reason" for not filing the returns. (FORM Item 2 at 35) When he was interviewed by a security investigator in April 2021, he attributed his failure to file the returns to "forgetting and a lack of motivation." (FORM Item 3 at 9) In his answer to the SOR, he stated that he had filed the federal and state returns for 2019, 2020, and 2021, and that he had contacted a professional tax preparer to obtain the necessary documentation to file his federal and state returns for 2018. He did not submit any documentation to support his answer.

The SOR also alleges a delinquent auto loan charged off for \$5,151. (SOR ¶ 1.c) In Applicant's interview with a security investigator in April 2021, he attributed this delinquency to unemployment after retiring from the Air Force and his retired pay being insufficient to pay his debts. (FORM Item 3 at 9-10) In his answer to the SOR, he claimed that this debt was paid in full. He submitted no documentation to support his claim. Credit reports from March 2021 and July 2022 reflect that the debt was unresolved. (FORM Item 4 at 3; FORM Item 5 at 2) However, the debt is not reflected in a credit report from January 2023. (FORM item 6)

The March 2021 credit report also reflects two credit-card accounts charged off for \$4,475 and \$77, and two consumer accounts placed for collection of \$4,320 and \$655. These debts are not alleged in the SOR.

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).

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 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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 failures to file federal and state tax returns are recent, multiple, and did not occur under circumstances making recurrence unlikely. His delinquent auto loan is the only debt alleged, but it is one of five delinquent debts reflected in the March 2021 credit report.¹ It is recent and did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established for Applicant's failures to timely file his federal and state income tax returns. His unemployment was a condition largely beyond his control, but he did not indicate that it prevented him from filing his returns.

AG ¶ 20(b) and 20(d) are not established for the delinquent auto loan. The delinquent auto loan was the result of his unemployment, but he did not act to address it responsibly. 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).

AG ¶ 20(d) is not established. Applicant admitted that he has not yet filed his federal and state income tax returns for 2018. He submitted no documentary evidence to support his claim that he has filed the federal and state tax returns for 2019, 2020, and 2021. Applicants who claim that financial delinquencies have been resolved are expected to present documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

¹ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for whole person analysis ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence of unalleged debts for these limited purposes.

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). 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 security concerns raised by his failures to timely file his federal and state income tax returns and his delinquent auto loan.

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.c: 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