



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 22-02011
)	
Applicant for Security Clearance)	

Appearances

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

06/02/2023

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 March 24, 2022. On December 1, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS 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 14, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on March 2, 2023. On March 6, 2023, 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 March 10, 2023, and did not respond. The case was assigned to me on May 25, 2023.

Evidentiary Issue

The FORM included a summary of a personal subject interview conducted on May 26, 2022. The summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant did not respond to the FORM. I conclude that he waived any objections to the summary by failing to respond to 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. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

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

Applicant is a 32-year-old security officer employed by a federal contractor since February 2022. He was employed as a security officer by a non-federal employer from April 2012 until June 2014, when he was fired for flashing his company-issued firearm at a driver who had been tailgating him. The tailgating driver notified the police, who arrested Applicant, confiscated his firearm, and charged him with assault with a dangerous weapon. Applicant was placed on ankle monitoring for six months, after which the charge was dismissed. He was unemployed from June 2014 to March 2016. He was employed as a security officer by several non-federal employers from March 2016 until he was hired by his current employer. He has never held a security clearance.

Applicant attended university classes from June 2009 to June 2015 but did not receive a degree. He incurred the delinquent student loans alleged in the SOR during this time. He has resided with a cohabitant since November 2021. He has no children.

The SOR alleges a car loan that was charged off for \$12,869 (SOR ¶ 1.a); ten student loans totaling \$30,996 that have been placed for collection (SOR ¶¶ 1.b-1.k); and a delinquent credit-card account placed for collection of \$123 (SOR ¶ 1.l). In his answer to the SOR, Applicant attributed his delinquent debts to unemployment, reduced income, reduced working hours due to COVID, and mental distraction due to the deaths of his father, mother, youngest brother, and best friend. He submitted evidence that he had made one payment on the car loan and had paid off the credit-card account. In his

answer to the SOR, he stated that he had made a payment agreement for the car loan, but he submitted no documentation of a payment agreement.

When Applicant was interviewed by a security investigator in May 2022, he admitted that he had not made any attempts to repay his student loans because of his low pay and his need to pay essential bills such as rent, food, and his car loan. (FORM Item 3) He did not submit any information showing his income and expenses at the time the student loan payments became due, nor did he submit any current financial information.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, and it provided for relief measures on Department of Education-owned federal student loans. This student-loan debt relief received several extensions. The CARES Act was followed by a DOE debt-relief program that was stalled by litigation, and the pause in student-loan payments remains in effect. (See www.studentaid.gov.)

A credit report from May 2022 reflects that all of Applicant's student loans were assigned to the U.S. Government for collection between February 2012 and September 2015. (FORM Item 4) Notwithstanding the pause in student loan payments Appellant's student loans were delinquent before the CARES Act and subsequent COVID payment pause went into effect. Accordingly, there is a concern that Appellant will not make payments on his student loans if collection of payments is resumed.

A recent credit report dated March 2, 2023, reflects that the credit-card account has been paid in full, and payments on another car loan that is not alleged in the SOR are current. However, it also reflects that payments on the charged-off car loan are still past due in the amount alleged in the SOR, and it reflects a telecommunications bill, not alleged in the SOR, that became delinquent in May 2020 has been referred for collection of \$145. (FORM Item 6) I have considered the unalleged charge of assault with a dangerous weapon and the unalleged telecommunications bill for the limited purpose of evaluating Applicant's evidence of extenuation and mitigation. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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 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 relevant:

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 established. Applicant's unemployment from June 2014 to March 2016 was due to his misconduct. His underemployment and reduced work hours due to COVID were conditions beyond his control, but he has not acted responsibly. He

admitted to a security investigator that he made no efforts to resolve his student loans, which became delinquent long before COVID and his unemployment. He stated in his answer to the SOR that he had made a payment agreement for the delinquent car loan, but he submitted no documentation of an agreement. His single payment on the car loan falls short of a track record of timely payments. He submitted no evidence of contacts with his other creditors or efforts to make payment plans that were affordable with his reduced income. He provided no evidence of his living expenses or income history.

AG ¶ 20(d) is not established. Applicant submitted evidence that he resolved a delinquent credit-card account and made one payment on his delinquent car loan, but he did not do so until he received the SOR and realized that his delinquent debts could prevent him from obtaining a security clearance. Evidence of past irresponsibility is not mitigated by payment of debts 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).

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 delinquent debts.

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.l:

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