



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



In the matter of:)	
)	
)	ISCR Case No. 22-01532
)	
Applicant for Security Clearance)	

Appearances

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

06/14/2023

Decision

MANNS, Gatha, 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 July 12, 2021. On October 3, 2022, the Department of Defense (DOD) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS acted under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on November 15, 2022, and elected to have his case decided on the written record in lieu of a hearing. He attached his earning's statement from December 2022 to his SOR response. Department Counsel submitted the Government's written case on February 6, 2023, including Items 1 through 7. On the

same date, 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 February 9, 2023, and did not respond. The case was assigned to me on May 15, 2023. Items 1 through 7 are admitted in evidence without objection.

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 47-year-old machine operator employed by defense contractors since February 2019. In 2022, Applicant's gross annual earnings exceeded \$88,000, inclusive of company incentive pay totaling \$14,000. Applicant is a participant in the company's 401(k) plan, having contributed over \$6,000 pre-tax to the plan in 2022. (Item 2 at 4). Prior to this position, Applicant worked as a construction laborer from March 2018 through February 2019; a self-employed Uber driver from June 2015 through March 2018; and a process engineer from June 2007 through June 2015. He states he left the position in June 2015 because the company moved its operations out-of-state. (Item 3 pp. 15 through 16) All told, Applicant has been consistently employed without any meaningful gap in employment since at least mid-2007. (Items 2 through 4)

There is no information in the record concerning Applicant's education. (Items 3 through 4) He married the first time in 1996, but the marriage did not last and the couple parted ways in 1996. He married a second time in January 2009. The couple have two children, ages 13 and 10 years. He states his wife never worked outside of the family home. (Items 3 through 4)

The SOR alleges nine delinquent debts. However, the debts alleged in SOR ¶¶ 1.d and 1.e are duplicate accounts. The eight non-duplicate debts total about \$30,306 and are reflected in credit bureau reports from July 2021 (Item 5) and April 2022 (Item 6). These debts are established through these credit bureau reports; Applicant's admissions in his Response to the SOR; and his September 2021 investigative interview. (Items 2, and 4 through 6)

Applicant attributed his financial problems to medical debts incurred after the birth of his daughter in 2012. (Item 4 at 6) He stated other debts went unpaid due to him having to pay medical bills to the hospital that provided delivery services to his wife for the birth of his daughter. He states he did not have enough income to simultaneously support his family and pay his debts; and that he was the sole income-earner in the family, and his income remained stagnant as the cost of living and other expenses increased over time. Finally, he states he used credit cards to pay bills during the period. (Items 2 and 4) He provided no evidence or any details concerning his income or his general financial obligations during this period or afterwards, except his December 2022 earnings statement attached to the Response to the SOR. (Items 2 and 4)

Applicant's two largest delinquent debts alleged in SOR ¶¶ 1.a and 1.b are charged-off credit cards from the same creditor, and total \$19,353. Both accounts were assigned to collection; SOR ¶ 1.a. was assigned in April 2014; and SOR ¶ 1.b was assigned in April 2015. (Item 5 at 2 and Item 6 at 2) The creditor charged off both accounts in about January 2018. A third delinquent debt alleged in SOR ¶ 1.c for \$4,154 was assigned for collection in June 2015; it was charged off in about June 2021. (Item 5 at 3 and Item 6 at 2) Five remaining delinquent debts alleged in SOR ¶¶ 1.d, and 1.f through 1.i, were assigned to collection between July 2017 and July 2020. All five debts remain in a collection status. (Items 5 and 6)

After admitting responsibility for all delinquent debts in the SOR, Applicant loosely made the following additional comment concerning the debts: "[T]hey are deducting my wages from my paycheck already." (Item 2 at 2) He told investigators in September 2021, that he would take the following actions concerning these debts to resolve them within the next two years: (i) contact creditors to negotiate a monthly payment plan; or (ii) settle with creditors to pay off debts; or (iii) contract with a third-party debt repayment company to consolidate all delinquent debts to pay off debts over time through monthly installments. (Item 4 pp. 7 through 8) There is no evidence in the record he took any of the aforementioned actions. In the same interview, he commented that his current income is better and more stable, enabling him to financially support his family; he lives within his means; and does not foresee having delinquent debts in the future. (Item 4 at 8)

Applicant's December 2022 earnings statement reflects an unidentified creditor garnished his pay in the amount of \$564.52 for an unidentified delinquent debt. The year-to-date garnishment totaled \$1,776.31 during this period. His earnings statement also shows five loans collateralized against his 401(k) funds of an unknown total balance. (Item 2 at 4) No information was provided concerning the purpose of the five loans. Other than the earnings statement discussed above, he provided no documentary proof of efforts or decisions taken to resolve delinquent debts alleged in the SOR. (Item 2 at 4)

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." EO 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.” 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. 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 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

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. 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts in this SOR that remain outstanding. AG ¶¶ 19(a) and 19(c) are established.

SOR ¶¶ 1.d and 1.e allege duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.e is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; 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 and ongoing.

AG ¶ 20(b) is not fully established. Applicant attributed his financial problems to medical debts incurred related to the birth of his daughter in 2012, stating he was unable to pay other debts due to having to pay medical expenses; and, as the sole income-earner in the family, he was not earning enough to pay his bills on time and still support his family. In 2012, Applicant had been working as a process engineer with the same employer since 2007. He presented no information concerning his income at the time; nor did he present information concerning medical or hospital bills, or any other bills he was responsible for paying. He has not submitted evidence that he acted responsibly in the 10 years since his daughter's birth. Moreover, there is no evidence he took the actions he informed investigators he would take in his September 2021 interview. There is no evidence he: (i) contacted any creditors to negotiate a monthly payment plan; or (ii) settled any debts with creditors; or (iii) that he contracted with a debt-settlement company. At least one creditor prevailed in garnishing his wages due to his non-payment of one or more delinquent debts.

AG ¶¶ 20(c) and 20(d) are not established. Applicant submitted no documentary evidence of financial counseling, contacts with creditors, payments, payment plans, or other evidence of efforts to resolve his debts. He presented his December 2022 earnings statement that showed an unidentified creditor garnished his wages for an unidentified delinquent debt. A court-mandated or an otherwise involuntary means of debt resolution such as garnishment is entitled to less weight than efforts initiated and carried out by a debtor; that is, reliance upon garnishment does not equate to good-faith efforts by Applicant to resolve his financial problems. *See, e.g.*, ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016). Applicant gets minimal credit for debts addressed by a creditor's garnishment action. However, there is inadequate information regarding the garnishment creditor and the relevant debt to award any credit here.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant 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 through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.i:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha Manns
Administrative Judge