



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



In the matter of:)	
)	
)	ISCR Case No. 22-02073
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2023

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 January 28, 2020. On November 9, 2022, the Department of Defense (DOD), Defense Counterintelligence and Security Agency 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 December 30, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 24, 2023, including Items 1 through 5. On January 25, 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 February 2, 2023, and did not respond. The case was assigned to me on May 15, 2023. Items 1 through 5 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 54-year-old computer technician employed by a defense contractor since January 2020. He served in the active-duty and reserve U.S. Navy, from May 1997 until his honorable discharge in June 2008. He earned an Associate's degree in July 2014, and is currently enrolled in an online university program. He married in July 2000, and he and his wife are parents to four children ages 20, 18, 15 and 13 years old. He disclosed that his wife is employed by the local hospital. (Items 2 and 3)

After leaving the Navy, Applicant was employed by defense contractors in Afghanistan, from January 2010 through April 2011, and February 2012 through March 2014; and in the United States, from April 2011 through February 2012, and June 2014 through January 2015. He was briefly unemployed after returning home from Afghanistan, from April to June 2014. (Items 2 and 3)

In January 2015, Applicant accepted a job with a U.S. multinational corporation, doing work as a cyber security analyst. He disclosed that he experienced job performance issues that ultimately led to his termination in May 2017. He stated that after his termination, he remained unemployed for about 12-months, through June 2018. During this period, he was a "stay-at-home dad" financially supported by his wife and unemployment benefits. (Item 3 at 1) He returned to the job market in July 2018, working as a part-time driver for about 12 months. He left the position and was unemployed for six months, from July through December 2019. (Items 2 and 3) In his response to the SOR, he disclosed he used this period of unemployment and part-time employment to start his own business. Applicant did not provide many details about his business, but disclosed for the first time he used credit card accounts to finance it. (Item 1 at 3)

The SOR alleges four delinquent debts totaling about \$61,000. Applicant admitted all debts. He attributed his financial problems to a lack of available financial resources after he was fired in June 2017. (Items 1 through 3) He disclosed that he stopped making payments on credit card debts to pay other debts. (Item 3 at 2) He provided additional comments concerning the delinquent debts alleged in the SOR.

These [debts] came about after being let go from [the employer] in 2017 and unable to find a job for over 2 years. These credit cards were used a little for paying bills, but mostly for trying to get my own business going. That failed miserably and now I am paying for it. Maybe it wasn't the best

decision, but it was a decision I made at the time to what I hoped to be my financial contribution while I wasn't working a full-time job. (Item 1 at 3)

He went on to state he had been working with his current employer for three years, while his wife works with the local hospital; and that they have been able to pay off one debt not listed in the SOR.

We do plan on paying all the debts off that are listed on the SOR, but we are doing it at a pace that we can keep up with. . . . We are in a good place [financially] right now and would not want to do anything to jeopardize this. (Item 1 at 3)

Applicant did not disclose additional details about the business; nor did he provide documents or details about his finances. The record is void of information or documents concerning his income and expenses, or other financial resources at his disposal, such as bank savings and checking accounts, retirement accounts, and other assets of value. (Items 1 through 3)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶ 1.a: account in collection for \$20,429. Applicant admits this debt. He disclosed the account first became delinquent in about May 2018, after he lost his job in May 2017. He stated he stopped making payments on this credit card debt to prioritize paying other bills. (Items 2 and 3) He disclosed to investigators in March 2020 he had not resolved this debt, but stated he planned to contact creditors within the next six months after catching up on his mortgage. (Item 3 pp. 3-4) He provided no additional details or documents to show the current status of the debt. The debt is listed as an individual account assigned for collection in October 2019. (Item 5 at 2). The credit bureau report indicates he disputed the debt following resolution, specifically reading "consumer dispute following resolution". (Item 5 at 2) No explanation, information, or documented proof has been offered to support the reason or basis for a dispute. (Item 5 at 2) This debt is unresolved.

SOR ¶ 1.b: account charged off for \$14,594. Applicant admits this debt. He stated the account first became delinquent in November 2017 after he lost his job. He disclosed he stopped making credit card payments in order to "make ends meet". (Items 2 and 3) During his interview, he disclosed he had not resolved this debt but stated he planned to contact creditors within the next six months after catching up on his mortgage. (Item 3 at 2) He offered no additional details or documents supporting the current status of the debt. In both credit bureau reports, this debt is listed as an individual account that was charged off and closed by the creditor in January 2019. (Item 4 at 14; and Item 5 at 2). This debt is unresolved.

SOR ¶ 1.c: account in collection for \$13,580. Applicant admits this debt. He stated the account first became delinquent in January 2018, after he lost his job. He prioritized other debts over credit card payments. (Item 3 at 3). He also disclosed his plan

to use a tax refund to help repay the debt. This debt appears in both credit bureau reports. It is listed as an individual account that was assigned to collection in June 2019. (Item 4 pp. 14-15; Item 5 at 2). In the most recent credit bureau report, the account balance changed from \$13,645 to \$13,580, a reduction of \$65. However, the date of the last activity was still June 2018, without change. The report also showed he disputed this debt following resolution, specifically reading “consumer dispute following resolution”. (Item 5 at 2) No explanation, information, or documented proof has been offered to support the reason or basis for a dispute. (Item 5 at 2) This debt is unresolved.

SOR ¶ 1.d: account charged off for \$12,590. Applicant admits this debt. He stated the account first became delinquent in January 2018, after he lost his job and had to prioritize other debts over credit card payments. (Items 2 and 3). The debt is listed as an individual account that was charged off for an actual amount of \$17,991, vice the amount alleged; and closed by the creditor in December 2019. (Item 4 at 14) This debt is unresolved.

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 relevant in this case:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant's admissions and the evidence in this FORM establish the above disqualifying conditions under this guideline. AG ¶¶ 19(a), and 19(c) are applicable.

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

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 recent and ongoing. His longstanding delinquent debts in this SOR remain unresolved.

AG ¶ 20(b) is not fully established. Applicant likely experienced financial strain after being terminated from his position in May 2017, followed by a 12-month period of unemployment, and part-time employment outside of his technical field. During this period, he was a stay-at-home father supported by his wife and unemployment benefits. He later revealed that he used this period of unemployment to launch his own business. He did not disclose much information about the business, other than the fact he used

credit card accounts to finance his business; and that the business ultimately “failed miserably” and he was now paying for it. The record lacks sufficient information about the business to fully evaluate the meaning of this comment. Applicant failed to provide information or evidence concerning his income, expenses, or other financial resources at his disposal such as bank checking and savings accounts, retirement accounts, or other assets of value. He has not established he acted responsibly under the circumstances.

AG ¶ 20(c) is not established. Applicant did not provide information or evidence he received or is receiving financial counseling. His financial problems are not under control.

AG ¶ 20(d) is not established. Although the most recent credit bureau report shows a \$65 reduction in the balance of SOR ¶ 1.c, the reason for the balance reduction is unclear. Applicant has not produced evidence showing he has a plan in place to repay delinquent debts and that that he is adhering to the plan. He failed to establish that he initiated and is adhering to a good-faith effort to repay his delinquent debts.

AG ¶ 20(e) is not established. Although two delinquent debts alleged in the SOR were disputed, Applicant did not elaborate or comment on this; neither did he present independent evidence to support a reasonable basis to dispute these delinquent debts.

In sum, there is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period of time. 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

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