



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



In the matter of:)	
)	
)	ISCR Case No. 22-02025
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2023

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 signed and submitted a security clearance application (SCA) on July 15, 2014. On January 17, 2023, the 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; Department of Defense (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 January 27, 2023, 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 about February 28, 2023, including Items 1 through 7.

On March 2, 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 16, 2023, and did not respond. The case was assigned to me on June 1, 2023. Items 1 through 7 are admitted in evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted all allegations in the SOR, with the exception of allegations in SOR ¶¶ 1.j and 1.k. His admissions are incorporated in my findings of fact.

Applicant is a 39-year-old employee of a defense contractor. He graduated from high school in May 2001. He worked about three years prior to joining the U.S. Air Force in March 2004. He married in June 2007. (Item 4)

Applicant held security clearances while he was in the U.S. Air Force. His most recent SCA was completed in July 2014 while he was still serving in the active-duty U.S. Air Force. As a result, the record is unclear concerning more recent background information, including his current status and the character of his service upon discharge from the active-duty U.S. Air Force. Two independent financial reports retrieved pursuant to the DOD's continuous evaluation program revealed unreported financial issues that formed the basis of this SOR. (Items 4, 5, and 6)

The SOR alleges 12 delinquent debts totaling about \$117,900. Applicant admitted 10 of the 12 alleged debts totaling about \$98,700. He did not provide documentary evidence to support his case, nor did he explain the circumstances that led to his financial problems. (Items 2 and 3)

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

SOR ¶¶ 1.a through 1.f: Applicant admits the delinquent debts in SOR ¶¶ 1.a. through SOR 1.f. All six debts are listed as individual accounts that have been charged off. (Item 6; see *a/so* Items 5 and 7) In this series of delinquent debts, the oldest debt, located at SOR ¶ 1.a, was opened in December 2016 with the last payment made in August 2020. The newest delinquent debt, SOR ¶ 1.e, was opened in September 2021 with the last payment made in about 2022. (Item 6 at 3) All six debts are unresolved.

SOR ¶¶ 1.g through 1.h: Applicant admits delinquent debts in SOR ¶¶ 1.g through 1.h, with comments. In SOR ¶ 1.g, he stated the amount of the debt "shouldn't be that much," but did not provide additional details or documents to show the current status of the debt. (Item 3 at 2) The debt is listed in the credit bureau report as an individual account that was charged off and closed by the creditor. (Item 7 at 14) His last payment on the debt occurred in October 2020. (Item 7 at 14) This debt is unresolved.

In SOR ¶ 1.h, Applicant stated the amount charged “is not that much,” but did not offer additional details or documents to show the current status of the debt. (Item 3 at 2) Though this debt, an individual account, appears in all three credit bureau reports, the amount of the debt has decreased over time. (Items 5, 6 and 7) It decreased from \$8,430 in 2021 (Item 5 at 5); to \$6,917 in 2022 (Item 6 at 4); and finally, to \$2,388 in 2023. (Item 7 at 11) Though the debt remains in a collection status, it is clear Applicant has taken progressive steps to pay off this debt over time though the actual terms of his agreement with the creditor were not disclosed. (Item 7 at 11) This debt is being resolved.

SOR ¶ 1.i: Applicant admits this debt. He stated the amount charged “is not that much,” but did not offer additional details or documents to show the current status of the debt. (Item 3 at 2) This debt appears in two of the credit bureau reports with the amount decreasing over time. (Items 6 and 7) It decreased from \$1,730 in 2022 (Item 6 at 4), and to its current collection amount of \$971 in 2023. (Item 7 at 4) His regular child support payment is \$659 per month. His actual payment has been \$689 per month since at least January 2023 with the additional \$30 amount going towards arrears. (Item 7 at 4) Though the debt remains in a collection status, it is clear Applicant is paying off the arrearage over time. This debt is being resolved.

SOR ¶¶ 1.j through 1.k: Applicant denies the debts in SOR ¶¶ 1.j through 1.k, stating he does not recognize the listed creditors. SOR ¶ 1.j, an individual account, appears in two credit bureau reports and increases over time. (Items 6 and 7) He opened this account with the creditor in June 2021, and by June 2022, the account was in a collection status. (Item 6 at 7) In 2023, the creditor assigned the account to a debt collector to continue collection efforts. The collection balance increased from \$10,884 to \$11,066, and the account remains in a collection status. (Item 7 at 8) This debt is unresolved.

SOR ¶ 1.k is also an individual account that appears in two credit bureau reports. (Items 5 and 6) Applicant opened the account in August 2018. (Item 5 at 3) This debt was charged off by the original creditor in about April 2021, and acquired in May 2021 by a substitute creditor. The substitute creditor returned the account to a collection status and kept the account balance the same. (Item 6 at 7) This debt is unresolved.

SOR ¶ 1.j: Applicant admits this debt, an individual account that appears in two credit bureau reports. (Items 6 and 7) He opened this account in March 2021, and by June 2022, the account was in a collection status. (Items 6 at 7) The first major delinquency was reported in June 2021. The creditor assigned the account to a debt collector to continue collection efforts. The collection balance remained the same. (Item 7 at 8) 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).

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;

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), 20(b), and 20(c) are not established. Applicant's delinquent debts are recent and ongoing, and most of them remain unresolved. He did not provide documentary evidence to support his case, nor did he explain the circumstances that led to his financial problems. He presented no evidence to show his financial problems were incurred due to circumstances beyond his control. He did not provide information or evidence about his income, expenses, or other financial resources at his disposal. Nor did he provide information or evidence he received or is receiving financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not fully established. There is evidence Applicant took steps to address his delinquent debts in SOR ¶¶ 1.h and 1.i. In his response to the SOR, he commented, regarding these two debts, that the amount owed on each was "not that much," without explaining or providing context to the comment. Credit bureau reports show the total amount of these debts decreased over time. He gets some credit for taking steps to address these two debts. However, his denial of debts in SOR ¶¶ 1.j and 1.k is not persuasive. He denied these debts because, as he stated, he did not recognize the creditors. These debts, both individual accounts, were clearly established through credit bureau reports. It is well settled that adverse information in credit bureau reports is sufficient to establish the Government's *prima facie* case that Applicant had delinquent debts that are of security concern. See *generally* ISCR Case No. 19-02993 (App. Bd. Nov. 23, 2021). Once established, it is the Applicant's burden to mitigate the security concern. See Directive ¶ E3.1.15. Applicant has not met his burden here.

AG ¶ 20(e) is not established. Applicant failed to establish he disputed any debt and that he supported any such dispute with evidence of his actions to resolve it.

Overall, there is insufficient evidence to determine that Applicant's financial problems will be resolved within a reasonable time. I am unable to find 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. Financial considerations security concerns remain in this case.

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 - 1.g:	Against Applicant
Subparagraph 1.h – 1.i:	For Applicant
Subparagraph 1.j – 1.l:	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