



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 22-01402
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2023

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 November 30, 2021. On August 9, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (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 September 8, 2022 and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 4,

2022. Department Counsel amended the SOR on October 11, 2022, adding one additional allegation under Guideline F.

The case was assigned to me on June 2, 2023. On June 7, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on July 12, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1, 3, and 4 were admitted in evidence without objection. Department Counsel withdrew GX 2, an unauthenticated summary of a personal subject interview. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until July 17, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on July 25, 2023.

Findings of Fact

SOR ¶¶ 1.a-1.m allege 14 delinquent debts totaling about \$45,000. SOR ¶ 1.o alleges that Applicant filed a Chapter 7 bankruptcy petition in September 2022. The debts alleged in the SOR include two loans to a credit union, multiple credit-card and consumer accounts, and several medical debts. In Applicant's answer to the SOR, he denied the allegations in SOR ¶¶ 1.a-1.n and admitted the allegation in SOR ¶ 1.o. His admission is incorporated in my findings of fact.

Applicant is a 44-year-old engineer technician employed by a defense contractor since November 2017. He has held a second job as a delivery driver for a food service provider since August 2021. He served on active duty in the U.S. Navy from March 2004 to March 2012 and received an honorable discharge. He was unemployed from April 2012 to May 2013. He was employed in various non-government jobs from May 2013 to November 2017. He held a security clearance while in the Navy, and he received a security clearance for his current job in May 2018.

Applicant married in August 2016 and has four stepchildren, ages 20, 18, 16, and 14. Although the father of these four children provides occasional financial support for them, Applicant and his wife are responsible for their daily living expenses.

Applicant and his wife purchased a home in February 2016, while he was working in a job that paid less than his current job. He and his wife began falling behind on their debts and they began having a monthly deficit of about \$1,000 per month. (Tr. 33, 37)

After some point after Applicant and his wife purchased the home, they decided to have a child. Applicant's wife became pregnant, but she miscarried at six months. They tried again, and their daughter was born in March 2018. (Tr. 18) His wife, who was earning about \$50,000 per year, stopped working after their daughter was born in March 2018, because the cost of childcare was about the same as what she was earning. (Tr. 30) Applicant testified that the minimum monthly payments on their debts kept increasing, and they knew it was only a matter of time before they would become delinquent. (Tr. 59)

Applicant and his wife contacted a bankruptcy lawyer in early 2018, who advised them to stop paying their delinquent debts. (Tr. 58-59) They did not contact their creditors or make any effort to resolve their delinquent debts. (Tr. 37) They terminated some unnecessary expenses such as cable television. (Tr. 51) They could not file their bankruptcy petition in 2018, because they could not afford to pay the legal fees. (Tr. 33-34) The petition reflects that the lawyer's fee was \$2,600. (GX 4 at 60)

Applicant and his wife filed a petition for Chapter 7 bankruptcy in September 2022, more than five years after consulting with the bankruptcy lawyer. Applicant testified that it took them a long time to save enough money to pay the bankruptcy lawyer because "that money would always kind of go to something else that would come up in the moments that we would need to pay off during all that time, and it was a long time." The petition included the debts alleged in the SOR. They claimed their home, two vehicles, and various personal effects as exempt property. The petition listed Applicant's wife as the sole owner of the home and two vehicles. (GX 4 at 20-22) They received a discharge in December 2022. (AX A) Applicant admitted that protecting his security clearance was a major factor in his decision to file the bankruptcy petition. (Tr. 47)

Applicant's current net remainder after paying all living expenses is about \$1,000 per month. (Tr. 52) He and his wife drive two old cars that are paid for: an 18-year-old vehicle with 150,00 miles on it and a 16-year-old vehicle with 195,000 miles on it. (GX 3 at 11) They have only one credit card, and they pay more than the monthly minimum amount. The payments on their home mortgage loan are current. (Tr. 49) Their monthly net remainder after paying all their expenses is about \$1,000 (Tr. 52)

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 admission and the evidence submitted at the hearing establish the 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; 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 debts were frequent, recent, and did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's decision to purchase a house that strained their budget was not a reasonable course of action. When Applicant's wife became pregnant, it was not a condition largely beyond their control. It was not a surprise, but rather a conscious decision. The record does not reflect whether the medical debts alleged in the SOR were due to conditions largely beyond their control. Applicant's wife's decision to stop working was a reasonable alternative to the cost of childcare. However, delaying the bankruptcy action for five years was an unreasonable and irresponsible course of action.

AG ¶ 20(c) is partially established. Although Applicant would have received financial counseling as part of the bankruptcy process, less than a year has elapsed since

his debts were discharged, and he has not yet established “clear indications” that his financial problems are under control.

AG ¶ 20(d) is not established. A bankruptcy discharge is not a “good faith effort” to resolve debts. See ISCR Case No. 11-08274 (App. Bd. May 2, 2013). Furthermore, an applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

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). Applicant was candid and sincere at the hearing. I have considered that he served honorably and held a security clearance in the U.S. Navy for eight years. However, insufficient time has passed since his bankruptcy discharge to convince me that his financial problems will not recur. 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 history of delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.o: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge