



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 22-01919
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
 For Applicant: *Pro Se*
 08/31/2023

Decision

HOGAN, Erin C., 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 (SCA) on February 4, 2022. On February 24, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 12, 2023, and requested a decision based on the written record in lieu of a hearing. On May 30, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 5. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation,

mitigation, or explanation to the Government's evidence. He received the FORM on June 8, 2023. He was given 30 days to submit a Response to the FORM. He did not submit a response. The case was forwarded to the DOHA Hearing Office on July 31, 2023, and assigned to me on August 8, 2023.

Evidentiary Matters

Item 1 contains the pleadings in the case and are part of the record. Items 2 through 5 are admitted into evidence. Applicant did not respond to the FORM.

Findings of Fact

Applicant, age 61, is an employee of DOD contractor who is seeking to maintain his security clearance. He has worked for the same employer since 2001. He served on active duty in United States Air Force from 1981 to 2001. He retired with an Honorable discharge. He believes he has held a security clearance consistently since 1981. He earned an associate's degree in 1996. He married in 1980 and divorced in 2019, He has an adult daughter. (Item 2)

The SOR alleged nine delinquent debts, with a combined approximate total of \$120,120, to include: a \$40,281 charged-off account (SOR ¶ 1.a: Item 4 at 5; Item 3 at 2); a \$32,071 charged-off account (SOR ¶ 1.b: Item 4 at 3; Item 3 at 2); a \$19,242 charged-off credit card account (SOR ¶ 1.c: Item 4 at 4; Item 3 at 2); a \$16,919 charged-off credit card account (SOR ¶ 1.d: Item 4 at 4; Item 3 at 3); a \$5,505 charged-off credit card account (SOR ¶ 1.e: Item 4 at 7; Item 3 at 3); a \$4,408 charged-off credit card account (SOR ¶ 1.f: Item 4 at 6; Item 3 at 3); a delinquent telephone account in the amount of \$1,076 placed for collection (SOR ¶ 1.g: Item 3 at 4); a \$318 satellite television account placed for collection (SOR ¶ 1.h: Item 4 at 4; Item 3 at 4); and a \$300 cable television account placed for collection (SOR ¶ 1.i: Item 3 at 4).

Applicant indicated in Section 26 - Financial Record of his February 2022 SCA that his debts became delinquent because he earned significantly less income and his financial situation was complicated by his 2019 divorce. He hopes to improve his income so he can satisfy his debts. (Item 2 at 45-54)

The SOR also alleges Applicant failed to file his federal income tax returns for tax years 2018 and 2019. (SOR ¶ 1.j: Item 2 at 46) He failed to file his state income tax returns for tax years 2018 and 2019. . (SOR ¶ 1.k: Item 2 at 46) Applicant listed his failure to file federal and state income tax returns in response to Section 26 Financial Record – Taxes on his February 2022 SCA. Regarding tax year 2018, he commented that he expected a tax refund and just forgot to file. He indicated the filing of his 2019 federal and state tax returns were delayed because of COVID 19 filing extensions. He noted that he expected a refund and payroll withholding was active throughout the year. (Item 2 at 46)

In his response to the SOR, Applicant admits to all of the allegations in the SOR. He states under each SOR allegation:

This is a self-reported item, but it by no means indicates unreliability, untrustworthiness, or my ability to protect classified information. In fact, the opposite is true by readily admitting to the government that these issues exist. It also by no means indicates that I have, or will in the future, engage in any illegal activities, or otherwise questionable acts (definition of which is lacking substance and is subjective. (Item 1)

Applicant did not provide evidence indicating that he is attempting to pay or resolve any of the delinquent debts alleged in the SOR. He also did not provide proof that he filed his federal and state income taxes for 2018 and 2019. His approximate monthly income is \$7,244, His monthly expenses total \$7,177. His total net remainder each month is \$67. (Item 5 at 6) Based on his monthly budget, he is unable to resolve his delinquent accounts.

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.” (*Egan* 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 AG. 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

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

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant’s case include:

- (a) inability to satisfy debts;

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's delinquent debts alleged in SOR ¶¶ 1.a – 1.i. The total approximate balance of the delinquent debt is \$120,120. AG ¶ 19(f) applies to Applicant's failure to timely file his federal and state income tax returns for tax years 2018 and 2019 as alleged in SOR ¶¶ 1.j – 1.k.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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 in the individual's current reliability, trustworthiness, or good judgment:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(b) applies, in part, because Applicant's 2019 divorce was a circumstance beyond his control. However, the mitigating condition is given less weight because I cannot conclude he acted responsibly under the circumstances because Applicant has made no attempts to resolve any of the delinquent debts.

None of the other mitigating conditions apply because Applicant's financial problems are ongoing. He failed to initiate a good-faith effort to resolve his debts. He has not provided documentation that he filed his 2018 and 2019 federal and state tax returns.

Applicant bears the burden of production and persuasion in mitigation. While Applicant disclosed his delinquent debts on his security clearance application, he took no action towards resolving these delinquent accounts. He did not mitigate the concerns raised under Financial Considerations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). I considered Applicant's honorable active-duty service in the United States Air Force. I considered his divorce adversely affected his finances. However, Applicant failed to show that he made any attempts to resolve his delinquent accounts or to file his federal and state income tax returns for 2018 and 2019. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised under financial considerations. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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.k:	Against Applicant

Conclusion

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

Erin C. Hogan
Administrative Judge