



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 22-01439 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: John Hannink, Esq., and Mark Lawton, Esq., Department Counsel
For Applicant: *Pro se*

10/12/2023

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 (SCA) on September 30, 2021. On August 31, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. For reasons not reflected in the record, the SOR was issued again on November 9, 2022. 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 in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January

23, 2023, and the case was assigned to me on June 30, 2023. On August 10, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 29, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until September 30, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. AX G and H are emails transmitting AX A through F, but they are included in the record because of their testimonial nature. DOHA received the transcript (Tr.) on September 12, 2023. The record closed on September 30, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, with explanations. His admissions are incorporated in my findings of fact.

Applicant has worked in the information technology field for various federal contractors since December 2013. He served on active duty in the U.S. Air Force from November 2008 to October 2013. He has worked for his current employer since May 2018. He received a security clearance while on active duty in the Air Force.

Applicant received an associate degree in January 2011. He married in June 2007 and separated in July 2020. He and his wife have no children. He testified that they have never divorced, and they remain friends. (Tr. 32-34) However, his SCA reflects that their marriage was "divorced/dissolved" in July 2020. (GX 1 at 29)

The SOR alleges 18 delinquent debts totaling about \$43,179. The debts are reflected in credit reports from August 2022 (GX 4), January 2022 (GX 5), and August 2023 (GX 6). Applicant was interviewed about his debts by a security investigator on February 4 and February 11, 2022 (GX 2). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a-1.e, 1.h, and 1.k: student loans totaling \$34,526. During Applicant's security interviews in February 2022, he told the investigator that the loans were in forbearance while he was on active duty and that he made some payments when they were due and then tried for another forbearance. He told the investigator that he had not thought about the loans for a while. (GX 2 at 5) In his answer to the SOR, he provided documentation that he had applied for consolidation of his loans into an income-contingent repayment plan on November 28, 2022. He stated that the consolidation would be effective on December 5, 2022, but he provided no documentation showing that his application was approved. As of the date the record closed, he had made no payments under the plan because of the COVID-19 forbearance. (Tr. 57)

SOR ¶ 1.f: student loan for \$3,695. Applicant and his wife initiated this loan in August 2007. At the time, Applicant's wife handled the family finances, and he did not

keep track of its status. He provided no evidence of the status of this loan. It is not resolved. (Tr. 59-61)

SOR ¶¶ 1.i and 1.r: credit-card accounts, referred for collection of \$2,580 and \$715. Applicant told the investigator that he “maxed out” the account alleged in SOR ¶ 1.i by purchasing Christmas gifts, and he could not make payments after being laid off for a short time and falling behind on the payments on his truck and his home. (GX 2 at 4; Tr. 82-86) He told the security investigator that he would make an immediate \$15 payment on this debt and follow with larger payments. (GX 2 at 4) At the hearing, he was not sure of the status of this debt. (Tr. 82) After the hearing, he submitted evidence of a two payment plans with the same collection agency for the debts alleged in SOR ¶¶ 1.i and 1.r. One plan provides for monthly payments of \$50, with 46 payments remaining, and the other plan provides for monthly payments of \$121, with four payments remaining. His documentation does not reflect which credit-card account will receive the \$50 payment and which will receive the \$121 payment. Both payment plans were scheduled to begin on September 30, 2023, the date the record closed. (AX D and E) There is no evidence that he made any payments.

SOR ¶ 1.I: credit-card account charged off for \$2,466. In Applicant’s answer to the SOR, he stated that he would set up an automatic payment of \$50 per month. He provided no evidence of payments. At the hearing, he testified that he contacted the creditor several months before the hearing about setting up automatic payments, but he did not take any further action. (Tr. 85-87)

SOR ¶ 1.m: home-security system. In Applicant’s answer to the SOR, he provided documentation that he had agreed to make \$100 payments each month beginning in November 2022. At the hearing, he testified that he thought this debt had been paid in full. (Tr. 67-68) He provided no documentation of any payments.

SOR ¶¶ 1.j and 1.p: medical debts. These debts were incurred in 2015 when Applicant had major leg surgery. He had health insurance, but it did not cover all his expenses. He was making payments but fell behind when he lost his job for a short time, and he did not receive his full medical benefits from the Department of Veterans Affairs. (GX 2 at 7; Tr. 91-92) He testified that he believes the debts are legitimate, but that he has not had time to contact the creditors and arrange for payments. (Tr. 93-94)

SOR ¶ 1.n: overdrawn checking account. Applicant told the security investigator that the debt was an overdrawn joint bank account with his spouse and mother-in-law. (GX 6 at 4). He told the investigator that he thought this debt was resolved when he and his spouse separated. He also told the investigator that he had disputed this debt, but he did not know its current status. (GX 2 at 8, 13) The debt is not resolved.

SOR ¶ 1.o: payments for a gaming system, placed for collection of \$285. Applicant told the security investigator that he purchased this system in December 2018, made a few payments, and then stopped. (GX 2 at 5) In February 2022, a collection agency notified Applicant that it had a judgment against him but that it would not proceed

further if he agreed to monthly payments of \$283 per month. (GX 3 at 7) In his answer to the SOR, he attached documentation that the debt was paid in full on November 25, 2022.

SOR ¶ 1.q: credit-card account. Applicant testified that he thought this debt was paid. He testified that he contacted the creditor, but resolution of the debt “fell by the wayside” because he was busy with work. (Tr. 90) After the hearing, he submitted evidence of a payment plan for this debt, providing for monthly \$34 payments beginning in September 2023, and reflecting that the first payment had been made. (AX F)

During Applicant’s first security interview in February 2023, he reported that his monthly income was \$4,277; his monthly household expenses were \$3,250; and his monthly debt payments were \$692, leaving a net remainder of \$335. (GX 2 at 10)

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 admissions and the evidence submitted at the hearing establish two following disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

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, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant has encountered several conditions largely beyond his control: a marital separation, a short period of unemployment after his discharge from the Air Force, and uninsured medical expenses. However, he has not acted responsibly. He accumulated delinquent debts because of inattention and poor record keeping. He did not begin to seriously address his delinquent debts until he realized that his security clearance was in jeopardy.

AG ¶ 20(c) is not established. Applicant employed a debt-resolution service, but he has not received the type of financial counseling contemplated by this mitigating condition, and his financial situation is not yet under control.

AG ¶ 20(d) is not established. Applicant submitted evidence that the debt in SOR ¶ 1.o has been paid in full, but he did not resolve it until he received the SOR and realized that his security clearance was in jeopardy. He did not apply for the income-contingent payment plan for his delinquent student loans until November 2022, well after he received the SOR. "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019).

Applicant testified that he consolidated his student loans in December 2022, and he understands that payments will begin to become due now that the COVID-19 forbearance has ended. Notwithstanding the forbearance, his student loans were delinquent before the forbearance went into effect. Accordingly, there is a continuing concern that he will not make timely payments on his student loans when they are no longer in forbearance.

Applicant recently made payment plans for the debts alleged in SOR ¶¶ 1.i and 1.r, but he had not made any of the agreed payments as of the date the record closed. “Promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner.” ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019) *citing* ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015).

AG ¶ 20(e) is not established. Applicant testified that he disputed the debt alleged in SOR ¶ 1.n, but he submitted no documentation of the basis for the dispute or its status.

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). 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 delinquent debts.

Formal Findings

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

Paragraph 2, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.r:

Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge