



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



In the matter of:)
)
) ISCR Case No. 22-01037
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 25, 2020. On August 8, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DoD 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 24, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 21, 2022, and the case was assigned to me on May 12, 2023. On June 6, 2023, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 7, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 3 and 5 through 7 were admitted in evidence without objection. GE 4 was admitted over Applicant's objection. (transcript (Tr.) at 17-19.) I ruled GE 4, which consisted of 2004 bankruptcy documents, to be authentic and relevant and material to a determination of Applicant's security worthiness. Applicant with his Answer submitted a September 26, 2022 agreement between him and a law firm. At the hearing he offered Applicant Exhibits (AE) A through D, which were admitted without objection. He and his wife testified at the hearing. DOHA received the transcript electronically on June 14, 2023.

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted AE E (confirmation of payment 6/19/23), which was admitted without objection. The record closed on June 21, 2023.

Findings of Fact

In Applicant's Answer to the SOR, he admitted to the allegations under Guideline F with the exception of SOR ¶ 1.e, which he denied on the basis the company could not locate the account. He admitted the allegations under Guideline E. His admissions are incorporated into the findings of fact.

Applicant is a 53-year-old Navy veteran. He was honorably discharged in 1988. He is married with two adult children. He has worked for a federal department as a contractor since May 2017. He has been in his current position since May 2022. He has experienced brief periods of unemployment when he was between contracts throughout the years while he waited to be put on a new contract. The largest period of unemployment for him was three months in 2015. (Tr. at 29; GE 1.) During COVID his wife's barber shop lost a lot of business, and she did not make the same income as she had previously. (Tr. at 34.)

Guideline F

SOR ¶ 1.a: past-due account charged off in the amount of \$5,195. Applicant admitted responsibility for this debt in his Answer. At the hearing he testified it was "paid off." (Tr. at 48.) Under further examination on whether he had paid the debt off he stated "I don't know. I'm not sure. Because I had not received any notice from [financial institution]." (Tr. at 49.) He cited losing his job for why stopped making payments on the debt. (Tr. at 51.) This debt is not resolved.

SOR ¶ 1.b: past-due account referred for collection for \$3,851. Applicant admitted responsibility for this debt and testified he paid it off in full and that there was no outstanding balance. (Tr at 51.) He supported his testimony with AE F showing the debt had a zero balance as of December 1, 2022. This debt is duplicative with SOR ¶ 1.g. (Tr. at 53.)

SOR ¶ 1.c: past-due account charged off in the amount of \$764. Applicant admitted responsibility for this debt and testified he called the company when he learned of the debt during the security clearance application process in 2020. He testified that he was told the company did not have a record of any account under either his or his wife's name. He does not have a record of his contact with the company. He stated he never paid off the account because when he called them and offered to pay the company, they said they did not have a record of the account. (Tr. at 54.) When asked if he or his wife had an account with the company he answered “No, I don't, but I do now, but I don't before, no but I do now.” (Tr. at 55.) This debt is not resolved.

SOR ¶ 1.d: past-due account charged off in the amount of \$565. Applicant denied responsibility for this debt. He admitted he and his wife shop at the store in question but denied getting a credit card from the store. (Tr. at 56.) In his Answer he stated he “called the company and they were not able to locate the account.” (Tr. at 56.)

SOR ¶ 1.e: past-due account charged off in the amount of \$5,140. Applicant admitted responsibility for this account in his Answer. He testified he called the company and was told that the debt was charged off. He stated he did not know if he still owed money on the debt but if he still owes the company money, he will pay it off. (Tr. at 57.) In his post-hearing submission, he provided a June 19, 2023 letter stating the account had been settled on June 9, 2023, for \$1,42.23. (AE E.)

SOR ¶ 1.f: past-due account placed for collection for a judgment obtained in 2016 in the approximate amount of \$5,058. Applicant admitted responsibility for this debt and testified he paid it off in October or November of 2022 with a \$5,000 check to the county district court. He obtained a personal loan to be able to satisfy the judgment in the amount of \$17,000. (Tr. at 58, 59; GE 7 at 6.) He explained the six-year delay in paying the judgment stating, “I had to find out exactly where it is, and it took some time for [the Court] to call me back and tell me what I needed to know and send them a check. Plus, I didn't have the money to pay them at the time.” (Tr. at 58.)

SOR ¶ 1.g: past-due account charged off in the amount of \$3,851. This debt is duplicative with SOR ¶ 1.b. (Tr. at 53.)

SOR ¶ 1.h: past-due cellular service account referred for collection for \$1,997. Applicant in his Answer admitted responsibility for this debt. He did not offer any information to refute or mitigate this allegation. (GE-2 at 13 and GE-6 at 10.) This debt is not resolved.

SOR ¶ 1.i: past-due account referred for collection for \$399. Applicant in his Answer admitted responsibility for this debt. He did not offer any information to refute or mitigate this allegation. (GE-2 at 13 and GE-6 at 12.) This debt is not resolved.

SOR ¶ 1.j: 2016 judgment for \$142,089 owed to a financial institution. Applicant questioned whether he took out the mortgages but acknowledges making the payments. He thought the mortgages were in his parents' name and could not explain

why they appeared on his credit reports as his debts. (Tr. at 63-64; GE 5; GE 6.) He stated they were current on the first mortgage and let the second one lapse in 2014. (Tr. at 63) He intended to use the additional money from the second mortgage to get “a clean start” because they had been living beyond their means. (Tr. at 65; 77.) He cited not working for a year but his SCA showed him employed from July 2011 until June 2015 with the same company. (GE 1 at 20; Tr. at 65.)

SOR ¶ 1.k: 2017 foreclosure and auction of mortgage accounts. During the examination under Guideline E allegations Applicant was evasive in stating he was unaware whether the foreclosure happened. (Tr. 33-35.) He testified his parents bought the house in 1992 and that his parents let his family live there. He paid the mortgages on the house. Both mortgages appear on his credit reports. (Tr. at 63-65; GE 5 at 2; GE 7 at 9.) He explained “We paid the mortgage, and then I took out a second mortgage on that house when we got in a financial situation. We were current with the first one. The second one, I let it lapse.” (Tr. at 63.) He could not recall when he let the mortgage lapse, which according to the credit reports was in March 2014. (Tr. at 64; GE 5; GE 7 at 9.)

SOR ¶ 1.l: filed for Chapter 13 Bankruptcy in about 2004, which was discharged in 2007. Applicant in his Answer admitted the bankruptcy. He stated he and his wife had been living beyond their means. (Tr. at 46; GE 4.)

After receiving the SOR Applicant hired a law firm in September 2022 to represent him concerning the negative credit items. (Answer Exhibit.) At the hearing he acknowledged the law firm had not resolved any SOR accounts. (Tr. at 48.)

Applicant discussed taking out a personal loan to settle SOR ¶ 1.f. The total amount of the loan was \$17,000. He used a portion of the remainder of the loan to pay off a \$5,000 debt with his sister that he incurred getting his teeth fixed in 2015. The remaining \$7,000 went to settling other personal debt. The interest rate on the loan is 26.5 percent. (Tr. at 83.)

Applicant admitted:

... all my life since I got married, we were constantly in, like I said, we overspend. We got a lot of credit cards. We overspend. We lived beyond our [two] means, and we had gotten in credit card trouble, all this stuff. And then I took out the second one so we can get ahead of ourselves. I did not realize that I was going to lose my job. Otherwise, I would have kept paying the second mortgage and the first one, all this stuff, but I lost my job. (Tr. at 65.)

Applicant cited his wife’s reduced income in 2019, that it occurred “under the COVID issue” for the 2017 foreclosure. (Tr. at 34.) Applicant was evasive in trying to explain this point and cited a change in his contract position. (Tr. at 34, 35-36.)

Applicant told investigator during his security clearance interview his financial situation was paycheck to paycheck. (GE 2 at 18.) Government Exhibit 7 shows no delinquent accounts on his current credit report.

Guideline E

SOR ¶¶ 2.a and 2.b. The Guideline E allegations stem from his failure to disclose that information as set forth in SOR ¶¶ 1.f, 1.h, and 1.j regarding whether a judgment had been entered against him and his failure to disclose that information as set forth in SOR ¶¶ 1.a through 1.k, whether he had any property repossessed or foreclosed, defaulted on any loan, or had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed. In his Answer Applicant stated “When I fill[ed] out the [SCA] I did make a mistake in filling it out but after I submitted [it,] I realized I had made a mistake and when I spoke with the investigator I did admit to the mistake and went over my credit history.” (Answer.)

During his security clearance interview he told the investigator that he was doing fine financially. He told the investigator he was meeting all his financial obligations. He responded, no to the investigator as whether he was more than 120 days delinquent on any debt and whether he was involved in any credit counseling. He also responded, no as to whether he had any judgments or foreclosures against him. After these responses, the investigator confronted him with the numerous debts and judgments set forth in SOR ¶ 1. (GE 2 at 9-10, 17-19.)

Applicant testified he had “heavy thoughts” about how he answered his SCA questions. He stated “I was thinking that if I said yes or answered those questions and then my clearance -- I would lose my clearance.” (Tr. at 32.) He testified he was going to go back in and resubmit it, but by the time he decided to do that, the investigator called and said he wanted to talk to him about his security clearance. (Tr. at 32.)

Applicant was evasive stating he was unaware that the 2017 foreclosure happened. After being asked again if he knew his house had been foreclosed on, he stated he assumed it was a short sale. (Tr. at 32-37.) Applicant initially denied receiving \$97,000 back after both mortgages were paid off from the foreclosure until confronted by Department Counsel. He said the \$97,000 went to paying off all the other creditors he and his wife owed. (Tr. at 37.)

Applicant’s wife testified that she let her husband “decide all those things” when it came to the foreclosure and the past debts. He was the one taking care of the financial matters (Tr. at 24.) Applicant admitted he knew he had credit card debts but did not realize at the time the situation was that bad. (Tr. at 37.)

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 documentary evidence admitted into evidence establish the following 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 under AG ¶ 20 are 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; 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 admits his history of living beyond his means goes back as far as when he got married. His debts are numerous, recent, and

were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is partially established. Applicant did experience periods of unemployment and his wife's barber shop business was negatively impacted by the COVID-19 pandemic. He does support his testimony that he paid certain debts after the security clearance process had been initiated and has offered to resolve others. AG ¶ 20(b) requires that "the individual acted responsibly under the circumstances." His intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

AG ¶ 20(d) is not established. There is insufficient evidence that Applicant has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. While he has apparently resolved other unlisted debts through a personal loan and the proceeds from the foreclosure sale there is no evidence these actions were part of a plan he initiated. The law firm he hired after the SOR was issued has not resolved any SOR account. See, e.g., ISCR Case No.12-01664 at 3 (App. Bd. Jan. 17, 2014). The Directive does not define the term "good faith." Good faith "requires a showing that a person acted in a way that shows reasonableness, prudence honesty, and adherence to duty or obligation." See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

None of these mitigating conditions are established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur. Applicant went through bankruptcy in 2004 and his financial condition since 2014 has been poor. He has had a significant amount of delinquent debt for several years, debts which he only began seriously to address when the clearance application process commenced. In addition, those debts that he has resolved were addressed through involuntary means such as wage garnishment and foreclosure. Applicant's circumstances raise serious concerns about his judgment and reliability, concerns which cannot be successfully mitigated by the debts he mitigated after his security clearance interview.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant

facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a references whether he deliberately failed to disclose the judgments set forth in SOR ¶¶ 1.f, 1.h, and 1.j. The record supports he specifically withheld this information. He said he mistakenly failed to disclose these judgments in his Answer and in his testimony. The financial questions on the SCA are straight forward and easy to understand.

“Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant’s mens rea in light of the entirety of the record evidence. *See, e.g.*, ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant’s intent or state of mind may not always be based on an applicant’s statements, but rather may rely on circumstantial evidence. *Id.*

Applicant knew about the judgments. I am not convinced Applicant honestly answered the questions on his SCA about the judgments. He elected not to disclose his judgments. The record evidence establishes AG ¶ 16(a) in relation to SOR ¶¶ 1.f, 1.h, and 1.j.

SOR ¶ 2.b references whether he deliberately failed to the accounts set forth in subparagraphs 1.a through 1.k. The record supports he specifically knew he had defaulted on a loan, “had these specific bills or debts turned over to a collection agency” or “had any of these accounts charged off or cancelled for failing to pay as agreed.” AG ¶ 16(a) is applicable to SOR ¶ 2.b.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

Neither mitigating condition is established for either allegation. Applicant made no effort to correct the omissions in his SCA until he was confronted with them during the April 2020 security clearance interview. Falsification of a security clearance application “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) I am satisfied that Applicant knew he had delinquent debts and a judgment when he submitted his SCA, and he deliberately chose not to disclose them. His false statements on his SCA cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

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.

Applicant was evasive in his testimony and did not act on his debts until after the security clearance application process had been initiated. After weighing the disqualifying and mitigating conditions under Guidelines F and E and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns about financial considerations or his personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.d:	Against Applicant
Subparagraphs 1.b, 1.e, 1.f, 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a-2.b:

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.

Charles C. Hale
Administrative Judge