



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



In the matter of:)
)
) ISCR Case No. 23-00512
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not take sufficient responsible action to address his financial responsibilities. The bulk of Applicant’s delinquent debts remain unresolved. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 29, 2023 the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for Applicant’s security clearance. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

In April 2023, Applicant provided a response to the SOR with attached documentation and requested a hearing. On May 26, 2023, the case was assigned to me. On August 18, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 6, 2023, using the Microsoft Teams video teleconference system. His hearing was held as scheduled.

During the hearing, Department Counsel offered six Government exhibits (GE) 1-5, and a hearing exhibit (HE) 1; I labeled the documentation Applicant provided with his SOR Answer as Applicant exhibits (AE) A, B, and C; and all proffered exhibits were admitted into evidence without objection. I held the record open until September 20, 2023, in the event either party wanted to supplement the record with additional documentation. On September 13, 2023, I received a copy of the hearing transcript. (Tr.) Applicant timely submitted AE D, E, and F, which I admitted into evidence without objection. On September 21, 2023, the record closed.

Findings of Fact

In Applicant's April 2023 SOR response, he admitted the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, and 1.h, and he denied SOR ¶¶ 1.c and 1.f. The SOR alleges eight delinquent accounts totaling approximately \$17,116. His admissions are accepted as findings of fact.

Applicant is 47 years old. He served in the Air National Guard from 1995 through 2000. He took some online college courses in 2019 and 2020, but he has not yet earned a degree. He married in 1999 and divorced in 2000. He married a second time in 2003 and divorced in 2011. He married a third time in 2013, and as of the date of the hearing, Applicant and his wife were involved in a pending divorce. He has two biological sons, ages 9 and 16, and he has three stepchildren, a set of twins who are 19 years old and a 21-year-old. Since April 2022, he has been employed by a federal contractor as a manager of physical security and security control. His annual salary is \$106,000. He does not currently possess a DOD security clearance. (Tr. 22-24, 48; GE 1)

Financial Considerations

Applicant testified there were several factors that contributed to his financial problems. Beginning in 2014, he and his spouse were the victims of identity theft. They were informed by the Internal Revenue Service (IRS) that they owed taxes of approximately \$43,000, and a tax lien was filed against them. Applicant was the sole wage earner for the family, and he began to experience financial problems as a result of repaying the tax lien and attempting to continue to pay his monthly expenses. He also was found to be at fault in a car accident in 2014 and did not have car insurance. He had to repay the other driver for the damages out-of-pocket, and he was eventually able to satisfy a civil judgment that was filed against him for the remaining amount of approximately \$8,000. In about early 2020, the IRS was able to determine that identity theft and fraud had taken place and returned approximately \$18,000 that Applicant had previously paid. He was unemployed from April 2020 to June 2020, and he used some of the returned tax money to pay for his family's cost of living and to pay other debts. He

was also unemployed from May 2018 to September 2018 and from December 2018 to February 2019. These periods of unemployment were contributing factors to his mounting debt. He testified that his current wife spent large amounts of money unnecessarily, and this was an underlying reason for their pending divorce. He was either unable or unwilling to take control of the family finances to prevent her reckless spending. He admitted he provided a specific timeline in his SOR response of when he planned to pay off several delinquent debts, but due to the expense of hiring an attorney and filing for divorce, he was unable to keep his financial commitments. (Tr. 24-29, 39-40; GE 1; AE A)

SOR ¶ 1.a alleges Applicant is indebted to a credit union for the deficiency balance of \$12,467 after his car was repossessed for nonpayment. In May 2023, he was able to set-up a payment plan with the creditor to pay \$400 a month. As of the date of the hearing, he had not made any payments, and this debt is unresolved. (Tr. 29-31; GE 1; SOR Answer)

SOR ¶ 1.b alleges Applicant is indebted to a collection agency in the amount of \$1,710 for an account referred by SmileDirect Club due to nonpayment. Applicant was to have settled this account for approximately \$855 by August 2023. As of the date of the hearing, he admitted he had not made any payments. This debt is unresolved. (Tr. 31-33; SOR Answer)

SOR ¶ 1.c alleges Applicant is indebted to a collection agency in the amount of \$1,419 for an account referred by a medical provider due to nonpayment. He was covered by Medicaid at the time of the medical procedure, and he provided post-hearing documentation showing that this debt has been resolved. (Tr. 33-34; AE B, AE E; GE 1, GE 4; SOR Answer)

SOR ¶ 1.d alleges Applicant is indebted to a collection agency in the amount of \$608 for an account referred by a cable utility provider due to nonpayment. He testified he settled this account for about \$368 in June 2023, but he did not provide supporting documentation as promised while the record was held open. This debt remains unresolved. (Tr. 34-36; GE 1, GE 4; SOR Answer)

SOR ¶ 1.e alleges Applicant is indebted to a collection agency in the amount of \$452 for an account referred by a medical provider due to nonpayment. He contacted the creditor in April 2023, and he was able to get a settlement offer of \$226. He intended to settle the account by June 2023. As of the date of the hearing, he had not made any payments. This debt is unresolved. (Tr. 36-38; GE 4; SOR Answer)

SOR ¶ 1.f alleges Applicant is indebted to a collection agency in the amount for \$608 for an account referred by an insurance carrier due to nonpayment. He provided documentation with his SOR Answer that this debt is fully resolved. (Tr. 38; GE 4; AE C; SOR Answer)

SOR ¶¶ 1.g and 1.h allege Applicant is indebted to a collection agency in the amount for \$170 and \$105, respectively, for two accounts referred by a medical provider due to nonpayment. Applicant intended to have these accounts resolved by May 2023.

As of the date of the hearing, he admitted he had not made any payments. These debts are unresolved. (Tr. 38-39; GE 4; SOR Answer)

Applicant provided a Personal Financial Statement (PFS) post-hearing. He recently moved into an apartment and has shared custody of his youngest son. His monthly net income is approximately \$3,500, and after paying his monthly expenses, he has a net monthly remainder of \$74. His PFS did not reflect any active monthly payments toward his delinquent debts. He admitted during the hearing that he essentially lives from paycheck to paycheck. (AE D; Tr. 45-46)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts, as shown by his admissions and by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. 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 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;
- (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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of incurring delinquent debts since 2014. He receives some mitigating credit for experiencing circumstances that were beyond his control, such as his divorce, identity theft, and periods of unemployment that resulted in his financial problems. The mitigating credit is lessened, due to his failure to call his creditors to settle delinquent accounts, or set-up payment plans, before he received the SOR. Additionally, due to his unexpected divorce in process, he has been unable to make payments toward his debts as he indicated he would in his SOR. To receive full credit for mitigation, he must also show that he acted responsibly under the circumstances in addressing his delinquent debts, and in this case, he failed to do so.

In the context of Applicant's security eligibility, I find that he did not act responsibly by failing to address his delinquent debts well before the issuance of the SOR. There is no evidence that he participated in financial counseling, and there are no clear indications that his financial problems are being resolved or under control. Based on documentation, the bulk of Applicant's debts remain unresolved. Under these circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Based on Applicant's PFS, he does not currently earn enough income to repay his delinquent debts due to expenses associated with a pending divorce. He failed to meet his burden to mitigate the financial security concerns due to a lack of an established track record of responsible financial management. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of his delinquent debts, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

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 and 1.f: | For Applicant |
| Subparagraphs 1.b – 1.e, 1.g, and 1.h: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge