



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



In the matter of:)	
)	
)	ISCR Case No. 22-02578
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2023

Decision

LAFAYE, Gatha, 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 signed and submitted a security clearance application (SCA) on May 20, 2022. On February 24, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on March 16, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on about April 27, 2023, including Items 1 through 7. On about

April 28, 2023, a complete copy of the Government's file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 11, 2023 and did not respond. The case was assigned to me on July 27, 2023. The Government's exhibits, including Items 1 through 7, are admitted in evidence without objection.

Findings of Fact

In his answer to the SOR, Applicant admitted all nine financial allegations, SOR ¶¶ 1.a through 1.i, without comment. His admissions are incorporated in my findings of fact.

Applicant is a 52-year-old logistics technician working full time with a defense contractor since February 2022. He worked with a different defense contractor from November 2018 through January 2022. He stated he was unemployed for about a month when that contract ended.

From March 2015 through about October 2017, Applicant worked as a commercial driver. He disclosed he was summarily dismissed from the position after he declined to take on new stops which, he stated, would have increased his workload beyond his existing 11–12-hour workday. He stated he was unemployed for about nine months prior to accepting a position in July 2018, where he worked as a lead housekeeper, until finding a new position more related to his technical field in November 2018. (Items 3 and 6)

During his periods of unemployment, Applicant stated he was supported by unemployment benefits and savings from his 401(k)-retirement plan. No additional information was provided concerning potential tax consequences created by his early withdrawal of his 401(k)-retirement funds. (Items 3 and 6)

Applicant was previously married from 1994 to about 2006. He has been married to his second wife since August 2007. He has three children ages 19, 16, and 14 years old. (Items 3 and 6)

The SOR alleges nine delinquent debts totaling about \$47,900. Applicant admitted all debts alleged in the SOR. He described his overall financial situation as being able to pay expenses with no money left over. (Item 6 at 11) He stated he and his wife have jobs and are trying to better themselves. In July 2022, the DOD investigator provided Applicant an opportunity to submit documentary evidence concerning his financial situation. However, Applicant declined stating he discussed the matter with his wife, and that they determined no extra funds were available to pay delinquent debts because of expected expenses for school, children's birthdays, and holidays. He was afforded several opportunities to submit documentary evidence to support his case, but he never did. He did not respond to the FORM; nor did he provide documents or materials in answering the SOR. (See Item 6 pp. 11-12)

The evidence concerning debts alleged in the SOR is summarized below.

SOR ¶ 1.a (\$32,882): The oldest delinquent debt is a joint mortgage account opened in August 1999. The last payment on the account was made in May 2018. The debt was charged off in about 2021. (Item 4 at 3; and Item 5 at 2)

This is a mortgage on a mobile home. Applicant stated he became delinquent on his mortgage when he lost his job in October 2017. He stated he paid his \$30,000 mortgage for about 22 years, but that the balance he owed was reduced by only \$1,000 during this entire period. He asserted his belief that his mortgage was not legal under state law because it exceeded seven years. He presented no proof to support his assertion, nor did he explain further. Applicant stated he ultimately decided to abandon his home because he was unable to pay. He did not notify or communicate with the creditor when he abandoned the home in about 2021; nor has he communicated with the creditor since that time. (Item 6 pp. 8-9). This debt is unresolved.

SOR ¶¶ 1.b (\$8,857) and 1.c (\$3,573): Applicant admitted both delinquent debts, stating he had credit cards with both creditors. He stated both debts were about \$7,000 each, with monthly payments of about \$300 per account. He disclosed he stopped making payments and communicating with creditors because he lacked income after losing his job. Both accounts are listed as individual accounts and both appear in his June and December 2022 credit bureau reports. (Items 4 and 5) SOR ¶ 1.b was opened in April 2016 and the last payment credited towards the account occurred in December 2017. The account was charged off in about May 2022. (Item 4 at 5; and Item 5 at 2) SOR ¶ 1.c was assigned for collection in August 2018, and debt amount remained the same in his December credit bureau report. Both delinquent debts are unresolved.

SOR ¶¶ 1.d through 1.g (altogether totaling \$2,145): Applicant admitted all four consumer debts in SOR ¶¶ 1.d through 1.g, without comment. He stated he believed the debt in SOR ¶ 1.d was a credit card account he used to purchase holiday gifts. SOR ¶¶ 1.e and 1.g were balances on mobile phone or wireless accounts for early termination fees or similar charges. Applicant did not communicate with the creditors regarding these debts, as in other instances, because of his inability to pay. Applicant did not recall the reason for the debt in SOR ¶ 1.f because he did not recognize the creditor. (Item 6 at 10) All four delinquent debts are listed as individual accounts. Two accounts, SOR ¶ 1.d and 1.g, were opened in October 2018. SOR ¶ 1.f was opened in July 2019, and SOR ¶ 1.e, the most recent debt, was opened in October 2021. All of these debts remain in a collection status. (See Items 4 at 4; and Item 5 pp. 3-4) These debts are unresolved.

SOR ¶¶ 1.h (\$216) and 1.i (\$237): Applicant admitted delinquent debts in SOR ¶¶ 1.h and 1.i, without commenting or providing clarifying information. During his July 2022 interview with investigators, he stated he believed at least one medical debt related to a \$2,000 bill he owed for treatment. He stated he paid about \$100 per month for two years, pursuant to an arrangement with the creditor, but that it is possible mail related to this debt was not forwarded to him after he moved. He had no further information concerning this debt. (Item 2; and Item 6 at 10)

A detailed review of the credit reports in the record indicates SOR ¶¶ 1.h and 1.i are the same underlying debt. Evidence for SOR ¶ 1.h lists the original debt as \$162 with an outstanding balance of \$216, with activity and assignment dates listed as March 2021 and April 2021 respectively. (Item 5 at 4) Similarly, evidence for SOR ¶ 1.i shows the same underlying information in “3rd party collection details.” (Item 4 at 2) The original debt was listed as \$162, with a balance of \$216.00. The debt in SOR ¶ 1.i was reassigned to a new collection agency in September 2022. After reassignment, the collection balance increased from \$216 to \$237. (Item 4 pp. 1-2) The debts alleged in SOR ¶¶ 1.h and 1.i are duplicate accounts. SOR ¶ 1.i is therefore resolved in Applicant’s favor.

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.” EO 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.” 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. 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 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

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

Applicant’s admissions and the evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

SOR ¶¶ 1.h and 1.i allege duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.i is concluded for Applicant.

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), 20(b), and 20(c) are not established. Applicant's delinquent debts are recent and ongoing, and all except one remain unresolved. He did not provide documentary evidence to support his case. Though Applicant was unemployed from about October 2017 to July 2018, he has not shown he acted responsibly under the circumstances. Additionally, he has been gainfully employed since that time. He made no attempt to communicate with creditors or otherwise address his delinquent debts. He did not provide information or evidence about his income, or other financial resources at his disposal during the time. Nor did he provide information or evidence he received or is receiving financial counseling. Applicant's financial problems are not under control.

AG ¶ 20(d) is not fully established. There is evidence Applicant took steps to address his delinquent debt in SOR ¶ 1.h and is credited with substantially addressing it. However, none of the other debts in the SOR have been addressed. It is well settled that adverse information in credit bureau reports is sufficient to establish the Government's *prima facie* case that Applicant had delinquent debts that are of security concern. See *generally* ISCR Case No. 19-02993 (App. Bd. Nov. 23, 2021). Once established, it is the Applicant's burden to mitigate the security concern. See Directive ¶ E3.1.15. Applicant has not met his burden here.

Overall, there is insufficient evidence to determine that Applicant's financial problems will be resolved within a reasonable time. I am unable to find he acted responsibly under the circumstances or that he made a good-faith effort to repay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. Security concerns remain in this case based on financial considerations.

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 relevant 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), 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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate security concerns based on financial considerations.

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 - 1.g:	Against Applicant
Subparagraph 1.h – 1.i:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge