



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 21-02623
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 17, 2020. On November 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF 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 December 9, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 26, 2022. Scheduling of the hearing was delayed by COVID-19. The case was assigned

to me on September 6, 2022. On September 23, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2022. At Applicant's request, the hearing was postponed until January 24, 2023. At the request of Applicant's program manager, the hearing was postponed again based on operational necessity, and it was rescheduled for March 16, 2023. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 5 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 March 31, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. The screenshots submitted as AX B and C appear to be the same transaction, *i.e.*, a \$100 payment to the same bank on March 29, 2023. Applicant's cover letter is marked and admitted as AX D because part of it is testimonial. DOHA received the transcript (Tr.) on March 27, 2023.

Findings of Fact

The SOR alleges one debt charged off for \$43,150. The debt is reflected in a credit report dated July 14, 2021. (GX 2) In Applicant's answer to the SOR, he did not admit or deny the debt but offered an explanation for it. I have treated his explanation as a denial.

Applicant is a 50-year-old marine electrician employed by a defense contractor since September 2009. He graduated from high school in June 1992. He married in June 1996, divorced in September 1999, and remarried in May 2009. He has two children, ages 20 and 14. He received a security clearance in October 2009.

Applicant's base income, based on a 48-hour work week, is about \$75,000 per year. He usually works 50 or 60 hours per week, making his annual income about \$90,000 (Tr 14-15) His wife starting working part time three or four months ago. The record does not reflect her income. (Tr. 15) He testified that his net monthly remainder after paying his debts is about \$200 when he is working a 48-hour week and about \$600 when he is traveling and working longer hours. (Tr. 33)

Applicant purchased his family home in 2006 for \$283,000, financed with two mortgage loans. One of the loans was an adjustable-rate loan, on which the payments initially were about \$200 per month. By 2019, the payments had increased to about \$800 per month, which he could not afford. His last payment on the debt was in July 2019. (GX 5 at 5) He contacted the lender in December 2019 and applied for relief under the Making Home Affordable Program. (AX A) He testified that he asked the lender about his application in January 2020 and was informed that the lender had not received it. He submitted a second application in January and was informed in February that this application had not been received. (Tr. 18-19) He did not inquire further until he was interviewed by a security investigator in early 2021. (Tr. 21) All his interactions with the lender have been telephonic conversations, without any written corroborating documentation. (Tr. 31)

Applicant testified that when the lender informed him that his loan was charged off, and he thought that “charged off” meant that the lender had been paid “in another way.” (Tr. 22) He still lives in the home, and the payments on the first mortgage loan are current. He explored the possibility of refinancing the first mortgage loan and using his equity in the home to pay the charged-off debt, but he was informed by the lender that he could not qualify for refinancing because the charged-off debt was on his credit reports. (Tr. 24)

After the hearing, Applicant submitted a statement stating that he had negotiated a payment plan with the lender for the charged-off debt, providing for monthly payments of \$100 per month. He stated that the lender would not provide documentation of the payment plan because the debt was still in a charged-off status. (AX D) He provided documentation of a \$100 payment to the lender on March 29, 2023. (AX B; AX C)

Applicant’s credit report from March 2023 reflects a telecommunications account that is past due for \$377. The account was opened in April 2003, and the last activity on the account was in September 2021. The credit report reflects that the debt is disputed, but it does not reflect the basis for the dispute. (GX 5 at 5) The debt is not alleged in the SOR.¹

In January 2023, Applicant obtained an unsecured loan of \$28,821, with monthly payments of \$875. He used the proceeds of this loan to pay off several credit-card accounts. (Tr. 27) In addition to the charged-off debt alleged in the SOR and the delinquent telecommunications account, his most recent credit report reflects that he is carrying a balance of \$11,739 on six revolving accounts and \$32,699 on two installment accounts, all of which are current. His total monthly payments on all these open accounts total about \$1,683. (GX 5 at 3)

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

¹ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the adjudicative guidelines is applicable; or to provide evidence for whole person analysis ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the unalleged debt for these limited purposes.

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 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 are potentially applicable:

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) is established. The delinquent debt alleged in the SOR is recent, but it is the only debt alleged. It occurred because Applicant obtained an adjustable-rate loan that he could not control. He is unlikely to make that mistake again. Even though the delinquent debt is ongoing, it does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is established. Applicant voluntarily obtained an adjustable-rate loan, not fully realizing the potential consequences of his decision, but he could not control the upward adjustments of the interest rate. He was irresponsible by not contacting the lender sooner when his payments began to increase, but he acted responsibly by contacting the lender in November 2019 and continuing to seek resolution of the debt. He is financially unsophisticated and did not know how to obtain a decision on his application for financial relief. However, he was persistent and eventually was able to arrange a payment agreement.

Applicant's documentation of the agreement is sparse. When an applicant claims that a debt is being resolved, it is reasonable to expect the applicant to support that claim with documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). In this case, Applicant submitted documentary evidence of his effort to resolve the debt in December 2019 and documentary evidence of a payment to the lender in accordance with an agreement. After considering the documentary evidence of Applicant's overall financial situation, especially as portrayed in the most recent credit report, I found his oral testimony about a payment agreement credible even though it is only partially corroborated by documentary evidence. I am confident that he will continue to make the agreed payments. If he does not, he risks reconsideration of his suitability for a security clearance.

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). I have considered that he has worked for his current employer and held a security clearance for more than 13 years, apparently without incident. I have considered that the debt alleged in the SOR and the disputed telecommunications debt that was not alleged are the only significant negative factors in his credit history. He was candid, sincere, and credible at the hearing. 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 mitigated the security concerns raised by the single delinquent debt alleged in the SOR.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge