



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



In the matter of:)	
)	
)	ISCR Case No. 22-02298
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen A. Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

12/22/2023

Decision

HALE, Charles C., 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 (SCA) on January 28, 2022. On September 15, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F. 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 November 30, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 30, 2023. The case was assigned to me on July 17, 2023. On July 31, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled

for August 17, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. At the hearing he offered Applicant Exhibit (AE) A, which was admitted without objection. DOHA received the transcript (Tr.) on August 25, 2023.

I took administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the Department of Education to provide the temporary relief for Department of Education owned federal student loans, suspension of loan payments, stop collections on defaulted loans, and a zero percent interest rate. (Tr. at 37.)

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted AE B (Department of Education email dated 9/2/23), AE C (confirmation of repayment plan 8/18/23), and AE D (screenshots of rent payments to roommates), which were admitted without objection. The record closed on September 23, 2023.

Findings of Fact

In Applicant's Answer to the SOR, he admitted to the allegations under Guideline F. His admissions are incorporated into the findings of fact.

Applicant is a 32-year-old cloud engineer for a government contractor. He has worked for his employer since 2019. His income with his company has increased incrementally from about \$56,000 to \$90,000 a year. He earned his bachelor's degree in 2016. After college he worked odd jobs. His student loans became due in May 2017, he did not have enough income to make the minimum payments. He has held an interim clearance since 2022. He lives with his domestic partner, and they have a preschool-aged child. (GE 1 at 10-13; Tr. at 22, 24, 25-29.)

SOR ¶ 1.a: past-due account referred for collection for \$30,708. Applicant admitted the debt. He shared a rental property with friends and each person was responsible for an equal share of the rent. He elected to move out when he learned his girlfriend was pregnant with their child. (Tr. at 51.) When he informed the property manager he was not renewing he learned their rent was delinquent. The roommate responsible for the rental payment to the property manager had been cashing out his portion of the money and had not been paying the rent. (Tr. at 52.) He provided screenshots of his monthly payments to his roommate through his cash application. (AE D; Tr. at 63.) The account appears on both credit reports the Government submitted. (GE 4; GE 5.) He thought he had worked out an agreement with the property manager, and his former roommates were being taken to court. (Tr. at 53.) The email exchange he provided between the property manager was inconclusive about the steps he had taken to be released from the lease. (AE A.)

SOR ¶¶ 1.b-1.g are student loans placed for collection totaling \$40,486. Applicant could not recall if he ever made a payment after his loans came due. He could

not afford the \$200 minimum monthly payment when they came due. He cited his monthly income as “holding [him] back” from making any payments. (Tr. at 34.) He could not recall if he contacted anyone to explore having his student loans deferred or put into forbearance or to request a hardship arrangement. He told the investigator during his security clearance interview that in October 2020 he contacted the Department of Education and had his loans consolidated. He indicated he had a payment arrangement for \$80 monthly payments or possibly \$58 monthly payments but did not provide documentation of the payments being withdrawn from his account. Government Exhibit 4, a September 2022 credit report, shows his student loans as in collection. Government Exhibit 5, an August 2023 credit report, does not list his student loan accounts under collection status and lists last payment date as June 2023 with a March 2023 start. (GE 2; GE 4 at 60; Tr. at 33, 34-40, 48.) Government Exhibit 6 indicated that in March 2019, two payments were made by a treasury offset. He could not recall having his tax refunds garnished. (Tr. at 39, 47.) After the hearing, he provided a Department of Education email informing him his interest payments would resume on September 1, 2023, and identified the holder of his student loans. (AE B.) He offered an email dated August 18, 2023, from the holder of his student loans stating his “federal student loans ... are on the Standard Repayment Plan with a current monthly payment amount of \$52.” (AE C.)

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; and

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(a) is established. Applicant's student loans were delinquent in 2017. There is some evidence there had been payments in the 2019 time period and then during the COVID 19 period there was no activity. When he was notified the payment pause would end in September 2023 and payments would resume on October 1, 2023, he documented he was enrolled in a payment plan.

AG ¶ 20(b) is established for SOR ¶ 1.a. Applicant established he was responsibly paying his rent and his roommate wrongfully appropriated his payments. The matter is an ongoing dispute and potential criminal matter against his former roommate.

AG ¶ 20(b) is established for SOR ¶¶ 1.b-1.k. Applicant has established a payment plan which he can meet and documented his recent efforts to resume his student loan payments.

Applicant does not present a perfect case in mitigation, but perfection is not required. Under the limited circumstances of this case, I find that his finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.k: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Charles C. Hale
Administrative Judge