



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



In the matter of:)	
)	
)	ISCR Case No. 22-02301
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

12/26/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and J (Criminal Conduct). The concerns under Guideline J are mitigated, but the concerns under Guideline F are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 18, 2022. On December 9, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him¹ a Statement of Reasons (SOR) alleging security concerns under Guidelines F, J, and H (Drug Involvement and Substance Misuse). The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

¹ Applicant's SCA reflects that he is female. However, Applicant testified that he is in the process of gender transitioning and prefers to be addressed as "he." (Tr. 15, 19) The transcript refers to Applicant as "Mr." throughout. Accordingly, this decision will use masculine pronouns to be consistent with the transcript and Applicant's gender identity.

Defense (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 January 25, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 28, 2023, and the case was assigned to me on September 11, 2023. On September 22, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 25, 2023.

I convened the hearing as scheduled. At the beginning of the hearing, I granted Department Counsel's request to withdraw SOR ¶¶ 2.b through 2.h, alleging concerns under Guideline J, and SOR ¶ 3 in its entirety, alleging concerns under Guideline H. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I held the record open until November 10, 2023, to enable him to submit additional documentary evidence. He timely submitted AX F through U, which were admitted without objection. DOHA received the transcript (Tr.) on November 6, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 32-year-old welder employed by a defense contractor since April 2018. He has worked as a welder for various contractors since November 2009, with periods of unemployment between contracts. He received a certificate in welding from a technical school in September 2013. He attended a community college for about three months in 2016 but did not receive a degree. He married in March 2023 and has no children. (Tr. 20). He has never held a security clearance.

The SOR alleges 15 delinquent debts (SOR ¶¶ 1.a-1.o) and failure to file a federal income tax return for tax year 2018 (SOR ¶ 1.b). The delinquent debts are reflected in credit reports from June 2021, June 2022, and March 2023. (GX 4, 5, and 6) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a-1.e: student loans referred for collection of \$9,059; \$4,186; \$3,863; \$3,392; and \$1,926. Applicant testified that these debts were incurred while he was attending technical school and community college. (Tr. 21) All of the loans were delinquent before the COVID-19 deferment of collections because of Applicant's erratic employment, which consisted of multiple short-term, low-paying jobs. (Tr. 30) In October 2023, Applicant was approved for the Fresh Start program, and the loans were taken out of default status and transferred to a loan servicer. On October 13, 2023, Applicant was notified that his monthly payments of \$239.40 would begin on November 7, 2023. (AX F)

SOR ¶ 1.f: payday loan referred for collection of \$1,062. Applicant admitted that this debt was valid, but that he had taken no action to resolve it. (Tr. 36)

SOR ¶ 1.g: telecommunications debt referred for collection of \$807. Applicant submitted proof of a payment of \$1,537 to a collection agency collector for the original creditor on October 13, 2023. (AX P)

SOR ¶ 1.h: collection account for \$462. Applicant provided no evidence of action on this debt.

SOR ¶¶ 1.i-1.n: medical debts referred for collection of \$411, \$215, \$121, \$115, \$87, and \$50. All these debts have been delinquent since 2017. Applicant testified that he made payment agreements for these debts in September 2023, with the first payments due in October 2017. The payment agreements were telephonic and not reduced to writing. (Tr. 33-34) There is no documentary evidence in the record showing that any of these debts are resolved or are being resolved.

SOR ¶ 1.o: debt to fitness club referred for collection of \$160. Applicant testified that he had forgotten about this debt and has taken no action to resolve it. (Tr. 39)

SOR ¶ 1.p: failure to file federal income tax return for tax year 2018. Applicant admitted that he failed to file his federal returns for 2018, 2019, 2020, and 2021. He filed all the past-due returns in February 2023. He estimated that he owes about \$40,000 in federal taxes. (Tr. 43-45) He submitted evidence that he had a payment agreement with the IRS to pay \$390 per month by direct debit. (AX E) He submitted bank records showing that he had made the agreed payments in July, August, September, and October 2023. (AX R, S, T, and U)

Applicant admitted that he was indebted to two insurance companies and had taken no action to resolve these debts, which were not alleged in the SOR. (Tr. 47-48) After the hearing, he submitted evidence that he had resolved both debts. (AX I) I have considered the evidence of these unalleged debts for the limited purpose of evaluating his evidence of mitigation and in my whole-person analysis.

Applicant submitted evidence that he has engaged a credit-repair company to assist him. (AX H) The debts being handled by the credit-repair company include the collection agency for five medical debts alleged in the SOR (SOR ¶¶ 1.i, 1.j, 1.l, 1.m, and 1.n). He also submitted evidence of a payment to a medical group not alleged in the SOR (AX N) and payments to several creditors not alleged in the SOR. (AX I through M)

In June 2019, Applicant was arrested and charged with assault and battery on a family member, abduction by force and intimidation, strangling or wounding causing injury, and destruction of property of a value less than \$1,000. The incident occurred when Applicant decided to leave a cohabitant. His cohabitant did not want him to leave, and she started hitting him. No injuries were inflicted. (Tr. 49-50) As they were fighting and

wrestling, his cohabitant's daughter arrived at the scene, and they stopped fighting. Applicant found out three days later that his cohabitant had filed a criminal complaint against him. (GX 7 at 4) The assault and battery charge was dismissed, but he was referred to a battery intervention group and placed on supervised probation for two years. (GX 3 at 17-18) The abduction and strangling charges were *nolle prosequi*. (GX 3 at 19-22). Applicant pleaded guilty to destroying a cellphone. He was sentenced to 12 months in jail, suspended for 12 months, and placed on supervised probation for two years. (GX 3 at 23-24)

Applicant is well-regarded and respected at work. Three project managers from Applicant's employer submitted statements attesting to his dependability, dedication, and competence. (AX A, B, and 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 evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's frequent and unpredictable periods of unemployment were conditions largely beyond his control. Because there is no evidence in the record of the circumstances that resulted in his medical debts, I cannot determine if they were conditions largely beyond his control. In any event, he has not acted responsibly. He submitted no evidence of responsible conduct until he realized that his debts were an impediment to a security clearance.

AG ¶ 20(c) is not established. The credit-repair company does not provide the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is not established. Applicant did not take action to file his tax returns and pay the taxes due until he realized that his debts, including his tax debt, were

impediments to a security clearance. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). Applicant has a payment plan for his delinquent student loans, but they were delinquent well before the COVID-19 forbearance went into effect. Accordingly, there is a concern that Appellant will not make payments on his student loans now that they are no longer in forbearance.

AG ¶ 20(g) is established. Applicant has filed his past-due tax returns, established a payment plan for the tax debt, and has complied with his payment agreement. However, the fact that Applicant has filed his past-due returns does not preclude careful consideration of his security worthiness based on longstanding prior behavior evidencing irresponsibility. ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). A security clearance adjudication is not directed at collecting debts, nor is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

The SOR originally alleged eight instances of criminal conduct. However, seven of the eight allegations were withdrawn by department counsel. The one remaining allegation was resolved by Applicant's plea of guilty to destroying a cellphone during a domestic altercation with a former cohabitant. The evidence is sufficient to establish the disqualifying condition in AG ¶ 31(b): "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted."

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or

higher education, good employment record, or constructive community involvement.

Both mitigating conditions are established. Although serious charges were filed against Applicant after his altercation with a former cohabitant, the evidence shows that it was a mutual altercation initiated by a former cohabitant, in which no one was injured. The incident was more than four years ago. Applicant is no longer involved with that cohabitant, and there is no evidence that he has been involved in any criminal activity since June 2019. He is currently in a stable relationship with another cohabitant. The testimonials of Applicant's supervisor indicate that he is a trustworthy person.

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 Guidelines F and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After years of unsteady employment, Applicant has apparently gained control of his life. However, this is a case of "too little" and "too late." He appears to have finally realized the need to gain control of his finances, but he has not established a track record of financial responsibility. After weighing the disqualifying and mitigating conditions under Guidelines F and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his criminal conduct, but he has not mitigated the security concerns raised by his delinquent debts and failure to timely file his federal income tax returns.

Formal Findings

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

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

Subparagraphs 1.a-1.p:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.h:	Withdrawn
Paragraph 3, Guideline H (Drug Involvement)	WITHDRAWN
Subparagraphs 3.a and 3.b:	Withdrawn

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.

LeRoy F. Foreman
Administrative Judge

