



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



In the matter of:)
)
) USN-M Case No. 23-00036-R
)
Applicant for Security Clearance)

Appearances

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

03/14/2023

Decision

GARCIA, Candace Le'i, 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

On April 12, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR 1) alleging security concerns under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct). The DOD CAF acted under Executive Order 12968, *Access to Classified Information*, dated August 2, 1995; DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, dated April 3, 2017 (Manual); and Security Executive Agent Directive 4, dated December 10, 2016 (SEAD 4), promulgating adjudicative guidelines (AG) for all adjudicative decisions issued on or after June 8, 2017.

On October 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent Applicant a Supplemental SOR

(SOR 2) alleging additional security concerns under Guideline F. Applicant answered SOR 1 and SOR 2 on November 9, 2022 (Answer).

On November 26, 2022, the DOD CAS revoked Applicant's clearance, and he appealed the revocation under the provisions of DOD Manual 5200.02. On December 2, 2022, the Under Secretary of Defense (Intelligence and Security), Ronald Moultrie, issued a memorandum providing that any individual whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum shall be afforded the opportunity to pursue the hearing and appeal process set forth in DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992). As a result of Under Secretary Moultrie's Memorandum, Applicant was given the opportunity to receive the process set forth in DOD Directive 5220.6. He elected that process, and his case was assigned to me on January 18, 2023.

On January 27, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing was scheduled to be conducted by video teleconference on February 15, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified. He did not submit any documentary evidence. At Applicant's request, I kept the record open until March 1, 2023, to enable him to submit documentation. He timely submitted documentation, which I collectively marked as Applicant's Exhibit A and admitted without objection. DOHA received the transcript (Tr.) on February 23, 2023.

SOR Amendment

Department Counsel amended the SOR at the hearing, pursuant to ¶ E3.1.13 of DOD Directive 5220.6 and withdrew the Guideline G and Guideline J SOR concerns. (Tr. at 11-13) Since those allegations have been withdrawn, they will not be discussed further.

Findings of Fact

In his Answer, Applicant admitted the Guideline F allegations, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old petty officer E-6 on active duty in the U.S. Navy. He graduated from high school in May 2004, and he attended college from February 2019 to January 2020, but he did not earn a degree. As of the date of the hearing, he was re-enrolled in college and expected to earn an associate degree in October 2023. He worked for various employers since July 2004, except for a period of unemployment from September 2006 to February 2007. He enlisted in the Navy in September 2007 and has served on active duty continuously until the present. He was deployed in 2013 and 2019. He first received a security clearance in 2010 and was granted a top secret clearance and access to sensitive compartmented information in approximately 2015. (Tr. at 6; GE 1, 6-7, 24-27, 65, 76-77, 88)

Applicant married in 2007, separated in 2017, divorced in 2020, and remarried in 2021. He has two minor children. His elder child is from his previous marriage and his younger child is from his current marriage. He previously owned a home from January 2016 to November 2019. As of the date of the hearing, he and his family have lived in base housing since October 2022. (Tr. at 24-25, 31-32, 42-43, 50-52, 68-71, 73, 77-80. GE 1, 6)

SOR 1 and SOR 2 allege eight delinquent debts. In addition to Applicant's admissions in his Answer, the debts are established by four credit bureau reports from 2019 to 2023. Applicant also discussed his debts during his April 2022 interview with a background investigator. He attributes his delinquent debts primarily to his ex-spouse's mismanagement of their finances during his 2019 deployment; his child support obligation of \$720 monthly for his eldest child since 2017; his divorce; and his ex-spouse's unwillingness to assist him with resolving the debts incurred during their marriage. He first began to learn about his delinquent debts when he separated from his ex-spouse, and he continued to learn about them through the security clearance process. He also incurred expenses when he moved his family into base housing, and he was the sole breadwinner until his spouse started nursing school just three weeks before the hearing. The evidence concerning the debts is summarized below. (Tr. at 28, 35-40, 45, 50-52, 60-61, 71, 76-82, 88; GE 2-6; AE A)

Debts #1, #2, #4, credit cards with the same creditor, in collection for \$15,644, \$11,602, and \$5,147. Applicant incurred these debts during his previous marriage. He mistakenly believed that his ex-spouse was responsible for these debts, and he was simply a cosigner. He negotiated settlements of \$6,258 and \$4,642, and payment plans of \$200 monthly and \$100 monthly, to resolve Debts #1 and #2, respectively. He made a payment in accordance with the payment plans in March 2023. He settled Debt #4 for \$2,059 and paid it in March 2023. (Tr. at 38-43, 82; GE 2, 3, 6; AE A)

Debt #3, note loan in collection for \$5,913. Applicant obtained this loan to try to pay his credit cards. The most credit bureau report from January 2023 reflects that Applicant paid this debt for less than the full balance, and the outstanding balance was zero. (Tr. at 54-55, 59, 61-62; GE 2, 3, 4, 5, 6)

Debt #5, credit card in collection for \$2,063. Applicant used this credit card to purchase a mattress during his previous marriage. He planned to contact the creditor to negotiate a settlement to resolve this debt, and to tackle each of his debts until they were all resolved. (Tr. at 43-48, 83-84; GE 2, 3, 4, 5; AE A)

Debt #6, credit card in collection for \$1,044. Applicant used this credit card to purchase a guitar. He settled it for \$522 and paid it in February 2023. (Tr. at 43-48; GE 2, 3, 4, 6; AE A)

Debt #7, credit card in collection for \$771. Applicant used this credit card to purchase a television during his previous marriage. He paid this debt as of March 2023. (Tr. at 55-56, 58-59; GE 2, 3, 4, 5, 6; AE A)

Debt #8, \$140 past-due credit card with a \$4,706 total balance. The most recent credit bureau report from January 2023 reflects that Applicant's past-due balance on this account decreased from \$140 to \$69. He intended to tackle each of his debts until they were all resolved. (Tr. at 56-58; GE 2, 3, 6)

Debt #9, \$12,765 foreclosure account. Applicant began to become delinquent on his mortgage for his previous home in 2018, and the home was foreclosed in 2019. He was unaware that his home was foreclosed because his ex-spouse handled their finances, and he was deployed. He first learned about it through the security clearance process. The credit bureau reports from January 2022 and January 2023 reflect that this real estate mortgage account had a zero balance. (Tr. at 31-32, 59-60, 73-74, 77-80; GE 2, 3, 4, 5, 6; AE A)

Debt #10, \$280 charge-off account. Applicant paid this debt, which was related to the refinancing of his home, in 2018. The credit bureau reports from December 2019, January 2022, and January 2023 reflect that this account had a zero balance. (Tr. at 64, 66-68; GE 2, 3, 4, 5, 6)

As of the date of the hearing, Applicant's annual income was \$80,000. His spouse is imminently expected to leave the Reserves with an honorable discharge, as she had just become a full-time student in nursing school. She received \$30,000 annually through the GI bill. She also received a 90% disability rating from the U.S. Department of Veterans Affairs, for which she expected to receive \$2,100 monthly. Their joint estimated monthly net remainder was \$2,980. Applicant decreased their rental expenses by moving into base housing. He had approximately \$9,000 in his retirement-savings account. In 2013, he took a financial budgeting class with the Navy's Employee Assistance Program (EAP). In August 2022, he also received credit counseling and developed a budget through the help of the Navy-Marine Corps Relief Society. He also utilized Credit Karma to pull his credit report and he was working to rebuild his credit. He intended to continue to resolve his debts and he understood the importance of maintaining his finances in good standing. (Tr. at 27-38, 42-43, 49-54, 56-59, 62-64, 68-76, 80, 83-84, 88; GE 6; AE A)

Applicant's performance was rated "above standards" in June 2022. His rater described him as a brilliant leader. He was awarded the Navy and Marine Corps Achievement Medal in June 2021 and recommended for the same medal in June 2022. (Tr. at 27-38, 42-43, 49-54, 56-59, 62-64, 68-76, 80, 83-84, 88; GE 6; AE A)

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 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 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) and 20(b) are established. Applicant incurred his delinquent debts during his previous marriage, when his ex-spouse mishandled their finances while he was deployed. This was a condition largely beyond his control. He was unaware of his delinquencies until his separation and through the clearance process, and he was making efforts to address his delinquent debts, rebuild his credit, and maintain his finances in good standing.

AG ¶ 20(c) is established. Applicant has received appropriate financial counseling, and his financial problems are under control.

AG ¶ 20(d) is established. Applicant has resolved or is resolving all the debts alleged in the SOR, and he has undertaken good-faith efforts to do so.

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. 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 his delinquent debts.

Formal Findings

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

Guideline F (Financial Considerations):	FOR APPLICANT
Debt #1 through Debt #10:	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.

Candace Le'i Garcia
Administrative Judge