



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



In the matter of:)	
)	
)	ISCR Case No. 23-01102
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2024

Decision

HALE, Charles C., 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 submitted a security clearance application (SCA) on June 22, 2022. On June 5, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline 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 August 1, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s file of relevant material (FORM) on August 25, 2023. On August 30, 2023, a complete copy of the 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 October 3, 2023, and did not respond. The case was assigned to me on January 3, 2024.

The SOR and the Answer are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant admitted SOR ¶ 1.b and denied SOR ¶¶ 1.a and 1.c with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 43 years old. After graduating high school in 1998 he attended some college but did not receive a degree. He has been self-employed since 2003. He is being sponsored by a defense contractor for his security clearance. (Item 3 at 8-13, 22.)

SOR ¶ 1.a: An account placed for collection in the amount of \$58,620. Applicant denies the debt. He states in his Answer that he did lease property from the creditor and that during the COVID pandemic he did relinquish property to the creditor "free and clear with no debt owed to them." He did not offer any documentary evidence in corroboration or support of his Answer. When he was confronted with the debt during his security clearance interview in September 2022, he acknowledged it was a warehouse he had leased but stated he did not have an outstanding balance when he completed his lease and was unaware of any outstanding balance. He did not reference the COVID pandemic during the interview. His July 2022 credit report lists the debt as placed for collection, with the date assigned as October 2021, and a balance of \$55,546. The debt is not listed on his May 2023 credit report. (Item 4 at 3; Item 5; Item 6 at 2.)

SOR ¶ 1.b: An auto loan placed for collection in the amount of \$9,566. Applicant admits the debt. He states in his Answer he was informed it was charged off and processed and "could not be re-opened." During his security clearance interview he told the investigator that the debt arose from a truck he purchased for work. When it broke down in 2022, he stopped making payments. (Item 6 at 3.) The debt is reflected in Item 5. He did offer to the investigator a letter showing he had paid in full an account with this creditor. However, there is no amount listed and the account numbers do not match. (Item 4 at 3.) Another account listed with this creditor does reflect it was closed with no outstanding financial obligations. (Item 4 at 4.)

SOR ¶ 1.c: A medical account placed for collection in the approximate amount of \$1,131. Applicant denies the debt. He states in his Answer the debt should have been covered by insurance. The debt arose from an accident and the company never completed the coverage. He stated he was unaware the account existed. He did not offer any documentary evidence in corroboration or support of his claim that the debt was or should be covered by insurance. The most recent record evidence, a May 2023 credit

report, shows no action. The first delinquency was listed as December 2018 and both credit reports show the debt assigned in May 2019. (Item 5 at 2; Item 6 at 3.)

Applicant listed one delinquent account not alleged on the SOR in his SCA. He discussed this deb and also why he withdrew his Chapter 13 bankruptcy filing with the investigator. He attributed his financial difficulties to a work slowdown due to the COVID pandemic. (Item 3 at 24; Item 4 at 2; Item 6 at 2.)

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 relating to the guideline for financial considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 accrued delinquent debts. His 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").

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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

(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, or 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) does not apply. Applicant's financial delinquencies are ongoing and unresolved. He offered no evidence, aside from the general statement that the COVID pandemic impacted him, for consideration in deciding whether his overall reliability, trustworthiness, or good judgment should mitigate these financial problems.

Applicant attributes his debts to the COVID pandemic. The first prong of AG ¶ 20(b) therefore applies. For full consideration under AG ¶ 20(b), however, Applicant must establish that he acted responsibly under the circumstances. He has not done so. He completed his SCA in June 2022 and was interviewed in September 2022. He acknowledged he had leased the property alleged in the SOR but did not offer any evidence to support his claim he did not have an outstanding balance when he completed his lease. He admitted the loan alleged in the SOR and that he stopped making payments on the loan when his vehicle when it broke down. The most recent record evidence (May 2023 credit report) shows no action on the medical debt alleged in the SOR. 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. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). He did not provide any evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 not mitigated the security concerns raised by his delinquent debts.

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.c: Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge