



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



In the matter of:)
)
) ISCR Case No. 23-01263
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2024

Decision

FOREMAN, LeRoy F., 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 on June 3, 2022. On June 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of 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 July 3, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on August 14, 2023. On August 16, 2023, a complete copy of the file of relevant

material (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 11, 2023, and did not respond. The case was assigned to me on January 11, 2024.

Evidentiary Issue

The FORM included a summary of a personal subject interview (PSI) conducted on July 20, 2022. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

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

Applicant is a 25-year-old maintenance clerk employed by a federal contractor since June 2022. He served on active duty in the U.S. Marine Corps from August 2016 to August 2020 and received an honorable discharge. While on active duty, he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for misusing a government travel card for personal expenses, including caring for his wife's family members. He was reduced in rank from pay grade E-4 to E-3. His nonjudicial punishment is alleged in SOR ¶1.h.

Applicant held a security clearance while on active duty, but it was suspended because of his misuse of the government travel card. He does not currently have a security clearance.

Applicant married in November 2017, but has been separated since February 2019. He lives with his partner, their new-born baby, and his younger sister. He is the only person in the household who is employed. (FORM Item 6 at 6)

The SOR alleges seven delinquent debts, reflected in credit reports dated July 7, 2022 (FORM Item 5) and April 12, 2023 (FORM Item 4). The evidence concerning those debts is summarized below.

SOR ¶ 1.a: credit-card account placed for collection of \$12,246. The July 2022 credit report reflected that this debt was charged off for \$12,790. (FORM Item 5 at 2) In July 2022, Applicant told a security investigator that he had consolidated his debts to this creditor and had a payment agreement for \$327 per month. (FORM Item 7 at 3) The April

2023 credit report reflects that Applicant is making payments on this debt under a partial-payment agreement. (FORM Item 4 at 2)

SOR ¶ 1.c: damage to an apartment totaling \$2,087. In Applicant's security interview in July 2022, he told the investigator that his wife's family broke into his apartment while he was absent on military training, stole all his belongings, and damaged the apartment. This debt is for damages to the apartment. Applicant submitted no evidence of efforts to resolve it.

SOR ¶ 1.e: line of credit with credit union, past due for \$1,613, with a total balance of \$11,172. The creditor for this debt is the same as the debt in SOR ¶ 1.a and is included in the same payment agreement . (FORM Item 7 at 5)

SOR ¶¶ 1.b, 1.d, 1.f, 1.g: personal loan placed for collection of \$9,253;. cellphone bill placed for collection of \$1,230; delinquent cable television account placed for collection of \$422; and utility bill placed for collection of \$326. Applicant submitted no evidence of efforts to resolve these debts. They are not resolved.

In response to financial interrogatories in April 2023, Applicant submitted a personal financial statement reflecting net monthly income of \$3,682 (based solely on his salary) and monthly expenses of \$3,212, leaving a net monthly remainder of \$670. (FORM Item 6 at 7) He did not list any debt payments such as his monthly payments of \$327 to the creditor alleged in SOR ¶¶ 1.a and 1.e. He provided no evidence of financial counseling.

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 of the seven delinquent debts 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"). His admitted misuse of a government travel card establishes the disqualifying condition in AG ¶ 19(d) ("deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust").

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(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established for the delinquent debts alleged in SOR ¶¶ 1.a-1.g. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. It is established for the misuse of the government travel card, alleged in SOR ¶ 1.h, which was a one-time occurrence that was

more than four years ago and is unlikely to recur because Applicant no longer has a limited-use credit card.

AG ¶ 20(b) is not fully established for the delinquent debts alleged in the SOR. Applicant has encountered several conditions that were largely beyond his control: his marital separation, the financial responsibility for his younger sister, and the damage to an apartment inflicted by his wife's family. However, he has not acted responsibly. He has been gainfully employed since June 2022. His personal financial statement reflects a reasonable net remainder after he pays all his financial obligations. Nevertheless, with the exception of the creditor alleged in SOR ¶¶ 1.a and 1.e, he submitted no evidence of contacts with his creditors or other attempts to resolve the debts.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling.

AG ¶ 20(d) is established for the debts alleged in SOR ¶ 1.a and 1.e, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

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). 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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

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