



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 22-02208
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2024

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 (SCA) on March 14, 2022. On February 14, 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. The DCSA 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 March 13, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 8, 2023, and the case was assigned to me on November 10, 2023. On December 5, 2023, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on January 29, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until February 19, 2024, to enable him to submit documentary evidence. He timely submitted AX A through Q, which were admitted without objection. DOHA received the transcript (Tr.) on February 6, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the Guideline F allegations in SOR ¶¶ 1.a-1.e. He did not admit or deny the Guideline E allegation in SOR ¶ 2.a. The Guideline E allegation was withdrawn at the beginning of the hearing. (Tr. 9) His admissions are incorporated in my findings of fact.

Applicant is a 51-year-old aircraft mechanic employed by a defense contractor since May 2014. He received a security clearance in November 1990. He served on active duty in the U.S. Navy from March 1991 to April 2011, when he retired. He attended college from August 2011 to August 2014 but did not receive a degree. He married in November 2007 and has four children, ages 29, 26, 16, and 12. (Tr. 14) He was unemployed from April 2011 until he was hired by his current employer.

In 2016, Applicant's wife moved out of the family home and lived with her ailing father until he passed away in 2020. During their separation, and while maintaining separate residences, Applicant and his wife accumulated the delinquent debts alleged in the SOR. He admitted that the debts were due to financial mismanagement and buying too many things that he would not afford. (Tr. 34)

In response to DCSA interrogatories in September 2022, Applicant provided a personal financial statement reflecting total family income of \$6,146; monthly expenses of \$1,654; and monthly debt payments of \$2,444; leaving a net monthly remainder of about \$2,048. (GX 5 at 9)

At the hearing, Applicant testified that he had about \$42,000 in his savings account. His wife has a separate savings account, and Applicant did not know how much she had in her account. (Tr. 19-20) After the hearing, he submitted evidence that he had \$47,000 in his retirement account, which was distributed on April 17, 2023. After taxes, the net distribution was \$30,052. (AX Q)

The SOR alleges five delinquent debts reflected in credit reports from May 2023 (GX 3) and March 2022 (GX 4). The evidence concerning these debts is summarized below.

SOR ¶ 1.a and 1.b, two credit-card accounts from the same bank, charged off for \$15,198 and \$10,669. At the hearing, Applicant testified that he had taken no action to resolve these debts, but that he intended to start making payments in February

2024. (Tr. 39) After the hearing, he submitted evidence of four payments to this creditor on January 30, 2024, in the amounts of \$1,733 (AX M); \$9,000 (AX N); \$9,000 (AX O); and \$5,611 (AX P) Both debts have been resolved.

SOR ¶ 1.c, credit-card account charged off for \$9,172. Applicant testified that he stopped making payments on this account in 2016 or 2017, a default judgment was entered against him, and his wages were garnished. (Tr. 35-37) The debt was resolved by the garnishment. (FORM Item 3 at 8)

SOR ¶¶ 1.d and 1.e, two credit-card accounts from the same bank, charged off for \$4,542 and \$3,736. Applicant testified that he opened both accounts to build up his credit. The May 2023 credit report reflects that one account was opened in August 2014 and the other was opened in March 2015. They were both charged off in March 2018. (GX 3 at 7) He testified that that he settled both debts for less than the full amount on January 15, 2024. (Tr. 22) After the hearing, he submitted documentation to support his testimony. (AX G, H, J, and K).

In Applicant's post-hearing submission, he presented evidence that he had settled two debts not alleged in the SOR. A judgment for one debt was entered against him in December 2019 and satisfied in October 2023 (AX L). A second credit-card debt was resolved through a payment plan in March 2023. (AX I)

Applicant testified that he has not sought or received financial counseling. When asked why had not sought counseling, he responded, "I guess I'm a little stubborn and I don't like to have help." (Tr. 45) When asked if he had made any recent large purchases, he testified that he bought a car for his daughter on her 16th birthday. He paid \$22,000 for the car and is making monthly payments of about \$317. (Tr. 49)

Applicant's wife, a retired chief petty officer, submitted a statement on his behalf. She stated that he "will do anything in his power to make sure we are supported, loved, and have everything we need for daily living." She corroborated his testimony about the economic impact of their separation in 2016 and described his efforts to resolve his debts, including working extra shifts and withdrawing funds from his retirement account. (AX A)

A site manager, operations manager, a maintenance master chief petty officer, and a coworker submitted letters attesting to Applicant's integrity, trustworthiness, and dependability. (AX C, D, E, and F) A friend who has known him for 26 years describes him as "a person of utmost integrity, displaying an unwavering commitment to honesty and truthfulness in all aspects of life." (AX B)

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(b): unwillingness to satisfy debts regardless of the ability to do;

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

AG ¶ 19(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

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) is not established. Applicant's debts are numerous and recent. The family separation was a circumstance that is not likely to recur, but Applicant admitted that the delinquent debts were due to excessive spending and financial mismanagement.

AG ¶ 20(b) is not established. The family separation due to the illness and death of Applicant's father-in-law was largely beyond his control, but he admitted that the delinquent debts accumulated during the family separation were largely due to excessive spending and financial mismanagement.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling. However, the debts alleged in the SOR are resolved.

AG ¶ 20(d) is not established. At the hearing, Applicant promised to start making payments on the debts in SOR ¶¶ 1.a and 2.b in February 2024, and he testified that the debts alleged in SOR ¶¶ 1.d and 1.e had been settled, but he submitted no documentary evidence to support his testimony. After the hearing, he submitted evidence that all four debts were resolved in January 2024. The debt alleged in SOR ¶ 1.c was resolved by garnishment of his wages. However, payment by involuntary garnishment is not a good-faith resolution of a debt. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). Applicant took no significant action to resolve the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e until he realized that his security clearance was in jeopardy. Payment of debts under the pressure of avoiding revocation of a security clearance does not constitute a "good-faith effort." An applicant who waits until his or her 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).

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). I have considered Applicant's military service and the favorable comments from his coworkers. 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.e:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicants eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge