



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-02043
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2024

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 May 3, 2021. On September 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 in an undated document and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on October 2, 2023. On October 4, 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 13, 2023, and did not respond. The case was assigned to me on January 31, 2024.

Evidentiary Issue

FORM Item 1 contains the SOR and Applicant's response. FORM Items 2 through 8 are the evidence submitted by Department Counsel. FORM Item 3 contains summaries of enhanced subject interviews (PSIs) conducted in July and November 2021. The summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions, or updates; or object to consideration of the summaries on the ground that they were not authenticated. I conclude that he waived any objections to the summaries 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). FORM Items 2 through 8 are admitted in evidence.

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 42 years old. He attended a community college from August 2010 to May 2011, but he did not receive a degree. He married in July 2017, and has two children, ages 9 and 4, and a 17-year-old stepchild.

Applicant was employed as a restaurant manager from November 2009 to March 2020, when he was laid off due to the COVID-19 pandemic. He has never held a security clearance. The record reflects that he has remained unemployed since March 2020 and that he is sponsored for a clearance by a federal contractor.

Applicant responded to interrogatories in September 2022.¹ In his response he stated that he and his spouse had agreed that he would stay home with their children during the COVID-19 pandemic. Their agreement apparently followed his involuntary lay-off in March 2020. He indicated that he had remained unemployed for three years pursuant to that agreement. He admitted that, during his unemployment, he was living beyond his means and was financially irresponsible. (FORM Item 4 at 6-7)

¹ The FORM does not identify who sent the interrogatories or the addressee for responses. Based on the format and content, I have concluded that the interrogatories were from either the DCSA CAS or DOHA, and the responses were sent to one of those agencies. Applicant has not challenged the authenticity of the documents.

The SOR alleges four delinquent consumer debts (SOR ¶¶ 1.a, 1.b, 1.c, and 1.d) and failure to pay state taxes for tax years 2018, 2019, and 2021 (SOR ¶¶ 1.e, 1.f, and 1.g.) The consumer debts are reflected in credit reports from June 2021 (FORM Item 6), March 2022 (FORM Item 7), and October 2023 (FORM Item 8). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: vehicle loan opened in November 2014 and charged off in March 2019 for \$2,761. The creditor obtained a judgment against Applicant in February 2020 for the amount charged off. (FORM Item 5) The judgment is unsatisfied.

SOR ¶ 1.b: deficiency of \$11,119 after a vehicle repossession and sale. The repossession was in June 2019. The debt is not resolved.

SOR ¶ 1.c: credit-card account charged off in May 2021 for \$797. The debt is not resolved.

SOR ¶ 1.d: credit-card account placed for collection in May 2021 for \$467. This debt is not resolved.

SOR ¶¶ 1.e, 1.f, and 1.g: unpaid state taxes for \$318 for 2018; \$1,490 for 2019; and \$278 for 2021. Applicant timely filed his state tax returns for 2018, 2019, and 2021, which reflected taxes due in the amounts alleged in the SOR. (FORM Item 4 at 103, 113, 120) His 2020 state tax return reflected a refund of \$949. (FORM Item 4 at 92) The record does not reflect whether the 2020 refund was applied to the unpaid taxes for 2018 or 2019.

In Applicant's answer to the SOR, he stated that the debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d will be paid once he returns to the workforce, and the tax debts in SOR ¶¶ 1.e, 1.f, and 1.g will be paid through payment arrangements after he returns to work. He submitted no evidence of financial counseling and no evidence of contacts with creditors, payments, or payment plans. He has not disputed any of the debts alleged in the SOR.

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. *Egan* 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. 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. 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* 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the record evidence 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;

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; 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 under this guideline 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(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 debts are numerous and recent. The record evidence does not establish circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's lay-off in March 2020 was a condition largely beyond his control, but his continued unemployment after that date was a voluntary decision. The vehicle loan alleged in SOR ¶ 1.a was charged off in March 2019, the vehicle repossession was in June 2019, and the unpaid state taxes included tax year 2018. All these delinquencies preceded his involuntary lay-off in March 2020. Furthermore, he did not act responsibly. He admitted that he incurred excessive debts because of financial mismanagement instead of adjusting his spending to his reduced income.

AG ¶¶ 20(d) and 20(g) are not established. Applicant has promised to resolve all the debts when he returns to the workforce. However, a promise to pay debts in the future is not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

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. 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.f: Against 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