



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



In the matter of:)
)
) ISCR Case No. 22-02405
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2024

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in March 2022. On December 22, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under 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 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant requested a hearing before an administrative judge in an undated answer to the SOR (Answer). On October 23, 2023, the Defense Office of Hearings and

Appeals (DOHA) issued a notice scheduling the hearing via video teleconference. I convened the hearing as scheduled on November 15, 2023. The Government's exhibit list and pre-hearing disclosure letter, and DoD SAFE confirmation of drop-off dated November 9, 2023, are marked as Hearing Exhibits (HE) I through III. Department Counsel offered four exhibits marked as Government Exhibits (GE) 1 through 4. GE 1 through 4 were admitted into evidence without objection. Applicant testified but offered no documentary evidence. I held the record open until November 30, 2023, to permit Applicant to submit documentary evidence, which he did not do. DOHA received the hearing transcript (Tr.) on November 27, 2023.

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 46-year-old information technology (IT) system administrator employed by a defense contractor since November 2022. He served in the U.S. Navy from 1997 until October 2006, and was honorably discharged. He has been employed continuously in IT positions since October 2006. He worked for federal contractors from October 2006 to October 2007 and from October 2015 to present. He was a federal civilian employee from October 2007 to October 2015. He has held a security clearance, without any reported security incidents, since at least 2008. (GE 1 at 12-24; Tr. 12-13, 24-38)

Applicant attended college from August 2004 to July 2011 and earned a bachelor's degree. He took classes online from May 2012 to February 2013 and from January 2015 to January 2016, and earned various certificates. He was married in January 1996, and divorced in October 2018. He has four children, ages 23, 20, 18, and 14 from his first marriage. He remarried in October 2019 and has one child, age 3, and one stepchild, age 10, from his current marriage. (GE 1; Tr. 24-28)

Applicant earned about \$72,000 per year from July 2013 to October 2015. His annual income increased to about \$120,000 when he worked as a contractor in State B from October 2015 to September 2016. He earned about \$200,000 per year as a contractor in Country A from September 2016 to January 2018. He returned to State B in January 2018 because of marital difficulties and to take care of his children. He earned an annual salary of about \$125,000 from January 2018 to January 2019. He earned from \$130,000 to \$185,000 per year as a contractor in Country B from January 2019 until April 2022. He has earned about \$130,000 per year as a contractor in State D since. (Tr. 29-37; GE 1 at 12-21) He received credit counseling. (Tr. 62-63)

The SOR alleges 22 delinquent debts totaling approximately \$141,272. Applicant attributes his financial problems to family relocation costs, his former spouse's debt, marital debt, underemployment after returning to the United States to care for his children,

separation and divorce, financial support to his second spouse, child support costs, and mistakes. (Tr. 22-35, 57-59)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: apartment debt placed for collection of \$19,906. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show the debt was assigned in January 2022 and placed for collection of \$19,906. He testified the debt was for early termination of his apartment lease, which he disputed, and said he requested an itemized receipt for the charges but was not provided one. He said he tried to contact the creditor but has been unable to determine who currently owns the debt. He said there “was kind of a verbal agreement and also [he] thought [he] had a written agreement [that specified a \$4,200 cost for breaking the lease early].” (Tr. 50-51) He said the creditor denied his \$4,200 offer to resolve the debt. He has no documentation of the offer and has not paid or challenged the debt. (GE 2 at 2, GE 3 at 2; Tr. 34-35, 49-51, 86)

SOR ¶ 1.b: credit account placed for collection of \$15,416. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show the debt was assigned for collection in January 2020, with last activity in August 2018, and as placed for collection of \$15,416. Applicant testified he used this loan to help his former spouse start her new life and for moving expenses. He has made no payments on this account. (GE 2 at 3, GE 3 at 12; Tr. 51-53)

SOR ¶¶ 1.c, 1.e, 1.h-1.k, 1.o and 1.r: student loans placed for collection totaling about \$59,200. Applicant admitted each allegation. (Answer) A May 2022 credit report shows the student loans were opened or assigned from September 2008 through February 2013, past due in the amounts alleged in the SOR, and assigned to the government for collection. (GE 2 at 3-6) Applicant testified as follows. He obtained student loans from August 2004 to February 2013 and has not made a voluntary payment on his student loan debt since at least 2015. The IRS withheld two of his federal income tax refunds and applied at least \$6,000 towards his student loan debt. He applied for student loan forgiveness recently and said he would try to locate and forward his application. He provided no documentary evidence of payments on his student loans or of an application for student loan forgiveness. (Tr. 39-42, 80-83, 96-103)

SOR ¶ 1.d: credit account placed for collection of \$11,177. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show the debt was assigned for collection in February 2019, and placed for collection of \$11,177. Applicant testified he used this loan to help his former spouse start her new life and for moving expenses. He has made no payments on this account. (GE 2 at 3, GE 3 at 2; Tr. 52-53, 88-89)

SOR ¶ 1.f: loan charged off for \$10,129. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show the loan account was opened in February 2018, with the last payment in March 2018, and charged off for

\$10,129. Applicant testified he used this loan to help his former spouse start her new life and for moving expenses. He has made no payments on this account. (GE 2 at 4, GE 3 at 6; Tr. 51-53, 88-89)

SOR ¶ 1.g: vehicle loan charged off for \$8,137. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show this vehicle loan account was opened in February 2018 and charged off for \$8,137. Applicant testified he had made all loan payments and wanted to sell the vehicle but was unable to travel to State B to do so. He said he contacted the creditor to discuss the loan and understood the debt would be cleared if the vehicle was voluntarily repossessed because of his previous payments. He missed four payments, told the creditor where the vehicle was, and the vehicle was repossessed in December 2020. He first learned the debt was being reported as delinquent during a June 2022 background interview. He has not contacted the creditor about the delinquent debt. (GE 2 at 4, GE 3 at 10; Tr. 53-55)

SOR ¶ 1.i: credit account charged off for \$4,874. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show this individual credit card account was opened in November 2008, with a last payment date of October 2018, and charged off for \$4,874. Applicant thought he had paid this debt but provided no documentary evidence of payment. (GE 2 at 4, GE 3 at 5; Tr. 55-59, 87-88)

SOR ¶¶ 1.m, 1.q, 1.s: credit accounts placed for collection of \$4,296, \$1,398, and \$608. Applicant admitted the allegations. (Answer) Credit reports from May 2022 and November 2023 show these individual credit accounts were opened or assigned from December 2018 to July 2021, and placed for collection in the amounts alleged. Applicant testified he obtained the credit to assist his former wife and said he had made payments on some accounts but did not claim he had made payments on the debts alleged in SOR ¶¶ 1.m and 1.q. He said he had paid the debt listed in SOR ¶ 1.s. He provided no evidence of payment on any of these accounts. (GE 2 at 6, 7, GE 3 at 2, 6, 11; Tr. 57-59, 84-85)

SOR ¶ 1.n: credit account past due in the approximate amount of \$4,266. Applicant admitted the allegation. (Answer) Credit reports from May 2022 and November 2023 show this credit account was opened or assigned in January 2018; that the first payment was never received; that the account was charged off; and has a balance of \$4,226. Applicant testified he obtained credit to assist his former spouse and that he had made payments on some accounts but did not claim he had made a payment on this account or provide evidence of any payments. (GE 2 at 6, GE 3 at 6; Tr. 57-59)

SOR ¶¶ 1.p, 1.t: credit card accounts charged off for \$2,482 and \$602. Applicant admitted the allegations. (Answer) Credit reports from May 2022 and November 2023 show these individual credit card accounts were opened or assigned in February 2018, that last payments were made in March 2019 and September 2018, and that the accounts were charged off for \$2,482 and \$602, respectively. Applicant testified he obtained the credit cards to assist his former wife and said he had made payments on

some delinquent accounts. He did not claim he had made payments on these accounts or provide evidence of any payments. (GE 2 at 7-8, GE 3 at 9-10; Tr. 57-59)

SOR ¶¶ 1.u-1.v: delinquent taxes to State C of \$2,600 for tax year (TY) 2019, and delinquent taxes to State B of \$2,400 for tax year TY 2018. Applicant admitted the allegations. (Answer) He said, “I believe I still owe some tax there [State B].” (Tr. 60) He testified that State C had applied a subsequent income tax refund to his delinquent taxes but that he still owed State C about \$1,800. (GE 2 at 7-8, GE 3 at 9-10; Tr. 59-62)

During the hearing Applicant was informed of the importance of providing documentary evidence of debt payments, contact with creditors, and efforts to address or resolve his delinquent debts. (Tr. 8, 85-89) As noted above, no post-hearing documents were received.

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).

The evidence establishes three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial

obligations”), and AG ¶ 19(f) (failure to pay annual Federal, state, or local income tax as required”).

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;

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(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), 20(d), and 20(g) are not established. Applicant’s delinquent debts and taxes are ongoing, and not incurred under circumstances making recurrence unlikely. He has not initiated a good-faith effort to repay or otherwise resolve his debts or taxes. His behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant’s former spouse’s debt, marital debt, divorce, and underemployment were largely beyond his control. However, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶¶ 20(c) is not fully established. Although Applicant has received financial counseling his financial problems are not being resolved or under control.

AG ¶ 20(e) is not established. Applicant has not provided evidence to substantiate the basis of any disputed debt or provided evidence of actions to resolve the issue.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The 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 considered Applicant's age, education, military service, and employment history, and that his financial problems were caused, in part, by circumstances beyond his control. Although I found Applicant's testimony credible, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.v:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security

clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge