



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



In the matter of:)	
)	
)	ISCR Case No. 23-01220
)	
Applicant for Security Clearance)	

Appearances

For Government: A.H. Henderson, Esq., Department Counsel
For Applicant: *Pro Se*

03/22/2024

Decision

HOGAN, Erin 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 September 9, 2021. On July 17, 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 CAS acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 5, 2023, and requested a decision based on the written record in lieu of a hearing. On November 22, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 5. He was given an opportunity to submit a documentary response setting forth objections, rebuttal,

extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on December 13, 2023. He was given 30 days to submit a Response to the FORM. He did not submit a response. The case was forwarded to the DOHA Hearing Office on January 24, 2024, and assigned to me on March 14, 2024.

Evidentiary Matters

Item 1 contains the pleadings in the case and is part of the record. Items 2 through 5 are admitted into evidence.

Findings of Fact

Applicant, age 42, is an employee of a DOD contractor since March 2023 who is seeking a security clearance. He served on active duty in the United States Air Force from March 2003 to April 2018. He separated with an honorable discharge. He has a high school diploma and some college credit. He is married and has two children. (Item 2)

Applicant submitted a security clearance application (SCA) on September 9, 2021. (Item 2) A subsequent background investigation revealed the Applicant had seven delinquent accounts, an approximate total of \$82,000. The SOR debts include: a \$5,381 collection account placed for collection (SOR ¶ 1.a: Item 4 at 2; Item 5 at 4); a \$60,567 delinquent account owed to the Defense Finance Accounting Service (DFAS) that was placed for collection (SOR ¶ 1.b: Item 4 at 5; Item 5 at 9); and a \$12,349 delinquent account placed for collection (SOR ¶ 1.c: Item 4 at 2; Item 5 at 4; Item 6 at 6).

Additional delinquent debts include: a \$1,817 delinquent cell phone account placed for collection (SOR ¶ 1.d: Item 4 at 3); a \$1,296 delinquent account placed for collection (SOR ¶ 1.e: Item 4 at 3; Item 5 at 3); a \$1,294 delinquent account placed for collection (SOR ¶ 1.f: Item 4 at 3; Item 5 at 3); and a \$240 delinquent cable television account that was placed for collection. (SOR ¶ 1.g: Item 4 at 3)

In his response to the SOR, Applicant admits all the SOR allegations. The largest debt is the \$60,567 debt owed to DFAS. (SOR ¶ b) When Applicant separated from active duty, DFAS overpaid him. He was notified months later that he owed this amount for the overpayment. He indicated that attempts to settle or close the account will begin on January 1, 2024. He also mentioned that he will begin to settle or resolve the debts alleged in SOR ¶¶ 1.a and 1.c starting in January 2024. He did not provide any updates on his attempt to settle these debts. (Item 1, Response to SOR)

Applicant mentioned that he will make arrangements to settle or close the debts alleged in SOR ¶¶ 1.d-1.f as soon as possible. The debt alleged in SOR ¶ 1.g is related to his failure to return a modem when he cancelled a cable television account. He mentioned he will return the modem to the cable company as soon as it is found. (Item 1, Response to SOR)

Applicant mentioned that he fell behind on his debt during his transition from the military to the civilian world. His wife was also unemployed. He did not provide updates on any of the accounts alleged in the SOR.

Upon his separation from active duty, Applicant was unemployed from April 2018 to August 2018. (Item 2 at 2) He got behind on his financial obligations during this time. He mentioned in his response to the SOR that his wife had a period of unemployment. He did not indicate when she was unemployed and the length of time that she was unemployed.

During his January 2023 background investigation interview, Applicant mentioned that he and his wife have a combined monthly income of \$5,900. Their monthly expenses are \$3,000 a month. They have \$2,900 left over each month after expenses. (Item 2 at 5)

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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*, 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. 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*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. 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.

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).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's delinquent debts alleged in SOR ¶¶ 1.a – 1.g. The total approximate balance of the delinquent debt is over \$82,000.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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 in 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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(b) applies, in part. Applicant and his wife both had periods of unemployment, which was a circumstance beyond his control. However, the mitigating condition is given less weight because I cannot conclude he acted responsibly under the circumstances since he failed to show any attempt to resolve his delinquent debts.

None of the other mitigating conditions apply because Applicant's financial problems are ongoing. He failed to initiate a good-faith effort to resolve his debts. He has not attended financial counseling. Overall, he failed to meet his burden of proof to mitigate the concerns raised under Financial Considerations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). I considered Applicant's honorable military service. However, he failed to show that he made any attempts to resolve his delinquent accounts. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised under financial considerations.

Formal Findings

Formal findings 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.g:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

Erin C. Hogan
Administrative Judge