



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



In the matter of:)
)
) ISCR Case No. 23-00071
)
Applicant for Security Clearance)

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel &
Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/28/2024

Decision

HALE, Charles 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 on June 8, 2022. On March 29, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; 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 original SOR on April 17, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 15,

2023, and the case was assigned to me on January 3, 2024. On January 24, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 21, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and offered Applicant Exhibit (AE) A, which was admitted without objection. I received the transcript (Tr.) on February 29, 2024. I kept the record open after the hearing to enable Applicant to submit documentary evidence. No additional evidence was received. The record closed on March 6, 2024.

Findings of Fact

In Applicant's Answer to the SOR, he admitted to the allegations under Guideline F. His admissions are incorporated into the findings of fact.

Applicant is a 50-year-old contractor. He has worked for a federal department as a contractor, initially with one company from 2008 until 2022. He has been in his current position since June 2022. Since his interim security clearance was revoked in 2023, he has been denied access to his worksite.

Applicant was married to his first spouse for almost four years, 2004 until 2008. He married his second spouse in June 2008, and they divorced in May 2018. He married his current spouse in July 2018. His third spouse works but was unable to work for a year because of medical reasons. (Tr. 39, 75.) He has two adult children from his second marriage and a stepchild who currently resides with him. (GE 1; Tr. at 40.) During his first marriage he purchased his home from a family member in approximately 2002 that is the subject of the SOR allegations. (Tr. at 48.)

Guideline F

SOR ¶ 1.b: Filed for Chapter 13 Bankruptcy in about March 2010 claiming approximately \$340,218 in outstanding liabilities, which was discharged in May 2013. Applicant admitted this allegation. He explained in his Answer he took on his second spouse's debt when they got married. He disputed the \$340,218 figure because it included his mortgage debt, which was not part of the bankruptcy. He only included his non-mortgage debt of approximately \$65,000 in the bankruptcy, which he resolved through the bankruptcy within four years. The bankruptcy documents show a track record of debt repayment and compliance with the legal terms of the Chapter 13 bankruptcy. Both Applicant and his second spouse were listed in the bankruptcy petition. (GE 2; GE 3.)

SOR ¶ 1.a: past-due home equity loan placed for collection for \$91,487. Applicant admitted responsibility for this debt. (Tr. at 33; GE 5 at 2.) The debt was for a home equity loan to make improvements on his home and to settle some credit-card debts. (GE 3 at 26; Tr. at 27-28, 53-55.) The debt was not asserted as claim in the bankruptcy and the Trustee's Final Report and Account reflects there was no principal paid or interest paid. (GE 4 at 2; Tr. at 28, 29.) He stated the reason for the account

becoming delinquent was his belief that this debt was handled through his divorce. He testified his second spouse had verbally agreed to pay this debt. She was supposed to send the monthly payments directly to the lender. (Tr. at 54.) Their divorce decree did not address marital debts. (Tr. at 54.) He had been making payments until his 2018 divorce. (Tr. at 54.) He states the billing statements had stopped and that the lender had listed this debt as being part of his Chapter 13 bankruptcy. (Tr. at 54; AE A.) He notes in his testimony and in his Answer that the debt did not appear in the credit report he reviewed and that he never received notification from the lender that the account was not being paid. (Answer; Tr. at 28, 32, 78.)

Applicant testified the lender would not work with him to set up any type of automatic payment plan because it wanted payment in full. (Tr. at 29, 78-79.) He has been trying to refinance his home mortgage so he can consolidate his home mortgage payment and the delinquent account together. (Tr. at 37, 60.) He developed this refinancing plan after the SOR was issued. (Tr. 61.) His first attempt at executing this plan was denied because his credit score was too low. He thought it would be several months before he could raise his credit score to meet the lender's requirements. (Tr. at 37-38.)

Applicant testified he had been paying debts not alleged in the SOR with funds he obtained from cashing out a retirement account. (Tr. at 43, 68, 70.) His only credit-card account is current, with a \$13,000 balance and \$300 monthly payment. He states he does not use this credit card anymore and instead relies on a debit card. (Tr. at 41, 62, 64; GE 6 at 5; AE A.)

Applicant's explanation was not credible for why he believed his former spouse would assume the home equity debt when 1) it was not addressed in their divorce; 2) the loan related to a home he owned prior to their marriage; and 3) the address the creditor associated the debt with was still his. He initially testified he did not know debt was not resolved in the bankruptcy until the security clearance process had been initiated. (Tr. at 29-30; GE 4 at 2.) He stated he and his former spouse "had a verbal that [it] was going to be taken care of along with, you know, the term equity deal, but, of course, I have no legal documentation that states that." (Tr. at 47, 53, 55.) He stopped making payments when he was not getting statements from the lender anymore. (Tr. at 35.) He stated "...the billing statements stopped coming, and I had said previously that it was my ignorance for not following up with them and saying, hey, why am I not getting statements anymore, so my home equity was current until 2017, 2018. 2017, I think, is the correct year." (Tr. at 54.) He did not make any change to the billing address even though his former spouse no longer lived with him. (Tr. at 55.)

Applicant testified that, after doing some research on the security clearance "criteria," he identified that he needed to come in with "minimal debt as possible." (Tr. at 68, 69.) In order to meet the requirements for a security clearance, he resolved a number of debts by cashing out a retirement account and has been paying down his other debts with on time payments. (Tr. at 43, 68-70.) A January 2024 credit report shows two discrepancies, a \$70 debt in collection and a closed mortgage, which lists "At least 120 days or more than four payments past due." (GE 6 at 1, 8; Tr. at 49.) In his July 2022

security clearance interview stated he had paid the \$70 debt via phone (GE 7 at 2.) He fell behind on his mortgage during COVID and exercised a forbearance provision to bring his mortgage current. (GE 6 at 5; GE 7 at 1-2; Tr. 49-50.) Citing his credit report, he notes he does not live beyond his means. (Answer.)

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

Applicant had debts discharged in bankruptcy in 2010 and he is past due on a home equity loan. His admissions and the documentary evidence establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations.)

The following mitigating conditions under AG ¶ 20 are relevant:

- (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; and

(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 for SOR ¶ 1.a. Applicant blames his former spouse for not adhering to a verbal agreement made during their divorce to make the payments on this debt, a home equity loan in his name, for a home that he kept after the divorce, and listed under his current address. This is not credible. He has not been making payments on this debt since the divorce. His behavior is recent and ongoing, which raises serious concerns about his judgment and reliability. He failed to address his financial issues until he recognized the security clearance process required him to be in good financial health. This is not a good-faith effort to resolve his debts. AG ¶ 20(a) is established for SOR ¶ 1.b. Applicant complied with the terms of his Chapter 13 bankruptcy to resolve pre-SOR debts totaling approximately \$65,000.

AG ¶ 20(b) is partially established. Applicant did experience a divorce and his third spouse was unable to work for a year because of medical reasons. He began addressing his debts in anticipation of the security clearance application process. He offered he acted responsibly under the circumstances by attempting a plan, which was unsuccessful because of his low credit score. His stated reliance on a verbal statement by his former spouse, to continue to make payments after their 2018 divorce, is not supported by any additional evidence. He admitted he did not track the debt, which was listed under his address, to ensure the payments were being made. AG ¶ 20(b) requires that “the individual acted responsibly under the circumstances.” His intention to resolve the financial problem when his credit score improves is not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

AG ¶ 20(b) is established for SOR ¶ 1.b. He established a track record of debt repayment and a responsible approach for this legal obligation under the terms of the Chapter 13 bankruptcy.

AG ¶ 20(d) is not established for SOR ¶ 1.a. There is insufficient evidence that Applicant has initiated and is adhering to a good-faith effort to repay or otherwise resolve the delinquent status of his home equity loan. He listed the home equity loan in his bankruptcy and admitted that he stopped making payments in about 2017 or 2018 because he believed his former spouse had agreed to make the payments as part of their divorce. The Directive does not define the term “good faith.” Good faith “requires a showing that a person acted in a way that shows reasonableness, prudence honesty, and adherence to duty or obligation.” See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

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.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns about his financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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.

Charles C. Hale
Administrative Judge