



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



In the matter of:)
)
) ISCR Case No. 22-01178
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

04/09/2024

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 August 20, 2020. On December 9, 2022, 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).

Department Counsel was ready to proceed on August 29, 2023. Applicant answered the SOR on November 27, 2023, and requested a hearing before an

administrative judge. The case was assigned to me on February 1, 2024. On February 8, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on March 7, 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. He submitted Applicant's Exhibits (AX) A through N, which were admitted in evidence without objection. DOHA received the transcript (Tr.) on March 18, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.e and denied the allegations in SOR ¶¶ 1.f through 1.i. His admissions are incorporated in my findings of fact.

Applicant is a 34-year-old senior network engineer employed by a defense contractor. He served on active duty in the U.S. Air Force from June 2008 to June 2015 and received an honorable discharge.(AX H) He has lived with a cohabitant and his cohabitant's daughter for about ten years. (Tr. 22)

In October 2016, Applicant was hired by a state government agency as an acquisition specialist. He was laid off in April 2018 due to restructuring of his position. While laid off, he worked as a ride-share driver. He was hired in June 2019 as a telecon engineer for a defense contractor. He began working for his current employer in 2022. He holds an active clearance. (AX K)

Applicant testified that when he was laid off, he contacted his creditors to ask for a forbearance on his payments for a couple of months. However, they were unwilling to do so. He did not take any further action or seek any credit counseling at that time. (Tr. 30-31)

When Applicant submitted his SCA in August 2020, he disclosed three of the debts alleged in the SOR. A security investigator questioned him about his debts in October 2020. He did not seek credit counseling or contact any of his creditors until he received the SOR in December 2022.(Tr. 35-36)

The SOR alleges nine delinquent debts reflected in credit reports from September 2020 (GX 3), January 2022 (GX 4), and March 2023 (GX 5). Applicant testified that most of the debts alleged in the SOR were incurred after he was laid off in April 2018. (Tr. 20) On January 23, 2023, Applicant hired a credit-counseling service that assisted him in devising a debt management program (DMP) to resolve the debts alleged in SOR ¶¶ 1.a through 1.e. However, he subsequently decided not to implement the DMP. Instead, he decided to save money until he can offer lump-sum settlements for these five debts. He testified that he has already saved about \$10,000 at a rate of \$750 per month. (Tr. 26) As of the date the record closed, he had not made any offers to settle these debts.

One creditor is alleged for both SOR ¶¶ 1.a and 1.b and another creditor is alleged for both SOR ¶¶ 1.c and 1.d. Applicant testified that he is concerned that if he settles one debt with a creditor, he will lose leverage to negotiate a favorable settlement of the second debt held by that same creditor. (Tr. 38-39)

The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: unsecured loan charged off in December 2021 for \$21,252. The DMP provided for monthly payments of \$355 for 60 months, to be completed by February 2028 (AX F; AX N) This debt is not resolved.

SOR ¶ 1.b: credit-card account charged off in January 2022 for \$12,543. The DMP provided for monthly payments of \$210 for 60 months, to be completed by February 2028. The debt is not resolved.

SOR ¶ 1.c: credit-card account charged off in October 2021 for \$5,541. The DMP provided for monthly payments of \$92.50 for 60 months, to be completed in February 2028. The debt is not resolved.

SOR ¶ 1.d: credit union account charged off in September 2021 for \$5,330. The DMP provide for payments of \$90 for 60 months, to be completed in February 2028. The debt is not resolved.

SOR ¶ 1.e: auto loan charged off in December 2021 for \$1,250. The DMP provided for payments of \$250 for five months, to be completed in July 2023. The debt is not resolved.

SOR ¶ 1.f: telecommunications account placed for collection of \$1,035 in December 2021. Applicant settled this debt for \$517 on January 23, 2023. (AX B)

SOR ¶ 1.g: telecommunications account placed for collection of \$591 in January 2022. Applicant paid this debt in full on January 20, 2023. (AX C)

SOR ¶ 1.h: credit-card account placed for collection of \$393 in January 2022. Applicant settled this debt by making a payment in an unspecified amount for less than the full balance on January 20, 2023 (AX D)

SOR ¶ 1.i: telecommunications account placed for collection of \$239 in December 2021. Applicant settled this debt on January 24, 2023 (AX E)

Applicant submitted an undated personal financial statement (PFS), which reflected that his net monthly salary is \$88,000 and his cohabitant's monthly salary is \$50,000. Their total monthly expenses are about \$4,500, leaving a net monthly remainder of about \$6,900. The PFS reflected monthly payments totaling about \$1,560 for the DMP, but they decided not to implement it. (AX F)

At the hearing, Applicant submitted his work evaluation reports for December 2011 to December 2013, which rated him as “above average” on a five-category scale. His rating was one step below a top rating of “truly among the best.” (AX I) He also submitted evidence of numerous certificates recognizing his performance and technical training. (AX J) A coworker submitted a letter attesting to Applicant’s integrity and devotion to his coworkers. The coworker was impressed when Applicant recently initiated a group event where he shared what he has learned about financial management. (AX G)

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." 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).

The evidence establishes 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 so;
and

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

The following mitigating conditions 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(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 delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's unemployment was a condition largely beyond his control. At first, he acted responsibly by contacting his creditors. However, when they refused his requests for forbearance, he took no further action until he received the SOR. His timing indicates that he took no further action until he realized that his security clearance was in jeopardy. An applicant who waits until his 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).

AG ¶ 20(c) is not established. Applicant received financial counseling but chose not to implement the DMP. The record falls short of "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is not established. He submitted no evidence of recent efforts to resolve the debts in SOR ¶¶ 1.a through 1.e. At the hearing, he articulated a plan for resolving those debts, but his plan consists of a promise to save up money and then negotiate settlements at some time in the future. "Promises to pay or otherwise resolve delinquent debts in the future are 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). He did not resolve the debts alleged in SOR ¶¶ 1.f through 1.i until he received the SOR. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. 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). 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.i:

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