



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



In the matter of:)
)
) ISCR Case No. 22-02382
)
Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq.

04/08/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). The Guideline F concerns are mitigated, but the Guideline E concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on May 20, 2022. On March 29, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 on June 6, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 3, 2023, and 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 on March 6, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not submit the testimony of any other witnesses. He submitted Applicant's Exhibits (AX) A through I with his answer to the SOR, and they were admitted without objection. He submitted AX J through M at the hearing, and they also were admitted without objection. I kept the record open until March 17, 2024, to enable him to submit additional documentary evidence, but he did not submit any additional evidence. DOHA received the transcript (Tr.) on March 15, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 2.b, 2.c, and 2.d, with explanations. He denied SOR ¶¶ 1.b and 2.a. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old network systems administrator employed by a federal contractor since May 2022. He has never married and has no children. He received a bachelor's degree in December 2015. He has never held a security clearance.

Applicant was employed by a commercial bank from August to December 2014 and was terminated for repeated tardiness. He testified that he was a full-time college student during this period, and that he was often late for work because he was tired due to the demands of school and his job. (Tr. 37, 73)

Applicant was employed as a part-time leasing agent for a rental agency from August 2013 to May 2015. He worked for five hours each Saturday and Sunday. His job was to call potential clients, complete leasing applications that were not completed by the full-time employees, and respond to maintenance requests. (Tr. 34) He was terminated for not following the procedures for completing resident surveys. He testified that he was required to obtain input from residents and record it on a survey form. However, because he had "built relationships" with some of the residents, he knew their concerns and he filled out the surveys for them. He believed that his way of conducting the surveys was more efficient than the prescribed procedure. (Tr. 70-71) He testified that he believed he was terminated because of gender discrimination, because he was the only male in the office and was required to perform maintenance work that his female coworkers could not do, in addition to his duties as a leasing agent. (Tr. 72)

Applicant was employed at a call center for three credit unions from July 2015 to April 2017. He was fired for not meeting company goals and objectives. The company goal was to take 100 help calls per day, but he took only 70 to 80 calls because he believed more time was needed with some individual callers, and he could make his quota of calls only by being more abrupt than he thought was appropriate. (Tr. 89)

Applicant was unemployed from April to October 2017. He worked as a contract specialist for a non-federal consulting company from November 2017 to November 2019. He worked as an IT specialist at a help desk for a state-run medical system from November 2019 to January 2020. While working for the state-run medical system, he completed professional courses to qualify as a system administrator. (Tr. 20-21) He worked as a system administrator for a federal contractor from January 2020 to August 2021. His project manager described him as a reliable and dedicated employee, with a reputation for helping users resolve technical difficulties with care and respect. He was often commended for his personalized and thoughtful approach to sharing his knowledge and helping users resolve difficulties. (AX E)

Applicant worked as a system administrator for a non-federal employer from August 2021 until May 2022, when he was hired by his current employer. His current employer rated him as a “solid contributor” on a five-category scale for the partial year from May to December 2022. “Extraordinary contributor” is the highest rating, followed by “major contributor,” “solid contributor,” “minor contributor,” and “unsatisfactory.” (AX G)

Applicant’s annual performance review from the same employer for 2023 rated him as a “solid contributor.” His rater commented that he needed improvement in four categories: (1) Follow directions as given without deviating; (2) Use an in-house tool to document work with good notes; (3) Arrive on time to work and meetings; and (4) Better retain information and develop technical skills. Two coworkers submitted letters attesting to his technical proficiency, problem-solving skills, honesty, and sincerity. (AX L)

Between August 2015 and June 2018, Applicant gave “a good friend,” access to his PayPal account. He testified that the “good friend” asked him for access to his PayPal account so that he could transfer funds to his girlfriend. On cross-examination, Applicant admitted that he did not know his “friend’s” last name and did not know where he lived. (Tr. 44-45) He also admitted that he removed his own credit card account from PayPal to prevent his “friend” from using his credit card for transactions. (Tr. 52) His “friend” gave him about \$150-\$200 in exchange for his account information. His “friend” and his “friend’s” girlfriend used his account to steal money from credit-card and debit-card accounts of other PayPal users.

Applicant was notified by PayPal in June 2018 that someone was using his account without his knowledge. (AX D) When he learned that his “friend” had changed his password, he contacted PayPal, reinstated his password, and learned about the illegal activities. His “friend” stole between \$4,000 and \$5,000 from other PayPal users. Applicant’s younger brother was one of the victims of the PayPal fraud, losing about \$1,000. (Tr. 28, 61) Applicant did not notify law enforcement authorities about the compromise of his PayPal account. (Tr. 65) PayPal has not attempted to recoup any funds from Applicant. Applicant was not charged with any criminal conduct. He disclosed the PayPal fraud in his SCA. (GX 2; Tr. 29-30)

In May 2018, Applicant filed a petition for Chapter 7 bankruptcy. In his petition, he reported monthly income of \$2,625 and expenses of \$2,618. (GX 4 at 12) He testified that

before resorting to bankruptcy, he tried to obtain a debt consolidation loan and obtained additional credit cards to spread out his payments. (Tr. 40-41) In addition to several student loans, his debts were a car loan of \$15,770, and credit cards and collection accounts totaling \$10,021. One of the debts was for a bank overdraft of \$1,212. When he was interviewed by a security investigator in June 2022, he explained that he was the victim of a scam in which he was asked to cash a check and send the scammer the proceeds. The check was fraudulent, and Applicant's checking account was overdrawn to cover it. (GX 3 at 16) He did not report the scam to law enforcement authorities.

Applicant completed the debtor education course required by the bankruptcy court in July 2018. (AX A) He received a discharge in August 2018. (GX 4; AX B) He testified that he decided to file a petition for bankruptcy after a creditor threatened to garnish his wages. At the time, he was supporting his mother, a younger brother, and a younger sister. He consulted with a lawyer, who advised that bankruptcy was his best option. It took him about a year to save up enough money to hire the lawyer. All his debts except for the student loans were discharged. (Tr. 16-19)

Applicant's current annual pay is about \$100,000 per year. In addition, he works about 20 hours per week for a graphics company and earns \$40 per hour. (Tr. 75-76) A credit report dated March 21, 2023, reflected that he was current on all debt payments. (GX 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." *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

SOR ¶ 1.a alleges that Applicant filed a petition for Chapter 7 Bankruptcy in about May 2018 and received a discharge in about August 2018. SOR ¶ 1.b alleges that Applicant allowed two acquaintances to use his personal PayPal account to fraudulently steal money from other people’s credit and debit card accounts.

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. . . .

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 19(a): inability to satisfy debts;

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

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

AG ¶¶ 19(a) and 19(c) are established by Applicant's admissions and the records of the Chapter 7 bankruptcy.

AG ¶ 19(d) is not established. There is no evidence that Applicant was directly involved in the theft from credit-card holders through PayPal. However, he allowed another person to bypass the PayPal security system by giving his credentials to that person. He was suspicious of that person's request for Applicant's credentials, to the extent that he closed his own credit-card account so that the other person could not have access to it. However, the evidence falls short of showing that he was an accomplice in the PayPal fraud. His poor judgment in allowing another to have access to his account is more appropriately addressed in the discussion of Guideline E below.

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 established. The bankruptcy discharge was almost six years ago. Applicant is now financially stable and has a steady and substantial income. A recent credit report reflects that he is current on all his financial obligations.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment were major factors in his inability to pay his debts. However, his periods of unemployment were not largely beyond his control, but rather due to his failures to follow the rules established by his employers. His most recent performance evaluation reflects that he continues to deviate from established procedures and continues to have problems with tardiness.

AG ¶ 20(c) is established. Applicant completed the financial counseling required by the bankruptcy court, and his financial situation is under control.

AG ¶ 20(d) is not established. A Chapter 7 bankruptcy discharge is not a good-faith effort to resolve debts. See ISCR Case No. 11-08274 (App. Bd. May 2, 2013).

Guideline E, Personal Conduct

SOR ¶ 2.a cross-alleges the conduct in SOR ¶ 1.b (the PayPal fraud) under this guideline. SOR ¶¶ 2.c, 2.d, and 2.e allege three instances in which Applicant was terminated from employment.

The security concern under this guideline is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . ."

The following disqualifying condition under this guideline is established by the evidence:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . a pattern of dishonesty or rule violations.

The following mitigating conditions are potentially applicable:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Neither mitigating condition is established. Applicant's naïve facilitation of the PayPal fraud demonstrated a serious lack of good judgment. He did not learn from this experience. Instead, he fell for another scam and incurred a substantial debt when he deposited a worthless check in his bank account. His multiple periods of unemployment were due to his unwillingness to follow rules. His most recent performance appraisal for 2023 reflects that he continues to demonstrate a pattern of tardiness and failure to follow procedures.

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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was sincere and remorseful at the hearing, but he tended to make excuses for his conduct. His candor about the PayPal scheme was questionable when he first described the perpetrator of the scam as a "good friend," but he then admitted that he did not know his "friend's" last name or where he lived. He also admitted that he protected himself from this "friend" by removing his personal credit card from PayPal. His gullibility in facilitating the PayPal scheme, unwitting participation in a fraudulent check scheme, and his spotty employment record leave me with serious concerns about his judgment and his willingness to comply with rules and regulations. "Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing*

Dorfmont v. Brown, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991).

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial problems, but he has not mitigated the security concerns raised by his personal conduct.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2.d: 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