



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



In the matter of:)	
)	
)	ISCR Case No. 23-00654
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 10, 2022. On April 6, 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 SOR on May 5, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 27, 2023, and the case was assigned to me on January 3, 2024. On January 23, 2024, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 27, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant Exhibits (AE) A through L were admitted into evidence without objection. Applicant testified but did not present the testimony of any other witnesses. DOHA received the transcript (Tr.) on March 6, 2024.

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted a bank record and his military record in series of emails. I have consolidated these into two exhibits AE M (banking screenshot) and AE N (military records), which were admitted without objection. The record closed on March 12, 2024.

Findings of Fact

Applicant admits the debt alleged in SOR ¶ 1.a and denies the debt alleged in SOR ¶ 1.b on the basis he paid it in full prior to the SOR being issued. He admits SOR ¶ 2.a with an explanation. His admissions are incorporated into my findings of fact.

Applicant is 45 years old. He retired honorably from the Army in 2020. He has worked for his sponsor since November 2021 in an overseas position. He worked for another contractor overseas shortly after retirement in a different country from December 2020 until August 2021.

Applicant separated from his spouse in July 2019. (Tr. at 22; GE 2 at 2.) He moved his spouse and children from his duty station to another state and initiated divorce proceedings in that state. (Tr. at 23.) He has four children. He is required to pay child support for two of his children who are teenagers and still reside with his former spouse. During this period, he provided the bulk of their support, approximately \$5,500 a month. With his command's permission he took a part-time job in a department store, so that he had some money to live on. He and his spouse negotiated a lower figure of support. (Tr. at 24, 39, 42.) They divorced in January 2021 after over twenty years of marriage. He listed his two adult children on his SCA but not the two children he was responsible for providing child support. His spouse was awarded 35% of his military retirement and he took on all marital debts. He had not planned to retire but given his divorce he felt it was the best thing to do for his family. (Tr. at 27-30; GE 1 at 24, 28-29, 37-38, 41.)

Applicant's former spouse did not work outside the home, and he relied on her to manage household finances. When they separated, he began to receive late notices for rent, utilities, cable, phones, "everything." (Tr. at 38.) He learned of even older delinquencies when these new delinquencies started arriving. (Tr. at 38, 41-42.) When they separated around July of 2019, he discovered his credit score was in the 400s. (Tr. at 22.) He began resolving a number of debts prior to the SOR. (Tr. at 42; GE 4 at 3-4.) He used a "little book" to track everything, and he started making calls to determine what was owed and make a plan to pay the debts. (Tr. at 41.) He was able to get the part-time job, restructure the child support amount, and sell the house to improve his financial situation. (Tr. at 42.) His command sent him to a loan specialist who instructed him to not

touch the closed debts because it would open the door for the creditors to reopen the accounts, which would affect his ability to buy a house and to pay off the other active debts. (Tr. at 25; GE 2 at 2.) However, the security clearance process raised his awareness to the seriousness that his financial situation had on his employment situation, and he started making payments. (Tr. 24-25, 50.)

He paid off his former spouse's car loan and his car loan with his 2023 tax refunds and regular income. (Tr. at 25.) He provides support for his children above his obligation for example, phones, extra cash, activities, and to his former spouse to cover travel costs associated with seeing his children, as well as helping his adult children on occasion. (Tr. at 53, 92.) He is working to bring his credit score up and states it is now around 690. (Tr. at 22.) He makes \$126,000 annually now. (Tr. at 36, 54.)

SOR ¶ 1.a: Indebted on an account that has been charged off in the approximate amount of \$31,850. As of the date of this Statement of Reasons, the account remains delinquent. The loan was in Applicant's and his spouse's names. It was a debt consolidation loan they obtained prior to their separation and subsequent divorce. His spouse stopped making payments after they separated and were living in different states. (Tr. at 23, 47; GE 2 at 2.) For the last 11 months he has made regular payments of \$500 every two weeks after each biweekly paycheck. (Tr. at 25; AE B.) When he learned of the debt he spoke with a financial advisor and was advised since the debt was closed reopening it would weaken his credit score if he wanted to buy a home. (Tr. at 24-25; GE 2 at 2.) When the SOR was issued he decided he had to begin making payments. He provided AE B through AE K showing his continuous payments. He has reduced the debt to about \$19,000. He has to renew his payment plan every three months because the account was closed, and he was not allowed to establish a regular payment plan. (Tr. at 51.) He has been saving additional money but given the uncertainty now with his employment situation he has not increased his payments. (Tr. at 25, 50.)

SOR ¶ 1.b: Indebted for an account placed for collection in the approximate amount of \$4,582. Applicant provided documentation showing he paid the debt in February 2022 prior to the SOR being issued. He explained he had resolved one account with the company but had missed that there was another account. (Tr. at 23, 35, 45, 48; AE-A.)

As noted above, Applicant has resolved one of the two delinquent accounts, and has provided evidence of ongoing payments for the other alleged debt and the government credit report supports his testimony that he resolved other debts related to the marriage. He has taken employment overseas for the past three and half years to get his financial affairs in order. He has been overseas in his current position for the past two years. His employer covers all of his living expenses, even gas for the company supplied vehicle. (Tr. at 28, 32, 41; GE 3.)

Guideline E

SOR ¶ 2.a. Applicant admits he falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed August 10, 2022, by answering "Yes" in response to Section 26 -Financial Record- Delinquency Involving Routine Accounts, which asked, in pertinent part, whether "[i]n the past seven (7) years, he had bills or debts turned over to a collection agency" or "any account or credit card suspended charged off, or cancelled for failing to pay as agreed" but disclosed only that debt alleged in subparagraph 1.b, above. In his Answer he states he unwisely rushed the SCA but did not intentionally falsify responses. He told the investigator during his security interview he had forgotten about the debt. He testified when he completed the SCA he looked through for only the open or active accounts on his credit report and did not realize at the time that it meant closed accounts as well because they are in fact closed. He was aware of the debt on his credit report because it was loan, he and his wife had taken out to consolidate his debts into one loan to lower the monthly debt payments. (Tr. at 15, 48; GE 2 at 2.) He cites that he has never been in trouble during his entire civilian or military career and that he has held a security clearance for over 20 years. He offered his military record as evidence of his reliability and trustworthiness. (AE N.)

During his security clearance interview he told the investigator that he was doing fine financially and recognized his mistake of not being more involved in his finances. He told the investigator after his divorce he pulled his credit report and paid everything off that he could, and they discussed the financial obligations he had resolved. (GE 2 at 3.) He paid off his car loan and his former spouse's car loan. (Tr. at 53, 72; GE 2 at 3; AE L.) He has downsized his life, taken jobs overseas, and kept his expenses to a minimum to improve his financial situation. (Tr. at 28, 56.)

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).

Applicant's admissions and the documentary evidence admitted into 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;

(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

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

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are fully applicable. Applicant's financial difficulties were incurred as result of his divorce, which was a circumstance beyond his control and unlikely to recur. He understands now he has duty to monitor his finances and cannot rely solely on another to manage the household finances. He has demonstrated through his actions that he is determined to overcome his indebtedness. He paid one debt off prior to the SOR and multiple others that had been neglected. He initially relied on the financial advice to let the loan drop off his credit report. His actions to reduce this debt after the security clearance process had been initiated are not unreasonable given this advice. He downsized his life, established a plan to resolve his financial problems, and has taken significant action to implement that plan. He knows that regaining financial responsibility is essential to qualify for a security clearance and has taken reasonable and measured steps to resolve his remaining SOR debt. While he does not present a perfect case in mitigation, perfection is not required. Under the circumstances of this case, I find

that his financial problems are unlikely to recur and do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

SOR ¶ 2.a alleges Applicant deliberately failed to disclose on his SCA his SOR ¶ 1.a debt. Applicant's admission and the record support that he failed to disclose the debt alleged in SOR ¶ 1.a. AG ¶ 16(a) is applicable to SOR ¶ 1.a.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

The mitigating condition in AG ¶ 17(a) is not fully established for SOR ¶ 2.a. Applicant failed to disclose the information described in SOR ¶ 1.a. He discussed the information in detail after being confronted by the investigator. He was aware of his poor financial situation. He had met with a financial advisor who had recommended he not make payments on this debt and have it remain closed. He had paid off the debt alleged in SOR ¶ 1.b but reported it in his SCA.

The mitigating condition AG ¶ 17(c) is established for SOR ¶ 2.a. Applicant

credibly testified that his omission of the information described in SOR ¶ 1.a was unintentional. The omission happened under unique circumstances involving his marital debts. It is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

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 Guideline E and evaluating all the evidence, noting his excellent military record, 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 mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude he has 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge