



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



In the matter of:)
)
) ISCR Case No. 23-00310
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2024

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate 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 August 4, 2022. On May 9, 2023, the Department of Defense (DOD), Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The CAS acted under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on May 19, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on June 30, 2023, including Items 1 through 6. On July 12,

2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 21, 2023, and did not respond. The case was assigned to me on November 6, 2023. Items 1 through 6 are admitted in evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, SOR ¶¶ 1.a – 1.k. His admissions are incorporated in my findings of fact.

Applicant is 54 years old. He graduated from high school in May 1988. In January 1989, he joined the active-duty U.S. Navy and served honorably for 20 years before his discharge in January 2009. (Item 3)

After leaving the Navy, Applicant was unemployed for about a year before he found work as a test specialist with a defense contractor in April 2010. He worked two years in the position before he found a better position as a test surveyor with a different defense contractor in April 2012. He has remained gainfully employed with his current defense contractor since being hired in April 2012. In February 2022, he began working part time as an instructor for a local college. He previously worked parttime as a warehouse sorter, from August 2020 through July 2021. (Item 3)

Applicant earned his associate degree in December 2019. He married for the second time in November 2020. He was previously married from 1994 through 2009. He has an adult daughter, born in May 1994. He disclosed that he earns about \$9,478 per month, which is about \$113,700 per year. His wife earns about \$28,800 per year. He stated he has about \$3,789 per month remaining after paying his bills and related expenses. He has been a homeowner since September 2021. (Items 3 and 6)

Applicant did not disclose any financial delinquencies in his August 2022 security clearance application (SCA). (Item 3 at 31-32) However, in October 2022, he admitted having financial delinquencies, and discussed them during his background interview with a DOD investigator. (Item 6 at 2)

The SOR alleges 11 delinquent debts totaling about \$39,000. Applicant admitted all debts. He attributed his delinquent debts to his divorce in 2009. He stated that he and his ex-wife informally and verbally agreed to split the debts they owed. After he learned that his ex-wife was not paying the debts she allegedly agreed to pay, Applicant made no effort to pay them, and the debts have remained unpaid. (Item 6 at 3)

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

SOR ¶ 1.a (\$19,118): After admitting this delinquent debt, Applicant commented that he is "still responsible for the account." (Item 2 at 1) He stated that he opened the account to help purchase a car for his daughter, who "defaulted on the loan in 2019."

(Item 2 at 1) This debt is an individual account, which was opened in June 2013. The last payment made on the debt occurred in September 2020. It was charged off in May 2021. (Item 4 at 16) This debt is unresolved.

SOR ¶ 1.b (\$6,747): After admitting this delinquent debt, Applicant commented that repayment of this debt is “being taken from check every two weeks,” an apparent wage garnishment. No documentary evidence was provided to support this statement. This debt was placed for collection and assigned in March 2022. (Item 5 at 2). It did not appear in the April 2023 credit bureau report (CBR). (Item 4) This debt is unresolved.

SOR ¶ 1.c (\$6,420): Applicant admitted this delinquent debt. No other information was disclosed about this debt in his response to the SOR, not even its purpose and status. (Item 2 at 2). However, he claimed in his background interview that this was a medical debt that he disputed. (Item 6 at 3) The debt is listed as an individual account that was assigned for collection in November 2019. The narrative section indicates Applicant disputed this debt. However, no explanation, information, or documented proof indicating the basis for any alleged dispute was ever offered or presented. The debt appears in both CBRs with the same past due balance. (Item 4 at 12; Item 5 at 3) This debt is unresolved.

SOR ¶¶ 1.d (\$1,523) and 1.e (\$1,489): Applicant admitted both delinquent debts, which were owed to the same creditor. The creditor sued him in small claims court. He provided proof that he “satisfied in full” the creditor’s small claims judgment against him. (Item 2 at 3-4). These debts are resolved.

SOR ¶ 1.f (\$1,180): Applicant admitted this delinquent debt, explaining that this was a medical bill that he reported to his insurance company for payoff. (Item 2 at 2) This debt was assigned in May 2022 and appeared in the September 2022 CBR. (Item 5 at 3) However, this relatively new debt does not appear in the April 2023 CBR. (Item 4) This debt is resolved.

SOR ¶¶ 1.g (\$617), 1.h (\$573), and 1.i (\$423): Applicant admitted these three delinquent debts. For each debt, he stated he was “working on payoff.” He did not offer information or documents to support this assertion for any of these debts. SOR ¶ 1.g was opened in 2020 and charged off in 2022. (Item 4 at 8; Item 5 at 4) SOR ¶ 1.h was opened as an individual account in January 2016, with a \$300 credit limit. Applicant made the last payment on this debt in October 2016. The debt was charged off in 2021. (Item 4 at 9; Item 5 at 4) Finally, SOR ¶ 1.i was opened as an individual account. It was assigned for collection in 2020, and the first major delinquency was reported in December 2019. (Item 4 at 11; Item 5 at 4) The narrative section in all three debts indicate Applicant disputed each one. He did not provide an explanation, information, or documented proof to indicate the basis for any alleged dispute he might have had with these creditors. (Items 4-5) These debts are unresolved.

SOR ¶¶ 1.j (\$177) and 1.k (\$896): Applicant admitted both delinquent debts. He stated he paid off the debt in SOR ¶ 1.j; however, he did not provide documentary evidence to support this assertion. He also disputed this debt; but similar to some of the

debts discussed above, he did not explain, inform, or provide documentary proof to indicate the basis of any alleged dispute he might have had with the creditor. (Item 2; Item 5 at 7) SOR ¶ 1.k was opened as an individual account in November 2020 with a credit limit of \$500. Applicant stated that the payoff of this debt was in process. No documentary evidence was provided to support this assertion. The last payment made on this debt occurred in March 2022. The debt was charged off in about September 2022. (Item 4 at 9; Item 5 at 6) Both debts are unresolved.

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.” EO 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.” 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. 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 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." Department of the Navy v. Egan, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially relevant in this case:

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

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

Applicant's admissions and the evidence in this FORM establish the above disqualifying conditions under this guideline. AG ¶¶ 19(a), and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially relevant:

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent and ongoing. His longstanding delinquent debts in this SOR remain unresolved.

AG ¶ 20(b) is not fully established. Applicant attributed his financial conditions to his divorce in 2009. However, he has been gainfully employed since at least 2010. He earns over \$113,000 per year, and disclosed that he has about \$3,789 per month remaining after paying all bills and related expenses. He has been a homeowner since 2021. He also supplements his income with part-time work; he currently works as a part time instructor for a local college. He has had the financial means to address his delinquent account, but for unknown reasons he has not. There is no indication he acted responsibly, or that he has taken meaningful steps to substantively address his delinquent debts. Though he stated he was paying off some of the debts in the SOR, he failed to provide sufficient evidence in mitigation. He is credited with addressing three of the 11 delinquent debts. These actions alone, however, are insufficient to fully mitigate financial considerations security concerns.

AG ¶ 20(d) is not established. Applicant has not produced evidence showing he has a plan in place to repay delinquent debts and that he is adhering to the plan. He failed to establish he initiated and is adhering to a good-faith effort to repay his delinquent debts.

AG ¶ 20(e) is not established. Although the record indicates Applicant disputed a few debts alleged in the SOR, he did not elaborate or comment on this; nor did he present independent evidence to support a reasonable basis to dispute any of the delinquent debts.

In sum, there is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period of time. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant 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.c: | Against Applicant |
| Subparagraphs 1.d – 1.f: | For Applicant |
| Subparagraphs 1.g – 1.k: | Against Applicant |

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge