



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-00581
)
 Applicant for Security Clearance)

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2024

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 June 28, 2022. On April 20, 2023, 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), which became effective on June 8, 2017.

Applicant answered the SOR on September 19, 2023, and requested a hearing before an administrative judge. On October 3, 2023, Department Counsel amended the

SOR by adding SOR ¶¶ 1.k and 1.l under Guideline F. Applicant did not acknowledge receipt of the amendments to the SOR and did not admit or deny them.

Department Counsel was ready to proceed on October 17, 2023. The case was assigned to me on April 2, 2024. On April 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 15, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I held the record open until May 31, 2024, to enable him to submit documentary evidence. He timely submitted an email describing his unsuccessful efforts to find documentation of his debt payments. His email was admitted in evidence without objection as Applicant's Exhibit A. DOHA received the transcript (Tr.) on May 24, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.j, but he did not admit or deny the allegations in SOR ¶¶ 1.k and 1.l. At the hearing, he admitted SOR ¶ 1.k and 1.l. (Tr. 11) His admissions are incorporated in my findings of fact.

Applicant is a 30-year-old electrician employed by a defense contractor since October 2013. He served on active duty in the U.S. Army from June 2008 to July 2011 and received an honorable discharge. He received a security clearance in July 2008. He served in the U.S. Army Reserve from 2013 to 2019 and received an honorable discharge. (Tr. 27) He worked for non-federal employers from July 2011 until he was hired by his current employer.

Applicant attended college from August 2005 to May 2007, January to June 2008, and August 2013 to the present, but he has not received a degree. He testified that he is four credits short of receiving a bachelor's degree. (Tr. 23)

Applicant was married briefly from May 2010 to May 2011. He has four children, ages 14, 11, 5, and 3. (Tr. 29) Each child has a different mother. He has full custody of the 14-year-old and shares custody of the other three children. For the 11-year-old, he pays child support of \$233 per month and daycare of \$75 per week. He pays child support of \$300 per month for the five-year-old and \$250 per month for the three-year-old. (Tr. 29-30) He testified that he has spent about \$5,000 in custody battles for the 11-year-old and another \$1,000 for child-support hearings. (Tr. 31-32)

Applicant earns \$39.60 per hour and works 40 hours per week. He also receives veteran's disability payments of \$4,200 per month. (Tr. 24-25) He estimates that his net monthly remainder after paying child support, daycare, and household expenses is about \$200 per month. (Tr. 45)

The SOR as amended alleges 12 delinquent debts, reflected in credit reports from October 2022 and October 2023 and court records. (GX 2, 3, and 4) The evidence concerning those debts is summarized below.

SOR ¶ 1.a: collection account for \$7,980. Applicant testified that this debt was a personal loan he obtained for living expenses. He testified that he contacted the collection agency about a settlement, but the creditor did not offer anything that he could afford. (Tr. 49)

SOR ¶ 1.b: collection account for \$4,891. This debt also was a personal loan for living expenses. He testified that he contacted the creditor and was offered a lump-sum settlement that he could not afford. (Tr. 50)

SOR ¶ 1.c: collection account for \$642. Applicant testified that this was another personal loan. He testified that he resolved this debt, but he did not provide documentation reflecting that it was resolved. (Tr. 51)

SOR ¶ 1.d: collection account for \$633. Applicant testified that this was a credit-card account. He admitted that he has not attempted to resolve it. (Tr. 54)

SOR ¶ 1.e: collection account for \$629. Applicant testified that this was another credit-card account. He admitted that he has not attempted to resolve it. (Tr. 55)

SOR ¶ 1.f: insurance company debt referred for collection of \$333. Applicant testified that he paid this debt. (Tr. 56) He did not provide documentation of payment.

SOR ¶ 1.g: medical bill referred for collection of \$104. Applicant testified that he paid this debt. (Tr. 58) He did not provide documentation of payment.

SOR ¶ 1.h: collection account for \$99. Applicant testified that he paid this debt. (Tr. 58) He did not provide documentation of payment.

SOR ¶ 1.i: judgment for \$1,537, filed in 2019. Applicant testified that he was unable to identify this debt and had no recollection of any court action. (Tr. 50-60) Court records reflect a default judgment. (GX 2) The debt is not resolved.

SOR ¶ 1.j: judgment for \$1,303 filed in 2019. At the hearing, Department Counsel moved to withdraw this allegation. I granted the motion. (Tr. 9-10)

SOR ¶ 1.k: auto loan charged off for \$33,044, and judgment entered for \$18,998. At the hearing, Department Counsel, moved to amend this allegation by deleting the reference to a judgment. I granted the motion. (Tr. 9) Applicant testified that he reached out to the creditor, who wanted a lump-sum payment that he could not afford. (Tr. 62)

SOR ¶ 1.I: credit-card account past due for \$659. Applicant testified that he had only one credit-card account with this lender, and he believes that this is the same debt as alleged in SOR ¶ 1.e. (Tr. 66) Based on the similarity of the type of debt and the amount, this debt is likely to be a duplicate of the debt alleged in SOR ¶ 1.e.

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).

At the hearing, Applicant claimed that the debt alleged in SOR ¶ 1.l was a duplicate of the debt alleged in SOR ¶ 1.e. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Applicant's claim is supported by the evidence. Accordingly, I have resolved SOR ¶ 1.l in his favor.

Applicant's admissions and the evidence submitted at the hearing 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 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;

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, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant voluntarily fathered each of his children, but his legal battles to retain custody of his 11-year-old child and to litigate the amounts of child support payments were conditions largely beyond his control. He submitted no evidence of any other conditions largely beyond his control. At the hearing, he claimed that he paid several debts and tried to settle several debts, but he provided no documentation showing reasonable efforts to resolve his debts.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling.

AG ¶ 20(d) is not established. Although Applicant claimed that he paid the debts alleged in SOR ¶¶ 1.c, 1.e, 1.g, and 1.h, he submitted no documentary evidence supporting his claims. He claimed that he made reasonable efforts to settle the debts alleged in SOR ¶ 1.a, 1.b, and 1.k but was unsuccessful. He provided no documentary evidence of his efforts to settle those debts. When applicants claim that they have resolved certain debts or claim that they have made reasonable efforts to resolve certain

debts, they are expected to present documentary evidence to support their claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established. Applicant provided no documentary evidence of a basis for disputing any of the debts alleged in the SOR.

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
Subparagraph 1.j:	Withdrawn
Subparagraphs 1.k:	Against Applicant
Subparagraph 1.l:	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.

LeRoy F. Foreman
Administrative Judge