



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-00936
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2024

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 November 16, 2022. On August 4, 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 August 31, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 26,

2023, and the case was assigned to me on April 2, 2024. On April 8, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 14, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 24, 2024, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on May 22, 2024.

Findings of Fact

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

Applicant is a 41-year-old equipment coordinator employed by a defense contractor since September 2022. He graduated from high school in June 2002. He worked for non-federal employers as a carpenter's helper from June 2002 to January 2012 and as a mechanic's helper from January 2012 to December 2016. He was employed by a defense contractor from January 2017 to July 2020, when he was fired for unsatisfactory performance. He was unemployed from September to October 2020 during the COVID pandemic. He was employed by a defense contractor from October 2020 until he was hired by his current employer. His SCA reflects that he received a security clearance in January 2016. He has lived with a cohabitant since March 2018 and has a five-year-old child.

The SOR alleges six delinquent debts reflected in credit bureau reports from December 2022 (GX 2), July 2023 (GX 3), and May 6, 2024 (GX 10). Five of the six debts (SOR ¶¶ 1.a-1.e) have been reduced to judgments reflected in court records. All the judgments were default judgments. None have been satisfied.

SOR ¶¶ 1.a, 1.b, 1.c, and 1.e allege judgments for delinquent credit-card accounts from the same bank. SOR ¶¶ 1.a and 1.b allege judgments for \$1,718 and \$2,049, both entered on October 29, 2021. SOR ¶ 1.c alleges a judgment for \$2,627, entered in April 2023. SOR ¶ 1.d is a judgment for \$9,994, entered in March 2020, arising from the deficiency after Applicant's automobile was repossessed. He testified that he made a few telephone calls about recovering the vehicle, but he stopped trying after he "kind of got the runaround." (Tr. 28) All the debts became delinquent after Applicant and a former cohabitant broke up after ten years, reducing the family income by half. Before the breakup, Applicant counted on his cohabitant to manage the household finances. (Tr. 19-20)

SOR ¶ 1.f alleges a medical bill placed for collection of \$400. Applicant paid this debt in full on August 9, 2023. (AX A)

Applicant owns his home, and the mortgage loan payments are current. (Tr. 24; GX 10 at 3) He admitted that he is not very responsible with money. (Tr. 14) He does not own an automobile, but he drives one owned by his father and stepmother. (Tr. 23) He has never sought or received financial counseling.

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. 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).

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 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(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 established for the unresolved judgments alleged in SOR ¶¶ 1.a-1.e. Applicant's domestic breakup was a condition largely beyond his control that reduced his family income by half. However, he has not acted responsibly. He has taken no action to resolve any of the judgments. He has acted responsibly regarding the medical bill alleged in SOR ¶ 1.f, which he has paid in full.

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

AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a-1.e. It is established for the medical bill alleged in SOR ¶ 1.f, which is resolved.

AG ¶ 20(e) is not established. Applicant has not disputed 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.e: **Against Applicant**

Subparagraph 1.f: **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