



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-01086
)
 Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

06/25/2024

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 October 11, 2021. On June 30, 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 in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October

26, 2023. On the same day, Department Counsel amended the SOR to add an additional allegation of a debt to a credit union charged off for \$15,649. Applicant admitted the additional allegation.

The case was assigned to me on April 2, 2024. On April 16, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 9, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until May 23, 2024, to enable him to submit additional documentary evidence. He timely submitted AX D, E, and F, which were admitted without objection. DOHA received the transcript (Tr.) on May 20, 2024.

Findings of Fact

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

Applicant is a 33-year-old shipyard cleaner employed by a defense contractor since May 2023. He did not complete high school, but he later earned his diploma online in 2019. He married in July 2017, but he is "kind of separated." (Tr. 58) He has a 12-year-old stepdaughter and a six-month-old child. He was granted a security clearance while he was a government employee.

Applicant was employed by the U.S. Government from September 2012 until he was laid off in March 2020, because the COVID pandemic prevented him from completing the educational requirement for renewing his certificate as a mariner. He was unable to find other employment until he was hired by a defense contractor in October 2021. He was laid off in July 2022 and worked for another defense contractor from August 2022, with annual pay of \$30,000 less than he had been earning. Seeking higher pay, he worked for another contractor for two months, and then was hired by his current employer in May 2023. He recently received a pay raise from \$27 per hour to \$37 per hour. His take-home pay is now about \$1,400 per week. (Tr. 32-36, 68)

The SOR alleges six delinquent debts. Applicant testified that he briefly dealt with four debt-settlement companies but was unable to resolve any of his debts. His income was barely enough to pay his home mortgage loan, insurance, car loan, and grocery bills. (Tr. 41) On May 8, 2024, he hired a debt-negotiation law firm to resolve four of the seven debts alleged in the SOR. He is required to pay the law firm \$253 every two weeks. (Tr. 65) The four debts to be handled by the law firm are alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.g. He testified that he did not hire the law firm earlier because of his limited finances, but the \$10-per-hour pay raise gave him sufficient income to begin resolving his debts. (Tr. 43) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: credit-card account charged off for \$7,077. Applicant opened this account in June 2017 and stopped making payments in October 2021 because he could

not afford them. (Tr. 38) His law firm agreed to handle this debt. (AX A at 9) As of the date of the hearing, the debt was not resolved. After the hearing, he submitted an email in which he stated that he contacted this creditor directly and the creditor agreed to settle the debt for \$2,451. (AX E) He did not submit any documentation of an agreement.

SOR ¶ 1.b: credit-card account charged off for \$4,302. Applicant stopped making payments on this debt in December 2021. The debt is not included in the list of debts referred to the law firm. At the hearing, Applicant testified that he was not sure why this debt was not included in his law firm's plan. (Tr. 45) In a post-hearing email, he stated that this debt had been sold to a third-party collection agent, but he had not yet determined the identity of the collection agent. (AX E) He submitted no evidence of efforts to resolve this debt before it was referred to a collection agent.

SOR ¶ 1.c: credit-card account charged off for \$3,241. Applicant opened this account in April 2012. He stopped making payments when he was laid off due to COVID. His law firm agreed to handle this debt. (AX A at 9) On May 22, 2024, the day before the record closed, the creditor agreed to settle this debt for \$810.42, payable in \$200 monthly payments. (AX D at 2)

SOR ¶ 1.d: personal loan charged off for \$1,448. Applicant testified that he obtained this loan in February 2020 to make the payments on his home mortgage. He stopped making payments in June 2020 (Tr. 48-49) His law firm agreed to handle this debt. (AX A at 9) He testified that he had several conversations with this creditor after he received the SOR, but he did not reach a settlement agreement. (Tr. 49-50) The debt is not resolved.

SOR ¶ 1.e: personal loan referred for collection and charged off for \$1,296. This debt is not included in the law firm's plan. Applicant testified that the collection agency incorrectly reflected the amount of the loan, and it corrected the error and sent him a check for the difference. (Tr. 51) After the hearing, he submitted a copy of a check from the collection agency for \$248, dated August 28, 2023. (AX F) He did not submit any evidence of payments or other resolution of the debt. It is not resolved.

SOR ¶ 1.f: credit-card account referred for collection of \$594. This debt is not included in the law firm's plan. In Applicant's answer to the SOR, he submitted documentation reflecting that he had a payment plan to resolve this debt by monthly payments of \$99.10, beginning in July 2023. In his answer to the SOR, he submitted documentary evidence reflecting that he made the July 2023 payment, but his documentation does not reflect whether he made any subsequent payments.

SOR ¶ 1.g: credit-card account charged off for \$15,649. Applicant's law firm agreed to handle this debt. (AX A at 9) In Applicant's answer to the SOR, he submitted evidence of an agreement, dated June 18, 2021, to make bi-weekly payments of \$200 by electronic debit until the balance is paid in full. He testified that he made the agreed payments until May 2023, when the creditor increased the amount of the payments. (Tr. 53) He testified that he skipped a month on his home mortgage loan payments to pay this

creditor. As a result, his mortgage loan payments increased from \$1,800 per month to \$2,800. (Tr. 60) After the hearing, Applicant submitted an email reciting that he had contacted this creditor directly, and this creditor had agreed to settle this debt for \$4,200, with the first payment of \$500 to be made on June 6, 2024. (AX E) He provided the first name and telephone number of the credit union official, but he did not submit any documentary evidence of the second settlement agreement.

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).

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; 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 not established. Applicant's debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's inability to renew his mariner's certificate because of the COVID pandemic and subsequent unemployment were conditions beyond his control. His marital separation was a condition beyond his control, but he did not submit evidence of the financial impact of the separation. He did not act responsibly. In June 2021, he agreed to make bi-weekly payments of \$200 on the debt alleged in SOR ¶ 1.g until the balance was paid, but he stopped making payments in May 2023. In July 2023, he negotiated a payment plan for the debt alleged in SOR ¶ 1.f, but he submitted no evidence that he made the agreed payments. He took no significant action to resolve the other delinquent debts until his hearing was imminent.

AG ¶ 20(c) is not established. The law firm retained by Applicant does not provide the financial counseling of the type contemplated by this mitigating condition.

AG ¶ 20(d) is not established. Applicant hired a debt-negotiation law firm to assist him, but it has settled only one debt, alleged in SOR ¶ 1.c. The debt in SOR ¶ 1.b is not included in his firm's settlement plan. He testified that he personally negotiated payment plans for the debts alleged in SOR ¶¶ 1.a and 1.g, but he provided no documentary evidence of payment plans. He provided documentary evidence of a payment plan for the debt alleged in SOR ¶ 1.f, but no documentary evidence of any payments under the plan, other than the one payment in July 2023. An applicant who claims that a debt has been settled or is being settled is expected to provide documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

In his post-hearing submissions, Applicant has promised to make payments on the debts alleged in SOR ¶¶ 1.a, 1.c, 1.f, and 1.g. However, promises to resolve delinquent

debts in the future are not a substitute for a track record of timely paying debts or acting in a financially responsible manner. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

Payment of a delinquent debt motivated by the pressure of qualifying for a security clearance is not a “good faith effort” within the meaning of AG ¶ 20(d). Applicant did not hire his law firm until May 2024, after he received the notice of hearing. He did not contact the creditors alleged in SOR ¶¶ 1.a and 1.g until after the hearing. An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

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). Applicant was sincere and credible at the hearing, but he has not presented documentary evidence of a credible and reasonable plan to resolve his delinquent debts. 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.g:

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