



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01676
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2024

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 March 2, 2023. On October 16, 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 November 6, 2023, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's

written case on December 22, 2023. On January 2, 2024, 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 February 15, 2024, and did not respond. The case was assigned to me on June 7, 2024.

The FORM consists of seven items. FORM Item 1 is the SOR and Applicant's answer. FORM Items 2 through 7 are the Government's evidence supporting the allegations in the SOR. Applicant did not object to any items in the FORM. FORM Items 2 through 7 are admitted in evidence.

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 36-year-old cloud-development team leader employed by a defense contractor since February 2023. He has worked for defense contractors since December 2010. He married in November 2013 and has a ten-year-old child. He attended college from August to October 2005 and February 2006 to May 2007 but has not received a degree. He completed training at a computer career institute in November 2008 and received a master certificate in May 2008. He has held a security clearance since June 2009.

In Applicant's SCA and follow-up interview with a security investigator, Applicant admitted that between April 2017 and May 2021, he borrowed about \$30,000 from three banks to invest in high-risk securities and lost it all. He no longer invests in the stock market. (GX 1 at 41; GX 3 at 9-11)

The SOR alleges three delinquent consumer debts; a federal tax debt for tax years 2016, 2017, and 2021; failure to file a federal income tax return; and failure to file a state income tax return. The evidence pertaining to these allegations is summarized below.

SOR ¶ 1.a: debt charged off for about \$16,582. Applicant admitted in his answer to the SOR that he had not made any arrangements to resolve this debt.

SOR ¶ 1.b: debt charged off for about \$7,542. Applicant claimed in his answer to the SOR that he had made a lump-sum payment on this debt, followed by monthly payments for more than a year. He did not submit any documentation to support his claim.

SOR ¶ 1.c: debt placed for collection of about \$2,214. Applicant claimed in his answer to the SOR that he had been making monthly payments for more than a year on this debt. He did not submit any documentation to support his claim.

SOR ¶ 1.d: federal tax debt for about \$14,429 for tax years 2016, 2017, and 2021. IRS tax transcripts reflect a tax debt of \$4,383 for tax year 2016; \$7,479 for tax year

2017; and \$2,566 for tax year 2021. (FORM Item 3 at 21, 23, and 31) In Applicant's answer to the SOR, he claimed that he had made an arrangement to pay this debt and was making payments. He did not provide any documentation to support his claim.

SOR ¶¶ 1.e and 1.f: failure to file federal and state income tax returns for “at least” tax year 2015. An IRS tax transcript reflects that Applicant did not file a return for tax year 2015. (FORM Item 3 at 20) In Applicant's security interview in April 2023 and his responses to DOHA interrogatories in October 2023, he admitted that he had not filed his federal and state income tax returns for 2015. In Applicant's answer to the SOR, he stated that he was working with his financial advisor to file these returns. He has submitted no evidence that they have been filed.

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 in the FORM establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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. Applicant claimed that his debts were due to stock market losses, but he submitted no evidence to support his claim. Losing money is a foreseeable risk of investing in the stock market, and Applicant invested his money knowingly and voluntarily. Furthermore, he has not submitted evidence that he acted reasonably when he found that he could not satisfy all his financial obligations.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling of the type contemplated by this mitigating condition.

AG ¶¶ 20(d) and 20(g) are not established. Applicant claimed to be making payments on his consumer debts and tax debt, but he submitted no documentary evidence to support his claims. An applicant who claims that debts are being resolved is expected to submit documentary evidence supporting his claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 and failure to timely file federal and state income tax returns.

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.f: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge