



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



In the matter of:)	
)	
)	ISCR Case No. 22-01807
)	
Applicant for Security Clearance)	

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2024

Decision

HALE, Charles C., 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 26, 2021. On December 7, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the December 7, 2022 SOR on January 19, 2023, and requested a hearing before an Administrative Judge. Department Counsel issued an amended SOR (A-SOR) on May 31, 2023. Applicant answered the A-SOR on June 5,

2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on January 30, 2024, in which it withdrew A-SOR ¶ 1.e. A complete copy of the file of relevant material (FORM) was sent to Applicant on January 31, 2024, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant did not submit a Response. The case was assigned to me on July 3, 2024.

The A-SOR, Answer, and the original SOR (Items 1, 2 and 3) are the pleadings in the case. FORM Items 4 through 12 are admitted into evidence without objection. Admission of FORM Item 12 is discussed below. Applicant did not submit a response to the FORM.

Evidentiary Issue

The FORM included a summary of a personal subject interviews (PSI) conducted on January 20, 2022. (Item 12.). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 12 is therefore admitted.

Findings of Fact

In Applicant's answer to the A-SOR, he denied without explanation all ten A-SOR allegations.

Applicant is 49 years old. He has been married and divorced three times. His third divorce occurred in August 2018. He has one child who is an adult . He served honorably in the Army Reserves from 1993 through January 1996. He was issued a security clearance in November 2017. (Item 5.) He has worked for his current sponsor since 2021. (Item 4.)

The original SOR alleged seven delinquent debts, which the Applicant denied. After the withdrawal of A-SOR ¶ 1.e, the A-SOR alleges ten delinquent debts, eight consumer debts totaling \$56,096 and two tax liens totaling \$60,221 for delinquent Federal and state taxes. None of these debts are listed as fraudulent, in dispute, or resolved on the most recent credit report. (Item 8.)

Applicant blamed his former spouse for these debts. He refused to pay on the two motorcycle debts, A-SOR ¶¶ 1.g-1.h, because his former spouse had taken the bikes. (Item 12 at 4.) His credit report shows the last payments for both bikes as November 2020. (Item 7 at 7.) His remaining debts, A-SOR ¶¶ 1.a-1.d, 1.f, and 1i-1j, also remain

unpaid and unresolved. (Items 6-8.) He offered no explanation for these debts other than blaming his former spouse. (Item 12.) A 2021 judgment was obtained against him for A-SOR ¶ 1.c. His credit report shows a last activity date of November 2018 for this debt. (Item 7 at 5; Item 9.) A-SOR ¶ 1.i, his Federal tax debt, for \$59,244, arose from tax years 2004, 2005, and 2006, with the tax lien being filed in 2014. (Item 10.) A-SOR ¶ 1.k, the state tax lien for \$977 was entered in 2023. (Item 11.)

Applicant offers no evidence to support his denials. He offered no financial details surrounding his 2018 divorce. He did not provide information about his current finances.

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*, 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 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*, 484 U.S. 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).

The documentary evidence admitted into evidence 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 under AG ¶ 20 are relevant:

(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;

(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; and

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

AG ¶¶ 20(a) and 20(b) are not applicable. Applicant's financial difficulties may have incurred in part because of his marital difficulties, which was a circumstance beyond his control. However, there is no evidence that he acted responsibly under the circumstances. He has owed Federal taxes for 20 years, with a tax lien in place since 2014 and in 2023 incurred a state tax lien. In order to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He did not establish that he has acted responsibly and made a good-faith effort to pay or resolve his debts.

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 evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I have considered his honorable military service. 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 did not mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.d, 1.f-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.

Charles C. Hale
Administrative Judge