



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01939
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 7, 2022. On September 18, 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 28, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November

15, 2023, and the case was assigned to me on May 3, 2024. On May 20, 2024, Department Counsel amended the SOR by adding one allegation (SOR ¶ 1.j). Applicant responded to the amendment on June 8, 2024. On May 28, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 20, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 3 through 8 were admitted in evidence without objection. GX 2, an unauthenticated summary of an interview with a security investigator, was not admitted. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until July 2, 2024, to enable him to submit additional documentary evidence. He timely submitted AX F through J. DOHA received the transcript (Tr.) on June 28, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.j, alleging that he filed a Chapter 13 bankruptcy petition in October 2023 and that a directive for wage deduction was filed on April 16, 2024. His admission is incorporated in my findings of fact. He denied the allegations in SOR ¶¶ 1.a-1.i.

Applicant is a 58-year-old decommissioning project manager employed by a defense contractor since August 2019. He and his team gather equipment previously used for classified work, sanitize it by disassembling it, and shred it. (Tr. 102)

Applicant was employed by federal contractors from October 2005 to August 2019. He received a security clearance from another government agency in July 2001. He served on active duty in the U.S. Army from November 1983 to March 1987 and received an honorable discharge.

Applicant married in April 1984, divorced in November 1992, married again in May 2000, and divorced in September 2020. He has one child, age 23. Applicant testified that he and his second wife were very good friends, and they had a good marriage for a long time, but he initiated the most recent divorce because they "lost the friendship" due to his extensive work-related travel. (Tr. 105-06)

Applicant filed a Chapter 7 bankruptcy in March 2010. His petition listed secured debts totaling \$320,477 and unsecured debts, consisting of credit card debts and medical bill totaling \$18,875. (GX 7 at 22) He received a discharge on June 28, 2010. (GX 7 at 1) This bankruptcy was not alleged in the SOR.

SOR ¶¶ 1.a-1.e allege five delinquent debts They are all consumer debts, mostly credit cards, and they are reflected in credit reports from November 2022 and August 2023 (GX 4; GX 5) They are being resolved in the Chapter 13 bankruptcy filed in October 2023 and alleged in SOR ¶ 1.j. (GX 6)

SOR ¶ 1.f alleges that Applicant failed to file federal income tax returns as required for tax years 2020 and 2021. Applicant admitted this allegation. At the hearing, he testified

that he had filed his past-due federal income tax returns in early 2023, at the same time he filed his 2022 return. (Tr. 76, 86) IRS tax transcripts reflect that he filed the returns for 2020 and 2021 in May 2023. (GX 3 at 22, 32)

SOR ¶ 1.g alleges that Applicant failed to file state income tax returns as required for tax years 2020 and 2021. He testified that he had filed his past-due state income tax returns. (Tr. 86) State tax transcripts reflect that he filed his 2020 and 2021 returns in March 2023 (GX 3 at 46, 50) The SOR does not allege a state tax debt.

SOR ¶ 1.h alleges that Applicant is indebted to the Federal Government for delinquent taxes in the amount of about \$14,435 for tax year 2020. He admitted that he did not contact the IRS about a payment agreement before filing his Chapter 13 bankruptcy petition. (Tr. 77)

SOR ¶ 1.i alleges that Applicant is indebted to the Federal Government for delinquent taxes in the amount of about \$121 for tax year 2021.

SOR ¶ 1.j alleges that Applicant filed a Chapter 13 bankruptcy petition in October 2023, that the bankruptcy process is ongoing, and that a directive for wage deduction was filed on April 16, 2024. The petition lists a federal tax debt of \$14,518, and unsecured consumer debts totaling \$71,233. (GX 6 at 20) The payment plan, as modified in June 2024, provides for payments totaling \$55,560, to be paid with nine payments of \$1,300 and 51 payments of \$860. (GX 8; AX I) The amended payment plan reflects that the trustee will pay priority claims, including Applicant's federal tax debt of \$11,333 for 2020 and the federal tax debt of \$121 for 2021, to be paid pro rata in 14 months. (GX 8 at 2) The bankruptcy trustee's records reflect that payments are current through June 2024 and are made automatically by a payroll deduction (AX G; AX H)

Applicant testified that his work as a contractor for another government agency was intermittent and the pay was too low to meet his living expenses. When he and his second wife decided to divorce, he moved out of their house and signed a two-year lease for a house that he shared with another man. During the marriage, his wife had managed the family finances, and after they separated, he found that he was not as adept as she, and he missed several payments and fell behind on his debts. (GX3 at 10) He quickly learned that the leased house was more expensive than he expected, and he needed to purchase furniture, linens, and other basic household items to furnish his new residence. (Tr. 20-21) He used credit cards to purchase house furnishings, food, and fuel. (Tr. 20-21) He found that he was making no progress on resolving his credit-card debt, because most of each payment was for interest rather than reducing the balance. (Tr. 22)

In early 2021, Applicant hired a debt-relief company. The company advised him to stop making payments on his credit-card accounts and to pay the company \$1,100 per month. He testified that the company told him that his debts would have to become delinquent before they could negotiate with the creditor. (Tr. 37) The company promised to build up a savings account for him and then negotiate with the creditors. After about two years, he realized that most of what he paid the company was for fees rather than

payments to his creditors. Applicant's transactions with the debt-relief company from April 2021 through April 2022 are included in the record as AX C and D.

In 2023, Applicant consulted with an attorney about a Chapter 13 bankruptcy. He did not consider a Chapter 7 bankruptcy because he wanted to pay his debts. (Tr. 23-24)

Applicant met his current girlfriend in September 2020. About a year later, she began suffering from deep depression. She had twin boys in high school, and their father had abandoned them and the family. She started using alcohol to cope with her depression. Applicant cared for her and the boys until she stopped drinking 15 months ago. (Tr. 25-26)

Applicant testified that after his girlfriend began to recover, he focused on his job, and was promoted to being a project manager. He moved out of his expensive rental home two years ago, and he has paid off his car loan. His living expenses are drastically reduced, and his income has increased nearly 40 percent. (Tr. 27) When he responded to interrogatories in June 2023, he estimated that his net monthly remainder after paying his debts and living expenses was about \$677. (GX 8 at 8) He testified that his net monthly remainder is now about \$1,300, after he pays all his debts, including his payment to the bankruptcy trustee. (Tr. 92)

Applicant's performance appraisal for his job as a project manager rated him as "exceptional." He was commended for his dedication, knowledge, character, and business savvy. (AX A; AX B)

A former colleague from Applicant's employment by another government agency describes him as trustworthy and honest. His former colleague attests to his personal skills, people skills, knowledge, and performance. (AX 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 “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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;

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

AG ¶ 20(b) is established. Applicant's two divorces were conditions largely beyond his control. Even though he initiated the second divorce, it was precipitated by his frequent work-related travel and long separations from his wife. When he and his second wife separated, he was a financial neophyte. His involvement with a purported debt-relief company was a condition beyond his control, even though it was the result of his financial naivete. After he realized that he was the victim of questionable business practices, he acted responsibly by consulting with a bankruptcy attorney and filing a Chapter 13 bankruptcy petition. He has acted responsibly by complying with his Chapter 13 payment plan. He initiated a wage deduction plan to ensure that he timely made the payments to the bankruptcy trustee.

AG ¶¶ 20(c) and 20(d) are established. Applicant has received financial advice from his bankruptcy attorney, completed the financial counseling required by the bankruptcy court, and complied with the Chapter 13 payment plan. This evidence demonstrates a good-faith effort to resolve his debts and provides "clear indications" that his financial problems are being resolved .

AG ¶ 20(g) is established. Applicant has filed his past-due federal and state income tax returns. His Chapter 13 payment plan provides for resolving his federal tax debt within 14 months. There is no evidence that he owes state income tax.

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 candid, sincere, remorseful, and credible at the hearing. He has faithfully served the United States in and out of uniform for many years. He has held a security clearance for more than 20 years, apparently without incident. 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 mitigated the security concerns raised by his financial problems.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.j:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge