



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



In the matter of:)
)
) ISCR Case No. 23-00843
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2024

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guidelines F (financial considerations). Guideline E (personal conduct) security concerns were not supported by the record evidence. Eligibility for access to classified information is denied under Guideline F.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 8, 2021. On June 5, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F (financial considerations) and E (personal conduct). The DCSA CAS acted under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR via email on July 27, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 21, 2023, including Items 1 through 5. Item 1 is the SOR and the Answer to the SOR, which are already a part of the administrative record. On August 23, 2023, 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 September 25, 2023, and did not respond. The case was assigned to me on June 10, 2024. Items 2 through 5 are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all allegations in the SOR, including SOR ¶¶ 1.a-1.i, and 2.a. His admissions are incorporated in my findings of fact.

Applicant is 57 years old. Born in Colombia, he arrived in the United States with his parents in 1972 at the age of five. He attended schools in the United States. He received his high school diploma in June 1985, and subsequently earned his associate and bachelor's degrees in May 1988, and May 2003, respectively. He became a naturalized U.S. citizen in July 1996 at the age of 29 years. His Colombian-born parents, currently residing in the United States, are also naturalized U.S. citizens. He married in 2003, and has one child, a 14-year-old son. (Items 2 and 3)

Applicant, a full-time systems engineer, has worked for the same federal defense contractor since July 2005. His most recent grant of a secret security clearance occurred following a favorable adjudication of his September 2015 SCA. He disclosed that he was granted a secret security clearance for the first time in about 2004. (*Id.*)

Applicant completed his current SCA in September 2021, where he disclosed seven unresolved delinquent debts estimated at about \$126,000. He attributed the delinquencies to "poor budgeting and financial management." He stated he was "seeking financial counseling" and "in the process of setting up repayment plan(s)" on each debt. (Item 2 at 45-51) He did not submit any documentary evidence in mitigation; nor did he comment on the current status of his delinquent debts listed in the SOR.

Under Guideline F, the SOR alleges nine delinquent debts totaling about \$128,500, which Applicant admitted in his Answer. During his September 2022 background investigation, he discussed the details concerning each debt. (Item 3) He stated that, prior to 2019, he was in good financial standing with his creditors. His main debts were a home mortgage, student loans, and credit card debts. Before 2019, he successfully contributed to his 401(k)-retirement plan, and set aside funds for emergencies. (Item 3 at 2) He stated his financial problems resulted from his son's competitive swim and ski team activities. His expenses tripled in 2019 due to his support of these activities. He became financially overwhelmed and fell behind on his financial obligations. (Item 3 at 2-3)

Under Guideline E, the SOR alleged Applicant was suspended for five days without pay for violating his employer's policy, which prohibited the personal use of a Company credit card. He admitted the allegation. A thorough search of the record evidence yielded no evidence concerning this allegation. (See Items 2 through 5)

Applicant traveled internationally five times between February 2016 and December 2019. Specifically, he toured Canada twice, in February 2016 (1-5 days); and again, in January 2017 (6-10 days). He also visited family and friends in several international locations, including Mexico in April 2016 (1-5 days), Columbia in December 2019 (11-20 days), and Panama in December 2019 (1-5 days). (Item 2 at 30-37; and Item 3). He used credit cards and personal loans to finance travel-related expenses and his son's competitive sports activities. (Item 3)

Applicant listed his gross monthly income at \$10,000, with a net income of \$4,000. He listed his spouse's gross monthly income at \$5,000, with a net income of \$2,000; for a combined net monthly income of \$6,000. His assets, other than family income, exceed \$1.8 million in value: home (\$1.2 million), three cars (\$16,000), checking and savings accounts (\$5,300), and 401(k) retirement plan (\$600,000). His monthly expenses total \$7,890 and included: a mortgage (\$3,500); his son's competitive activity fees (\$1,200), and entertainment (\$300). His monthly debts total \$1,415, and include: student loans (\$370), credit cards (\$1,000), and fitness club membership (\$45). (Item 3)

The evidence for all allegations in the SOR is summarized below.

SOR ¶¶ 1.a through 1.h: Applicant admitted the delinquent debts in SOR ¶¶ 1.a. through SOR 1.h. All eight debts are individual accounts that were charged off between April and June 2022. (Items 4 and 5) The two oldest debts, SOR ¶¶ 1.c and 1.f, were opened in 1998 with the same creditor. Both accounts were 150 days past due before the creditor charged them off. The narrative indicates that a past dispute with the creditor was resolved. (*Id.*) Applicant did not dispute any of the SOR debt and did not raise this as an issue in his Answer. (See Answer to SOR) All eight debts are unresolved.

SOR ¶ 1.i: Applicant admitted this debt. However, there is no independent evidence or information in the record to support the allegation that, in May 2009, Applicant's wages were garnished for \$3,749.15, by a previous employer. (See Items 2 through 5) This allegation is resolved in Applicant's favor.

SOR ¶ 2.a: Applicant also admitted this debt. However, there is no independent evidence or information in the record to support the allegation that, in January 2008, Applicant received a five-day suspension without pay for violating a company policy regarding the personal use of a company credit card. (See Items 2 through 5) This allegation is resolved in Applicant's favor.

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.” EO 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.” EO 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 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.” Department of the Navy v. Egan, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

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, two credit reports, and statements made during his background investigation establish two 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;

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.

None of the above mitigating conditions are applicable in this case. Applicant's delinquent debts are recent, ongoing, and unresolved, despite the fact that he has been gainfully employed with the same defense contractor for over 19 years, and reported a net worth that exceeded \$1.8 million, including \$600,000 or more in a 401(k)-retirement account. There is insufficient evidence to establish that conditions creating his financial situation were beyond his control; or that he acted responsibly under the circumstances; or that he made a good-faith effort to pay his debts. Though he stated he planned to get counseling, and to contact creditors to establish a repayment plan, he did not state nor did he provide documentary evidence to show he took these actions. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant has not met his mitigation burden. Financial considerations security concerns remain in this case.

Guideline E, Personal Conduct

The security concern under this guideline is described in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Other than Applicant's admission, there is no evidence in the record to support the personal conduct allegation in the SOR. The disqualifying condition in AG ¶ 16(e) has not been established in this case.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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.

Gatha LaFaye
Administrative Judge