



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02149
)
 Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 14, 2019. On December 14, 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 January 24, 2024, and requested a hearing before an administrative judge.¹ Department Counsel was ready to proceed on February 15, 2024, and the case was assigned to me on September 4, 2024. On September 19, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 16, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 11 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on October 28, 2024.

I kept the record open until October 25, 2024, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through I, which were admitted without objection. I reopened the record on November 20, 2024, to enable him to submit an additional document. He submitted AX J, which was admitted without objection. The record closed on November 21, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.g and 1.i-1.k. There is no SOR ¶ 1.h. His admissions are incorporated in my findings of fact.

Applicant is a 44-year-old senior middleware consultant employed by a federal contractor since September 2016. He received a bachelor's degree in December 2004. He has been employed by federal contractors since May 2006. He married in June 2000, divorced in 2011, married in August 2015, and divorced in February 2021. (GX 1 at 27-28; Tr. 19) He has two children, ages 19 and 17. He received security clearances in May 2000 and September 2010.

SOR ¶ 1.a alleges a Chapter 13 bankruptcy filed by Applicant in September 2019, involving \$680,929 in outstanding debts. The debts alleged in SOR ¶¶ 1.b-1.f were incurred in child-custody litigation and were included in this Chapter 13 bankruptcy. (Answer to SOR; GX 5, 6, 7, and 8) Applicant admitted these debts, explaining that they are credit-card debts and loans obtained to pay attorney's fees, court fees, and other fees incurred during a multi-year custody battle with a prior spouse to obtain custody of two minor children.

SOR ¶ 1.g alleges a debt of \$32,134 to a law firm representing a vehicle rental company. This debt was incurred when Applicant wrecked a rental truck by trying to drive under a low-hanging tree branch, and it was included in the September 2019 bankruptcy. (GX 7 at 22; AX G)

¹ Applicant submitted some materials to the DCSA that were not included in the Government evidence submitted at the hearing. A copy of the materials he submitted to the DCSA is included in the record as AX B.

SOR ¶¶ 1.i alleges a debt of \$37,067 that was incurred during the selling of the marital home in March 2021. It was included in the first of two bankruptcies involving Applicant. He had contracted for installation of solar panels on the home. When the family home was sold, he and his then wife decided to not pay for the solar panels out of the shared proceeds from the sale, because that would have reduced the amount of their profit on the home sale by about \$32,000. (Tr. 41) The debt is not reflected in the two credit reports in the record. (GX 2; GX 3)

SOR ¶¶ 1.j-1.k allege the debts incurred during Applicant's first divorce and the subsequent custody battle. (AX C; AX D) After Applicant's first divorce in 2011, he and his ex-wife agreed to not contest the custody of their two daughters. They agreed to joint custody, with the mother being the primary custodian and would make the decisions regarding education and medical care for the children. Applicant learned that the children were not being educated or receiving proper medical care. His seven-year-old younger daughter could not read, and neither child was vaccinated. After a few months of negotiating with his ex-wife, Applicant decided to seek primary custody of his two daughters. A long custody battle followed. (Tr. 13) Applicant incurred attorney's fees, court fees, and investigative fees totaling about \$191,873, but he succeeded gaining primary custody of his daughters. (Tr. 13-14; AX C; AX D) He was unsuccessful in his attempt to have his daughters move to another state to live with him, and so they continue to live with their mother, even though Applicant has primary custody and responsibility for their education and medical care. He used unsecured loans and credit-card accounts to pay the expenses of the litigation, including the debts alleged in the SOR. (AX F) He has recently moved to a smaller, less expensive apartment to reduce his living expenses. (AX E; AX H)

Applicant and his then spouse filed a joint bankruptcy and made the payments of \$740 per month from October 2019 to February 2021. (Tr. 25) Some of the debts included in the bankruptcy were for student loans incurred by Applicant's then wife (GX 6, debts # 2, #3, #7, and #16), a home mortgage loan (#13) and two car loans (#14 and #15). When Applicant and his then spouse filed for divorce, they were advised by their attorney to cease making payments and allow the bankruptcy to be dismissed, because they could not continue with a joint bankruptcy after the divorce. They followed the attorney's advice, and the case was dismissed for failure to make the required payments. (GX 8)

Applicant filed another Chapter 13 bankruptcy on January 31, 2024. He is the sole debtor in this petition. The petition, proposed Chapter 13 plan, and calculation of disposable income are reflected in GX 9, 10, and 11. The plan for this bankruptcy provides for payments of \$740 per month for 60 months. (GX 10) This bankruptcy petition reflects that Applicant has monthly income of \$12,880, and he will have monthly disposable income of \$538 after making the proposed monthly payments of \$740. He has no home mortgage or car loan expenses. His monthly expenses include child support of \$1,000 per month, but his children are ages 19 and 17, and his child-support obligation will soon terminate. (GX 11) He has made the required monthly payments for eight months through November 2024 (AX K).

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 during the hearing and after 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 established. Applicant's delinquent debts are recent and ongoing, but they arose from a bitter and expensive custody battle that is not likely to recur, and they do not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is established. The debt for damage to a rental truck, alleged in SOR ¶ 1.g, was due to Applicant's negligence and was not a condition largely beyond his control. However, he has encountered two divorces and a bitter custody battle, which were conditions largely beyond his control. He acted responsibly after the first divorce and the custody battle by filing a petition for Chapter 13 bankruptcy and making payments for about 18 months, until he was required to terminate the joint bankruptcy because of his second divorce. He has now filed another Chapter 13 bankruptcy petition as the sole debtor, and he is making timely payments to the bankruptcy trustee as required.

AG ¶ 20(c) is established. Applicant has received the financial counseling required by the bankruptcy court and there are clear indications that the problem is being resolved.

AG ¶ 20(d) is established. Applicant made the required payments under his first bankruptcy for 18 months, and he has been making the required payments under his second bankruptcy for eight months.

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). 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 delinquent debts.

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.g and 1.i-1.k: For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge