



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



In the matter of:)
)
) ISCR Case No. 23-02318
)
Applicant for Security Clearance)

Appearances

For Government: John G. Hannink, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2024

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate 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 May 17, 2023. On October 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). 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 on October 24, 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 December 6, 2023, including Items 1 through 8. On December 6, 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 January 4, 2024, and did not respond. The case was assigned to me on April 2, 2024. Items 1 and 2, the SOR, and Applicant's Answer to the SOR, are already part of the administrative record. Items 3 through 8 are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all allegations in the SOR, including SOR ¶¶ 1.a -1.x. His admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 57 years old. He earned his bachelor's and master's degrees in 1989 and 1990, respectively. He married in 1991, divorced in 1992, and he has no children. Applicant has resided with his mother and stepfather for the last five years. He previously resided with them from 2017 to 2019; and prior to that, he resided in a home owned by his sister, from 2008 to 2017. In total, Applicant has resided with his mother and stepfather for about seven of the last eight years. (Items 3)

Applicant has worked as a corporate accountant for a defense contractor since February 2023. From January 2008 to February 2023, he worked part-time, as a self-employed accountant and paralegal for an accounting and law firm he established with his sister. In January 2019, he found full-time work as an accountant for a private company. However, he stated that he left the company after about 12 months due to an illness. In January 2016, he worked part-time as a paralegal in a private law firm for about four months before he was laid off in April 2016. (Item 3)

In May 2023, Applicant completed his first SCA, where he disclosed 24 unresolved delinquent debts totaling about \$90,500. (Item 3 at 28-47). Most of his delinquent debts, 17 of 24, were charged-off accounts. He stated that he was unable to pay his debts because he lacked the income to do so. (*Id.*) Applicant previously filed for Chapter 7 bankruptcy in September 2000. His prior unresolved delinquent debts were discharged in January 2001. (Item 7)

Under Guideline F, the SOR alleged 23 delinquent debts totaling about \$70,000. It also alleged the prior bankruptcy action discussed above. In his Answer to the SOR, Applicant admitted all 24 allegations. He discussed the details of each delinquent debt during his July 2023 background investigation. (Item 8) He stated that he was in good financial standing with his creditors up until he was laid off from work in 2016. He stated that, although he was still working part-time with his sister, he was not earning enough income to sustain himself financially. He stated he resided in a high cost-of-living area, and that he used credit cards to finance his living expenses. (Item 8)

Applicant admitted that he has not made any attempt to pay his delinquent debts. He also admitted receiving letters from creditors, but stated it was "too depressing" to read them. However, he stated that he kept the letters for use in a future bankruptcy

action. He commented that he would take action to do something about his delinquent debts, by either filing another bankruptcy action, or working with a credit counseling service. (Item 8) He did not submit any documentary evidence to show any steps he took to address his delinquent debts.

Though Applicant did not disclose his salary, he stated that he contributes 15% of his income to his employer-based 401(k) retirement plan. He has also saved \$10,000 cash and paid off the car his mother purchased for him. He stated he keeps one credit card for emergencies. During his background interview, he stated that he was contemplating filing for bankruptcy a second time. However, he stated he first needed to move out of his parents' home to show living expenses to the bankruptcy court. He commented that he has no living expenses, and that he makes too much money to file Chapter 7 bankruptcy, but that he would probably file for Chapter 13 bankruptcy and pay a trustee to pay back some of his debts. (Item 8 at 2) It is unclear whether Applicant has filed a second bankruptcy action. He has not presented any evidence, nor is there any evidence of a second bankruptcy action in the administrative record.

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

SOR ¶¶ 1.a through 1.x: Applicant admitted all delinquent debts in the SOR, including SOR ¶¶ 1.a. through SOR 1.w. He also admitted in SOR ¶ 1.x, that he filed for Chapter 7 bankruptcy in September 2000, and that his debts were discharged in January 2001. All allegations in the SOR are supported by evidence, including two credit bureau reports, Applicant's comments to investigators during his background interview, and his admissions in Section 26 of the SCA. (Items 2 through 8)

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; and

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.

None of the above mitigating conditions are established in this case. Applicant's delinquent debts are recent, ongoing, and unresolved, despite the fact that he has resided with his parents for seven of the last eight years, with little to no ordinary household living expenses. He has been employed at least part time since 2019; and has worked in his current position since February 2023. He has saved \$10,000 or more, and he actively contributes 15% of his income to a 401(k) retirement plan. He also had prior delinquent debts discharged under Chapter 7 bankruptcy in 2001. He admitted not taking any meaningful action or steps to address his delinquent debts in the SOR. He did not contact creditors or otherwise communicate with them to establish repayment plans.

There is insufficient evidence to establish that the conditions creating his financial situation were beyond his control; 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 do something, and that he would probably file for Chapter 13 bankruptcy, he did not provide documentary evidence showing steps he has taken to address his delinquent debts.

Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. Applicant has not met his mitigation burden.

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.x: 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.

Gatha LaFaye
Administrative Judge