



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



In the matter of:)
)
) ISCR Case No. 23-02256
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2024

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 27, 2014. On December 11, 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 December 18, 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 February 7, 2024, including documents marked as Items 1 through 11. On February 8, 2024, 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 February 28, 2024. He responded to the FORM on March 29, 2024 and submitted documentary evidence for consideration. The case was assigned to me on June 7, 2024. I marked Applicant's submission as AE A and admitted it in evidence without objection. Items 1 through 3, the SOR, the transmittal letter, and Applicant's Answer to the SOR, are already part of the administrative record. Items 4 through 11 are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all allegations in the SOR (SOR ¶¶ 1.a through 1.f). 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 51 years old. He received his high school diploma in 1991. In December 1994, he enlisted in the active duty Army. He was honorably discharged from the Army in July 2001. In October 2002, he enrolled in college and he earned his bachelor's degree in July 2006. He married in 2001 and has two children, ages 23 and 12, and a 30 year-old stepchild. (Items 5, 7)

Applicant has worked full time as a network analyst for a defense contractor since August 2012. (Items 5, 7) He holds a top secret security clearance, which was granted in June 2015. (Item 8) He previously worked 24 months as an operations analyst for a different defense contractor, and another 18 months in the information technology (IT) field for another defense contractor. He was unemployed for about 4 months, between October 2008 and January 2009. (Items 5, 7)

Applicant completed his most recent SCAs in May 2009 and March 2014. (Items 4,5) In both SCAs, he disclosed multiple financial problems. (*Id.*) In his 2009 background interview, he admitted he had not managed his finances well and that he could have done better living within his means. No budgeting information was provided. (Item 6)

In his March 2015 background interview, Applicant admitted that he failed to disclose all delinquent debts his 2014 SCA. (Item 7) He stated he and his wife experienced marital problems and lived separately from 2011 to 2012, before deciding to reconcile later in 2012. Their separation caused more financial strain with the added burden of supporting two households, and they were unable to manage their debts. (*Id.*)

In 2012, Applicant stated they hired a debt management company (DM1) to help manage their delinquent debts, and that DM1 was responsible for making payment arrangements with creditors and paying them directly, as well as settling debts as

appropriate. The outstanding delinquent debts at the time totaled about \$15,600. He paid DM1 \$538 per month, which included \$488 towards debts and a \$50 management fee. He claimed all payments were made on time, and that he committed to continuing payments until the accounts were fully paid. He denied knowing the remaining balances of the accounts in his 2015 interview. (Item 7 at 4)

In his May 2014 SCA, Applicant failed to disclose about nine delinquent debts, but discussed them in detail during his 2015 interview. He attributed his financial problems to his mismanagement of funds. He stated some, but not all delinquent debts were included in the DM1 agreement and that debts he did not disclose were either missed due to oversight or because they were paid. (Item 7) He did not provide documentation to corroborate his agreement with DM1, including debts being managed and the status of the managed debts. He also claimed that he was financially stable, living within his means, and working on his financial situation. (Item 7 at 6-7)

The DOD continuous vetting program (CV) identified unreported derogatory financial information about Applicant in a January 2022 credit bureau report. The CV incident report listed six delinquent debts totaling about \$28,600, which ultimately led to the SOR allegations in this case.

In his December 2023 Answer, Applicant admitted all debts and attached supplemental documents, including a copy of his sensitive compartmented information (SCI) pre-screening questionnaire completed in March 2023. (Item 3 at 4-7) Applicant responded “yes” to question 10, which asked whether he “had any bills referred to a collection agency since his last completed [SCA].” He stated that his “family household income depleted severely” and that he was working with a different company (LPG) to “consolidate, pay off, lower interest, and/or delete” delinquent debts in the SOR. (*Id.*) He explained that in 2019 his household income was depleted by “family emergencies dealing with elderly siblings.” He did not specify the family emergencies or how they impacted his income. He stated he would continue make payments to LPG until all debts were resolved. (*Id.*)

Applicant provided a copy of his agreement with LPG and included a one-page document indicating a planned schedule of payments to LPG from November 2020 through October 2022. (AE A at 13; Item 8 at 20) The LPG agreement included debts alleged in SOR ¶¶ 1.a, and 1.c through 1.f, totaling \$27,809. (AE A at 11,13, 15) He submitted an unsigned bank authorization for LPG to debit \$575.80 each month. However, when his facility security officer (FSO) requested proof of payments made, to include an accounting for any gap, Applicant was unable to establish he actually made payments to LPG. (Item 8 at 6-11) In April 2023, he informed his FSO that LPG sold his account and that he was not required to make payments to LPG from December 2022 to March 2023. He also stated the funds he paid to LPG were to be used towards his delinquent debts. (Item 8 at 6)

Though Applicant asserted LPG was a “debt consolidation” company and that funds he sent were to be used for payments towards his delinquent debts, the first paragraph of LPG’s agreement clearly described the contracted services to be provided:

Legal Services

[LPG] will provide debt validation services wherein it will assist you in removing erroneous or inaccurate information appearing on one or more of your credit reports by contesting debts appearing therein. ... (AE A at 9-10)

Though not specifically advanced as an argument, the evidence shows Applicant disputed the debts alleged in SOR ¶¶ 1.a and 1.f, through credit bureaus pursuant to his agreement with LPG. (Items 9, 11)

Applicant did not provide documentation or information about his earnings, savings or checking accounts, or other financial accounts. Nor did he provide documentation or information about his monthly household expenditures. It is unknown whether he participates in or actively contributes to a 401(k) retirement plan. The record is also void of any financial counseling or budgeting information.

The evidence regarding the SOR allegations is summarized below:

SOR ¶ 1.a: Applicant admitted this debt. The account was assigned in 2018, with the last payment date listed as December 2018. (Items 9, 11) The creditor charged off the account for \$790. (Item 11 at 4) Applicant presented proof he paid this charged-off account in March 2024. (AE A at 3)

SOR ¶ 1.b: Applicant admitted this debt, but indicated it was no longer delinquent. In 2021, he secured an auto loan of \$50,500, with monthly payments of \$912 for 75 months. The creditor indicated the loan was past due not more than three times. (Item 10 at 6) In February 2024, the past due amount was listed as \$767. (Item 11 at 8) In March 2024, Applicant presented proof he was current on this debt, which had an outstanding balance of \$36,729. (AE A at 4)

SOR ¶ 1.c: Applicant admitted this debt, a revolving credit account opened in February 2018. The creditor reported the first major delinquency in May 2021. The account was charged off for \$6,553. (Items 9 at 2; 10 at 8; and 11 at 9) Applicant presented proof he settled the account for \$3,000 in March 2024. (AE A at 1,5)

SOR ¶ 1.d: Applicant admitted this debt, a revolving credit account opened in October 2017. The creditor reported the first major delinquency in May 2021. The account was charged off for \$10,917. (Items 9 at 2; 10 at 9; and 11 at 10) Applicant presented proof he paid \$433 on the account in March 2024. He also stated he agreed to pay the creditor this amount for 12 months, but he did not provide documentation of other payments. (AE A at 1,6)

SOR ¶ 1.e: Applicant admitted this debt. The account was opened in April 2018, with the first major delinquency reported in June 2021. The creditor indicated the loan was modified, but ultimately charged off the account for \$7,667. (Items 9 at 2; 10 at 10; and 11 at 4) Applicant presented proof he settled the account for \$3,292 in March 2024. (AE A at 1,7)

SOR ¶ 1.f: Applicant admitted this debt. The account was opened in September 2019. The first major delinquency was reported in December 2019 and listed as a collection account for \$1,981. (Item 9 at 3) The collection amount was revised to \$1,906 in the 2023 and 2024 credit bureau reports. (Items 10 at 7; and 11 at 9) Applicant presented proof he paid the account in full amount in March 2024. (AE A at 1,8)

The source of funding Applicant used in March 2024 to pay or settle the SOR debts is unknown. He did not explain why he did not resolve these debts sooner. His 2024 credit bureau report (CBR) shows new delinquent debts that were not alleged in the SOR. (Item 11 at 5-6,8-10) It also lists 18 accounts as being 90 days delinquent. (Item 11 at 1) The evidence also indicates Applicant has a history of acquiring personal or debt consolidation loans to pay delinquent debts. (See Item 6; Item 7 at 4-6; Item 11 at 13)

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* 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.” *Egan* at 531. See also 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).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially relevant in this case:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant's admissions, the continuous evaluation incident report, three credit bureau reports, and statements made during his two background interviews establish the above disqualifying conditions under this guideline.

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.

AG ¶¶ 20(a) and 20(c) are not established. Applicant's delinquent debts are recent and ongoing. He did not provide sufficient evidence to find that these debts occurred under circumstances that are unlikely to recur. Moreover, he has not presented evidence that he is receiving financial counseling or that he received counseling for his financial problems in 2009.

AG ¶ 20(b) is not fully established. Applicant attributed his current financial situation to the depletion of his household income in 2019 due to “family emergencies dealing with elderly siblings,” though he failed to disclose anything about the nature of these emergencies or their costs. He has been gainfully employed with the same defense contractor since August 2012. He did not disclose information about his earnings, savings or checking accounts, or other financial assets; nor did he disclose information about his routine household expenses to permit me to evaluate the reasonableness of his actions under the circumstance. Applicant has a long history of financial problems as established by the record. He readily admitted he has mismanaged his funds and has failed to live within his means at times. He is credited with seeking the assistance of a debt servicing company, though the contracted service was not the service he claimed it was. The actual service provided was limited to “debt validation” to assist Applicant with contesting and removing inaccurate financial information reported by credit bureaus. It is the Applicant’s burden to mitigate financial considerations security concerns and he failed to do so here.

AG ¶ 20(d) is not fully established. Applicant is credited with taking positive actions in March 2024 to repay overdue creditors and to resolve his delinquent SOR debts. However, he took these actions in direct response to the Government’s evidence in this FORM, and well after the initiation of the security clearance process. He did not explain how he obtained the funds to make these payments and why he waited so long to resolve the debts. The timing of his action negatively impacts the degree to which the mitigating factors apply. It is well settled that an Applicant who waits until his security clearance is in jeopardy before resolving legitimate debts may be lacking in the judgment expected of those with access to classified information. Resolving legitimate debts in this manner does not equate to a good faith resolution of one’s delinquent debts.

AG ¶ 20(e) is not established. Although the record indicates Applicant disputed two debts, SOR ¶¶ 1.a and 1.f, through his debt validation provider, he did not provide the basis for his dispute. He subsequently admitted both debts in his Answer.

There is insufficient evidence to make a determination that Applicant’s financial problems are behind him. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. I find that financial considerations security concerns remain unresolved 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 suitability for a security clearance at this time. I conclude Applicant did not mitigate security concerns based on financial considerations.

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.f: 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