



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



In the matter of:)
)
) ISCR Case No. 23-02325
)
Applicant for Security Clearance)

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel
For Government: Rhett Esq., Department Counsel

For Applicant: *Pro se*

12/03/2024

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 August 8, 2019. On October 19, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The DOD acted under Executive Order (EO) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; 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 November 2, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2024. On September 13, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for September 30, 2024. The hearing was convened as scheduled. During the hearing, Department Counsel offered Government Exhibits (GE) 1 through GE 7, which were admitted in evidence without objection. Applicant did not offer any exhibits at the hearing. DOHA received the hearing transcript (Tr.) on October 11, 2024.

Findings of Fact

In his Answer, Applicant admitted all allegations, SOR ¶¶ 1.a through 1.e. Applicant's admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 32 years old. He earned his high school diploma in June 2010 and his bachelor's degree in August 2015. He has never been married, and does not have children. (GE 1,7; Tr. 15-16)

Applicant has worked as a full-time waterfront support employee for a defense contractor since January 2018. He testified he earns between \$60,000 and \$100,000 per year depending upon the amount of overtime he works. (GE 1,7; Tr. 19-21) He stated that overtime work was broadly available until recently. (Tr. at 20-21, 30-32) From May to August 2015, he worked as a part-time intern with a local government employer where he earned about \$15 per hour. In September 2015, the same local government employer hired him full-time for the same pay. In January 2018, he began working with his current employer. (GE 1,2,7; Tr. at 16-21)

Applicant participates in his employer's 401(k) retirement plan, which has up to an 8% employer matching rate. He stated the current value of his 401(k) is about \$98,000. (Tr. at 33) He has about \$600 in his checking account and about \$400 in his savings account. He denied having any additional financial accounts or sources of income. (GE 2,7; Tr. at 32-34)

Applicant stated he lives alone and pays \$1,300 per month for rent. He has a car payment of about \$500 per month, and other bills including insurance, mobile phone, utility bills and other expenses totaling about \$2,800 per month. (GE 2; Tr. at 28-30) He stated that he recently reduced his automatic contributions to his 401(k) retirement plan from 12% to 6% of his income. (GE 2; Tr. at 33-39) He described his current financial situation as "rocky at the moment." (Tr. at 32) He stated he has about six to eight months remaining to pay off his car loan and "free up some money." (Tr. at 32)

Applicant testified that he was aware of only one student loan, SOR ¶ 1.a, which he listed as delinquent in Section 26 of the SCA. (GE 1 at 32-33; Tr. at 24-25) He stated his "payments were too high to make with a part-time job" and explained that payments for this student loan "were being garnished out of [his] check" and his tax refunds were

also “being kept.” (GE 1 at 33; Tr. at 24) He did not list any additional delinquent student loans or other debts. (*Id.*) He stated he communicated initially with the student loan creditors after he completed his bachelor’s degree. He stated that he made a few payments to his student loan creditors and qualified for a deferment of payments three times. (Tr. at 22-23) The deferment status had ended by the time he commenced working for his current employer in 2018. (Tr. at 39)

In his October 2019 background interview, he stated he was unaware that he had so much student loan indebtedness, about \$80,000. (GE 7) He informed the DOD investigator that he would contact his student loan creditors and make payment arrangements with them. (GE 7) During the hearing, Applicant disclosed that his mother actually completed his student loan applications and she also managed his debts until she married again. (GE 7; Tr. at 40,44). He disclosed that he had not contacted his student loan creditors; nor had he sought financial counseling or advice for his financial problems. (GE 7; Tr. at 23-28, 36)

The SOR alleged five delinquent student loans totaling about \$24,489. Applicant admitted all debts and his admissions are also supported by the record evidence, including four credit bureau reports, admissions made in the SCA and during his background interviews, and testimony during the hearing.

Th evidence concerning the SOR allegations is summarized below:

SOR ¶ 1.a (\$7,647): This debt was charged off for the full amount in March 2020. The account was opened in January 2015, and the last activity on the account occurred in August 2019. (GEs 3-6; Tr. at 21-23)

Applicant testified that his student loan creditor started calling him regarding SOR ¶ 1.a. in about 2019, and that he had discussions with them once or twice. He testified that the creditor offered to settle the debt for an amount that he could not afford. (Tr. at 24-25) He did not make a counteroffer. Applicant’s wages were ultimately garnished for this debt in the amount of \$150 per pay period. He claimed he completed payments under the garnishment order, and that the creditor informed him by mail. (Tr. at 25-27) Applicant did not provide a copy of the letter; nor did he provide any proof he satisfied the debt in SOR ¶ 1.A. This debt is listed as charged off in Applicant’s September 2024 credit bureau report. (Item 3 at 1, Tr. at 35)

SOR ¶ 1.b: This debt is a collection account for \$6,360. It was assigned in August 2017, and the original debt was \$4,455. (GE 5 at 2)

SOR ¶ 1.c: This debt is a collection account for \$5,203. It was assigned in August 2017, and the original debt was \$3,370. (GE 5 at 2)

SOR ¶ 1.d: This debt is a collection account for \$2,708. It was assigned in August 2017, and the original debt was \$1,827. (GE 5 at 3)

SOR ¶ 1.e: This debt is a collection account for \$2,571. It was assigned in August 2017 and the original debt was \$1,769. (GE 5 at 3)

Applicant did not submit any documentary evidence in support of the above SOR allegations. Neither did he make any specific comments about the debts alleged in SOR ¶¶ 1.b through 1.e, above. Moreover, there were several unalleged student loans with different account numbers and dollar amounts in his 2019 credit bureau report that were either charged off or transferred to the Government. (GE 6 at 8-11) Throughout the hearing, Applicant expressed his limited awareness of his student loan account balances and the overall status of his student loans since his mother stopped managing his debts for him. (Tr. at 21-23, 26-28, 43-45) He has not made any direct payments towards his student loans since 2018, when he started working for his current employer. (Tr. at 21-23, 27-28) He has prioritized paying off his car loan to “free up some money” before he plans to address his delinquent student loans. He understood that his delinquent student loans caused financial considerations security concerns. (Tr. at 34-35, 44)

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).

Applicant's admissions and the evidence discussed above 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).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially relevant:

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) and 20(c) are not established. Applicant has a long history of financial problems. His current delinquent debts are numerous and ongoing and remain unresolved. He has not sought financial counseling, education, or advice to help him resolve his financial issues.

AG ¶¶ 20(b) and 20(d) are not established. Applicant initially experienced difficulty finding a position with adequate pay after earning his bachelor's degree in August 2015. He initially communicated with the student loan creditors and had his student loan payments deferred for an unknown period of time. However, he has been gainfully employed since January 2018, earning between \$60,000 and \$100,000 annually. Despite his much improved financial circumstance over six years ago, Applicant has not communicated with his creditors; nor has he made any payments towards his delinquent student loans. Throughout the hearing, he expressed limited awareness of his account balances and the overall status of his student loans. He specifically testified that he prioritized paying off his car loan to "free up some money" before taking any action towards addressing his delinquent student loans. There is insufficient evidence to establish that the conditions creating his financial situation were beyond his control; or that he acted responsibly under the circumstances. I find he has not acted responsibly under the circumstances and he has not made a good-faith effort to pay delinquent debts.

In sum, there is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find he acted responsibly under the circumstances or that he made a good-faith effort to pay his delinquent debts. His financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. I find that financial considerations security concerns remain 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 in this case.

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.e: | 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