



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02537
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

12/23/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 9, 2023. On March 8, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and F. The DCSA 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 March 14, 2024, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's

written case on July 30, 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 August 16, 2024, and did not respond. The case was assigned to me on December 5, 2024.

The FORM consists of six items. Item 1 is the SOR and Applicant's answer. FORM Items 2 through 6 are the evidence submitted by Department Counsel in support of the allegations in the SOR. Applicant did not object to any items. FORM Items 2 through 6 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 2.a, and 2.d. He denied the allegations in SOR ¶¶ 2.b and 2.c. His admissions are incorporated in my findings of fact.

Applicant is 30 years old. He has been sponsored by a federal contractor for security clearance. The record does not reflect the type of his employment. He has never married, but he has a daughter born in 2016 that he has never met. He received an associate degree in May 2020. He has never held a security clearance.

When Applicant submitted his SCA in June 2023, he disclosed that he had used marijuana a total of ten times between May 2013 and 2023. He stated, "[M]y party days are over." (Item 2 at 30-31) Later, when he responded to DOHA interrogatories, he admitted that he used marijuana more frequently than he had admitted in his SCA. He admitted that he used marijuana from once or twice a week from February 2018 to June 2021 and once or twice a month from 2021 to 2023. He also stated that he used a THC pen or vape once or twice a month from March to June 2023. Finally, he stated that he stopped using all THC products in June 2023 because it caused him to have breathing issues. (Item 3)

The SOR alleges four delinquent debts. reflected in credit reports dated February 21, 2024 (Item 4) and June 21, 2023 (Item 5). The evidence concerning these debts is summarized below.

SOR ¶ 2.a: federal tax debt of \$29,364 for tax year 2013. (Item 6). In Applicant's security interview in July 2023, he told the investigator that his father arranged to have his salary paid to him to avoid garnishment for child support. Applicant was 18 years old at the time. He cashed the checks and gave the money to his father. He told the investigator that he attempted to contact the IRS but was unable to reach anyone. He told the investigator that he will allow the IRS to continue taking his refunds until the tax debt is paid.

SOR ¶¶ 2.b and 2.c: credit-card accounts charged off for \$1,802 (Item 4 at 3) and placed for collection of \$742 (Item 5 at 3). In Applicant's security interview, he

stated that his ex-fiancée gained access to his bank accounts and spent the money on groceries, gas, and other items. In his security interview, he stated that he reached out to the collection agency for the debt in SOR ¶ 2.b and has made three payments. He submitted no documentary evidence of contacts with creditors or payments.

SOR ¶ 2.d: child-support arrearage of \$1. (Item 4 at 9) During Applicant security interview, he told the investigator that he paid off his child support arrearage in the summer of 2018. When he moved to another state, he notified the child-support office by email that he was moving, but he has not received any communication from his current state of residence. (Interview at 5) The amount of this debt makes its probative value *de minimis*. I have resolved it 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." 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 H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant’s admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; and

AG ¶ 26(a) is not established. Applicant's drug use was recent, frequent, and did not occur under circumstances making it unlikely to recur.

AG ¶ 26(b) is not established. Applicant acknowledged his drug involvement in his SCA, but minimized the frequency. It was not until he responded to DOHA interrogatories that he disclosed the full extent of his drug use. He presented no evidence that he has disassociated from drug-using associates and contacts or changed his environment. He has not provided the signed statement of intent provided for in AG ¶ 26(b)(3).

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 in the FORM establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are 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;

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is established. Applicant's debts are recent and frequent, but they occurred under circumstances making them unlikely to recur, *i.e.*, his ex-fiancée's

unauthorized use of his credit cards and his father's fraudulent scheme to avoid garnishment for a child-support arrearage.

AG ¶ 20(b) is not established. Applicant's ex-fiancée's use of his credit cards was a condition largely beyond his control, but he has not submitted documentary evidence of responsible conduct. His participation in his father's scheme to avoid paying child support was not largely beyond his control. He was an 18-year-old adult when he voluntarily participated. He submitted no documentation to support his claim that he is paying the credit-card debts and no evidence of contacts with the IRS regarding the tax debt.

AG ¶ 20(g) is not established. Applicant submitted no documentary evidence of payments or a plan to resolve his tax debt.

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 Guidelines H and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Once a concern arises regarding an Applicant's eligibility for access to classified information, there is a strong presumption against granting eligibility. ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption. After weighing the disqualifying and mitigating conditions under Guidelines H and F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by drug involvement and delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drugs): AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

Paragraph 2, Guideline F (Financial): AGAINST APPLICANT

 Subparagraphs 2.a-2.c: Against Applicant

 Subparagraph 2.d: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge