



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



In the matter of:)	
)	
)	ISCR Case No. 24-00260
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves 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 March 18, 2022. On February 26, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on April 12, 2024, and requested a decision on the written record without a hearing. (Answer) Department Counsel submitted the Government's written case on May 14, 2024. A complete copy of the file of relevant material (FORM) was sent to Applicant on May 16, 2024, who was given an opportunity

to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant did not submit a response. The case was assigned to me on September 3, 2024.

The SOR and the Answer (Items 1 and 2) are the pleadings in the case. FORM Items 3 through 7 are admitted into evidence without objection. Admission of FORM Item 4 is discussed below.

Evidentiary Issue

The FORM included a summary of a personal subject interview (PSI) conducted on May 17, 2023. (FORM Item 4). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 4 is therefore admitted.

Findings of Fact

In Applicant's Answer to the SOR, he admitted to failing to file his Federal and state income tax returns (SOR ¶¶ 1.a and 1.b). He also admitted to five of the alleged delinquent consumer accounts (SOR ¶¶ 1.c-1.f and 1.h) and denied two on the basis that he did not recognize them (SOR ¶¶ 1.g and 1.i). His admissions are incorporated in my findings of fact.

Applicant is 41 years old. He served honorably in the U.S. Marine Corps on active duty from January 2003 until September 2013. He married in 2018 and has one preschool age child and a teenage stepchild. He earned an associate degree in 2019.

The SOR debts were not listed on his SCA. Appellant discussed them with an investigator during his PSI after being confronted. He also provided documentation in response to Government interrogatories showing that his 2021 and 2022 Federal income tax returns, SOR ¶¶ 1.a and 1.b, remained unfiled. (Item 4; Item 5.) Regarding his Federal and state taxes, he stated in his Answer for both that:

At the time that this correspond[ence] was received it was correct that I had not filed personal federal [and state] taxes for either 2021 or 2022. I have since filed and currently await receipt and acceptance for 2021, 2022, & 2023. All three years are estimated to contain balances owed to the IRS none of the above years are estimated to exceed the estimated personal state tax fund for the corresponding year.

Applicant provided no documentation for the seven consumer debts alleged. After leaving the Marine Corps in September 2013, he experienced a brief period of unemployment. He was unemployed once again between December 2015 and March 2016. The SCA shows he has been continuously employed full-time since August 2016. (Item 3.)

SOR ¶ 1.c alleges an automobile loan that has been charged off in the amount of \$7,457. In his Answer, Applicant admits the debt and stated this loan was for his wife's car and he was the primary on it because she had no credit history at the time of purchase. She was supposed to make the payments with her wages. He did not know the loan had gone into default until it was repossessed. (Answer; Item 4; Item 5; Item 6; Item 7.)

SOR ¶ 1.f. alleges a communications account placed for collection in the amount of \$228. In his Answer, Applicant admits the debt and notes he keeps forgetting to reinstate contact with the creditor and pay this debt. (Answer; Item 4; Item 5; Item 6; Item 7.)

Applicant admits without explanation SOR ¶¶ 1.d, 1.e, and 1.h, a charged-off account in the amount of \$3,681; an account placed for collection in the amount of \$670; and an account that is past due in the amount of \$1,852, with a total balance of \$5,625, respectively. During his May 2023 PSI, Applicant confirmed these accounts remained unpaid, and again confirmed in his response to the Government's interrogatories. In his Answer, he cites to "personal" and "civil tumult" that required him to prioritize his income towards rent payments, car requirements, food, and childcare. He denied SOR ¶¶ 1.g and 1.i, an account placed for collection in the approximate amount of \$228, and an account that had been charged off in the amount of \$2,093, respectively, on the basis he was unsure of the debts and was unfamiliar with the "presented name." (Answer; Item 4; Item 5; Item 6; Item 7.)

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*, 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 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*, 484 U.S. 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 Government's documentary evidence 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 annual Federal and state as required).

The following mitigating conditions under AG ¶ 20 are relevant:

(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;

(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;

(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 not established. Applicant's delinquent debts are recent, numerous, and ongoing, which cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established. Applicant did suffer a brief period of unemployment and he states his wife suffered underemployment, but he did not provide evidence to support his assertions that he had resolved his taxes or paid certain debts. He did not establish that he maintained contact with his SOR creditors and attempted to establish payment plans with them. He failed to show he acted responsibly under the circumstances.

AG ¶¶ 20(d) and 20(g) are not established. Applicant did not provide corroborating

documentary evidence to support his assertions that he had filed his income tax returns and resolved or paid certain debts. He failed to show he had made arrangements with the appropriate tax authority or established a good-faith effort to repay overdue creditors.

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). 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). 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 did not mitigate the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against 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.

Charles C. Hale
Administrative Judge