



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



In the matter of: [Redacted] Applicant for Security Clearance)))))	ISCR Case No. 23-02799
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Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/29/2024

Decision

FOREMAN, LeRoy F., 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 February 6, 2020. On January 4, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAS 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 April 23, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on June 7, 2024. On the same day, 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 June 12, 2024. On August 12, 2024, he submitted Applicant's Exhibits (AX) 1 through 11, which were admitted in evidence without objection. The case was assigned to me on October 8, 2024.

The FORM consists of 12 items. Items 1 through 4 are the pleadings in the case. Items 5 through 12 are the evidence submitted by Department Counsel in support of the allegations in the SOR. Items 5 and 6 are summaries of personal subject interviews (PSIs) conducted by security investigators with Applicant on April 28, 2020, and August 15, 2018. The summaries were 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 summaries; make any corrections, additions, deletions, or updates; or object to consideration of the summaries on the ground that they were not authenticated. Applicant submitted a detailed response to the FORM, but he did not comment on the accuracy or completeness of the summaries, nor did he object to them. I conclude that he waived any objections to the PSI summaries. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Items 5 through 12 and AX 1 through 11 are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.e. He denied the allegation in SOR ¶ 1.f. His admissions are incorporated in my findings of fact.

Applicant is a 62-year-old logistics analyst employed by a defense contractor since June 2019. He received an associate degree in applied sciences in May 1988. He served in the U.S. Army National Guard from February 2006 to July 2011 and was medically retired with an honorable discharge. He married in December 1991, divorced in February 2002, and remarried a few days later in February 2002. He has an adult child, an adult stepchild, and a minor child. He received a security clearance in April 1993, which was revalidated in April 2008.

When Applicant submitted an SCA in March 2017, it listed no delinquent debts. (Item 4) However, in his SCA in February 2020, he disclosed that he was using a debt-relief company to negotiate payment plans with creditors, that he had reduced his debt by about 46%, and that he was scheduled to complete the program in July 2022. However, he did not list the specific creditors involved. (Item 3 at 50) He answered "no" to questions asking if he had any property repossessed, defaulted on any type of loan, had debts turned over to a collection agency, had been more than 120 days delinquent on any debt, or was currently more than 120 days delinquent on any debt. (Item 3 at 51) In the April 2020 PSI, he attributed his financial problems to overextending himself by using credit cards to pay day-to-day expenses, borrowing money to purchase large

household items, and paying for his mother's medical and personal bills from 2016 until she passed away in January 2018. (Item 5 at 3)

Applicant hired a new debt-relief company in July 2024, and made a payment of \$854 to this company. (FORM Response Items 1 and 11) The debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e are enrolled in this company's program.

The evidence concerning the debts alleged in the SOR is summarized below:

SOR ¶¶ 1.a and 1.b: rental accounts placed for collection of \$1,268 and \$2,365. These two debts are owed to the same creditor. Applicant admitted these debts in his response to financial interrogatories on September 30, 2023, and in his answer to the SOR, and he stated that he was working with a "new debt consolidation company" to pay them. In July 2024, he hired another debt-consolidation company, but did not include these two debts in its program. Instead, he changed course and sent a letter to this creditor requesting verification of the debts, even though he had admitted them in his initial response to the SOR. (FORM Response Item 10) They are not resolved.

SOR ¶ 1.c: delinquent unsecured loan placed for collection of \$38,604. In response to the interrogatories, Applicant stated that he had made a payment arrangement for this debt and was making payments. He provided no documentary evidence to support his statements. (Item 7 at 2) This debt is being handled by Applicant's new debt-relief company. It is not resolved.

SOR ¶ 1.d: auto loan charged off for \$6,756. Applicant admitted this debt in his response to the interrogatories and in his answer to the SOR. This debt is being handled by Applicant's new debt-relief company. It is not resolved.

SOR ¶ 1.e: credit-card account charged off for \$5,681. Applicant admitted this debt in his response to the interrogatories and in his answer to the SOR. It was not resolved by his first debt-relief company and is now being handled by Applicant's new debt-relief company. It is not resolved.

SOR ¶ 1.f: credit-card account charged off for \$461. In response to the interrogatories, Applicant stated that this debt had been paid. (Item 7 at 4) He provided documentation that the debt was settled for less than the full amount (Item 7 at 11), and that the agreed amount would be paid in two installments: \$500 on January 31, 2022; and \$257.82 on February 2, 2022. Documents from Applicant's first credit-relief company reflect that the debt has been paid. (Item 7 at 11-12; FORM Response Item 2)

Applicant is active and well respected in his church and community. He is well known as a volunteer and an organizer for community activities. He has a reputation in the community for dependability and integrity. (FORM Response, Items 4, 5, and 6) During his military service, he attained the rank of master sergeant, received strong evaluation reports, and was awarded the Army Commendation Medal for his service from February 2006 to August 2009. (FORM Response, Items 7, 8, and 9)

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 *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, 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;

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) is partially established. Applicant's debts are recent and numerous, but some of them were incurred for payments of his deceased mother's living and medical expenses, which will not recur.

AG ¶ 20(b) is not established. Applicant's loss of employment and his mother's illness were conditions that were largely beyond his control. However, he has not acted responsibly. He admitted that his financial problems were due to overuse of credit cards and borrowing money to purchase large household items. He submitted no evidence of actions to resolve the debts alleged in SOR ¶¶ 1.a and 1.b. He admitted these two debts and promised to pay them, and then changed course and challenged their validity. He has relied on debt-relief companies to resolve the remaining debts but has provided little evidence of progress.

AG ¶ 20(c) is not established. Applicant has engaged the services of two credit-repair companies, but they do not provide the type of financial counseling contemplated by this mitigating condition, and Applicant has not reached the point where there are "clear indications" that his financial problems are under control.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.f, but not for the other debts alleged in the SOR.

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). I have considered Applicant's honorable military service and his devotion to his now-deceased mother. Because he 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 has not mitigated the security concerns raised by his delinquent debts.

Formal Findings

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

Paragraph 1 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge