



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 24-00004
)	
Applicant for Security Clearance)	

Appearances

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

09/17/2024

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 September 21, 2022. On January 23, 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 March 22, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on April 30, 2024. On May 6, 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 May 23, 2024, and did not respond. The case was assigned to me on September 4, 2024.

The FORM consists of eight items. Items 1 and 2 are the pleadings in the case. Items 3 through 8 are the evidence submitted by Department Counsel in support of the allegations in the SOR. FORM Item 4 is the summary of a security investigator's personal subject interview with Applicant conducted on October 26, 2022. The 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 summary; make any corrections, additions, deletions, or updates; or object to consideration of the summary on the ground that it was not authenticated. I conclude that he waived any objections to the 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016); ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018). FORM Items 3 through 8 are admitted in evidence.

Findings of Fact

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

Applicant is a 38-year-old aircraft mechanic employed by a defense contractor since August 2022. He was employed by the same defense contractor from December 2008 to April 2018, when he left this job to work full time as a real estate agent. He has continued working part time as a real estate agent since returning to his job as an aircraft mechanic. He has never held a security clearance.

Applicant attended college from May 2004 to November 2008, March 2011 to August 2012, and December 2012 to June 2013. He received a certificate of graduation in November 2008 but has not received a degree.

Applicant married in October 2014 and divorced in August 2023. He has one child, born in the same month as his divorce.

The SOR alleges five delinquent consumer debts and failures to file tax returns and pay the taxes due for tax years 2019 and 2020. The evidence regarding these allegations is summarized below.

SOR ¶ 1.a: credit-card debt charged off for \$26,950. In Applicant's answer to the SOR, he admitted this debt and stated that he intends to contact this creditor within the next year. He submitted no evidence reflecting progress in resolving this debt.

SOR ¶ 1.b: collection account for \$17,655. In Applicant's answer to the SOR, he denied this allegation and stated that he made a payment agreement in November 2023 to pay off the debt in five years. He provided no documentary evidence of a payment agreement. However, an April 2024 credit report reflects that he made a payment in March 2024, indicating that the debt is being resolved. (FORM Item 6 at 3)

SOR ¶ 1.c: revolving charge account charge off for \$4,185. In Applicant's answer to the SOR, he admitted this debt and stated that he had received a settlement offer from the creditor and intended to accept the offer within a month. He submitted no documentary evidence of the offer, no evidence that he had accepted it, and no evidence of any payments on this debt. This debt is not resolved.

SOR ¶ 1.d: account charged off for \$3,749. In Applicant's answer to the SOR, he admitted this debt. It is reflected in the November 2023 credit report as paid. (FORM Item 7 at 8) It is resolved.

SOR ¶ 1.e: credit-card account placed for collection of \$2,346. In Applicant's answer to the SOR, he denied this debt and attached documentation that it was settled. It is resolved.

SOR ¶¶ 1.f and 1.g: failure to file federal income tax returns and pay the taxes due for tax years 2019 (\$3,000) and 2020 (\$5,000). In Applicant's SCA, he stated that he had been self-employed and did not know how to deal with his taxes. (FORM Item 3 at 48) When Applicant was interviewed by a security investigator in October 2022, he told the investigator that he filed his 2019 tax returns with the help of a tax professional but that he filed late and owed an amount that he could not remember. (FORM Item 4 at 5). However, in his answer to the SOR, he admitted that he failed to file returns for 2019 and 2020 and pay the taxes due. He stated that he submitted his information to his ex-wife, who submitted it to a tax professional, but the tax returns were not filed. He stated that intended to work with a tax professional to file the returns and pay the taxes, but nothing had been done as of the date of his answer to the SOR. These two allegations are not resolved.

In response to DCSA interrogatories in June 2023, Applicant submitted a personal financial statement. It reflected a net monthly income of \$4,675; expenses of \$1,610 (including his car payment); a mortgage loan payment of \$1,656; and a net monthly remainder of \$3,226.¹ (FORM Item 5 at 11) Applicant admitted in his answer to the SOR that his debts were due to living beyond his means for several years.

¹ Applicant's calculations appear to be incorrect. If the amounts of his income and expenses are correct, his net remainder would be \$1,409 instead of \$3,226.

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;

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 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(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 not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling. He stated that he and his ex-wife had consulted with a tax professional regarding his federal tax debts, but there are not "clear indications" that his tax debt is being resolved.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. It is not established for the consumer debts alleged in SOR ¶¶ 1.a and 1.c, or the failures to file returns or resolve the tax debts alleged in SOR ¶¶ 1.f and 1.g.

Although Applicant expressed his intention to resolve some of his debts in the future, such promises are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner." ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

Applicant claimed that he had received a settlement offer for the debt in SOR ¶ 1.c, but he provided no documentary evidence of any offers or agreements. When applicants claim that debts have been resolved or are being resolved, they are expected to present documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(g) is not established. Applicant submitted no evidence that he had filed his past-due income tax returns for 2019 and 2020 and no evidence of payment agreements or payments for the tax debts alleged in SOR ¶¶ 1.f and 1.g. His failures to fulfill his legal obligation to file federal tax returns indicate that he lacks the good judgment and reliability required of persons who are granted access to classified information. ISCR Case No. 14-04159 (App. Bd. Aug. 1, 2016)

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 question him or 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 and failures to timely file his federal income tax returns.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	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.

LeRoy F. Foreman
Administrative Judge