



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



In the matter of:)
)
) ISCR Case No. 23-01314
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

10/16/2024

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 November 4, 2021. On July 28, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The DCSA CAS acted under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on September 12, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 23, 2023, including Items 1 through 9. On October 25, 2023, 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 October 30, 2023, and did not respond. The case was assigned to me on February 2, 2024. Item 1, which includes the SOR and Applicant's Answer to the SOR, is already part of the administrative record. Items 2 through 9 are admitted in evidence without objection.

Findings of Fact

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

Applicant is 37 years old. In August 2005, he enrolled in college and earned his bachelor's degree in May 2012. He continued his education from June to August 2013, but did not earn a second degree or certificate. He married in 2011 and has two minor children, ages 9 and 11. (Item 2)

Applicant has worked full time as a senior information technology (IT) specialist for a defense contractor since January 2021. He previously worked as a full-time IT professional for a state government employer from November 2019 to January 2021. He was unemployed from June 2018 until November 2019, and prior to that, he worked as a full-time wire technician for a private company from May 2017 until June 2018. From April to May 2017, he worked as a technical support contractor. He became unemployed from November 2016 until April 2017 after leaving his full-time position in retail management. (Item 2) It is unclear whether Applicant ever received unemployment benefits, or any other special federal or state financial support. He and his wife filed a voluntary Chapter 7 bankruptcy petition in August 2016. Their debts were discharged in December 2016. (Items 2, 4, and 6-9)

Applicant completed his SCA in November 2021 and disclosed the above listed bankruptcy action, his unpaid 2018 federal income tax of \$6,451 and his 2015 delinquent state income tax of \$520, which was resolved in August 2021 by wage garnishment. Regarding his unpaid 2018 federal income tax, Applicant stated that he was missing a form from his original taxes and that he "wasn't working at the time and I didn't have the money to satisfy the debt." Regarding his delinquent 2015 state income tax, he explained that his pay was low at the time and he was trying to provide for his family. (Items 2 and 3) In his December 2021 background interview, he stated that he would contact the IRS in 2022 to set up payment arrangements to pay his federal delinquent income tax debt. (Item 3) He attributed his financial situation to employment instability, including being in between jobs, losing a job due to an accident at work, and going through a period where he struggled to find work. He also stated he worked in jobs that barely paid enough to

provide for his family. (Item 5 at 13). He did not submit any documentary evidence to support his case in mitigation.

In March 2023, Applicant disclosed he earned a net monthly salary of \$3,400 and that his wife earned the same net monthly amount, for a combined net monthly income of \$6,800 for the household. Deducting monthly expenses, the net monthly remainder for his household totaled about \$4,226. (Item 5 at 15) He did not disclose information about his assets in his personal financial statement. No checking and savings account information was provided. (*Id.*) Applicant's pay record shows that he actively contributes a percentage of his earnings to his employer's 401(k) retirement plan. (Item 5 at 14) In his December 2021 background interview, he described his current financial situation as stable and stated that he is willing and able to pay his delinquent debts. (Item 3 at 4)

The evidence for all allegations in the SOR is summarized below.

SOR ¶ 1.a: Applicant admitted this debt to the federal government for his 2018 unpaid income taxes. The alleged tax debt, originally \$6,451.90 on the IRS form, increased to \$7,300.06 due to accrued interest and penalties. (Item 5 at 30; and SOR Answer) He did not submit documentary evidence to show the current status of the debt. This debt is unresolved.

SOR ¶ 1.b: Applicant admitted he filed for Chapter 7 bankruptcy and that his debts were discharged in 2016. (SOR Answer) In his voluntary petition, the estimated combined liabilities for Applicant and his wife were between \$100,001 and \$500,000. (Item 4) Applicant's independent and joint student loan accounts, which were listed in the petition as unsecured creditor claims, totaled about \$119,000. (Item 4 at 10-12, 15-16) His more recent student loan balances, which were listed as being in a collection status in March 2023, exceeded \$120,000 in value. (Item 5 at 3-5)

SOR ¶ 1.c: Applicant admitted this delinquent debt, originally alleged as a past-due account of \$412. This debt was ultimately charged off for \$5,579 in September 2023. (Item 9 at 9) This debt is unresolved.

SOR ¶ 1.d: Applicant admitted this delinquent debt, originally alleged as a past-due account of \$448. The record evidence indicates this debt is now current and being paid as agreed. (Item 9 at 8) This debt is being resolved.

SOR ¶¶ 1.e through 1.i: Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.e through 1.i in his Answer. Six of the eight delinquent debts are consumer accounts. The other two are a student loan and a medical account. All allegations are supported by credit bureau reports from 2021, 2022, and 2023 and Applicant's statements about these debts during his background interview. (See Item 3, and Items 5-8)

Per the record, Applicant apparently disputed the debts in SOR ¶¶ 1.e and 1.g, with the respective creditors. However, he did not dispute these debts in his Answer. He simply admitted them without comment. Nor did he disclose any prior dispute with the

creditors. Finally, he did not explain, refute, or offer any documentary evidence to support the basis for any past dispute of debts with his creditors. (See Item 8 at 2-3). These debts are unresolved.

SOR ¶¶ 1.m and 1.n: Applicant admitted these delinquent medical debts in his Answer. Both debts are supported by the 2021 and 2022 credit bureau reports (Items 6 and 7) However, in his March 2023 interrogatory response, Applicant stated he paid these debts of \$65 and \$40, respectively, but he did not include documentary evidence. (Item 5 at 9-10) These delinquent debts do not appear in the 2023 credit bureau reports. (Items 8 and 9) These debts are resolved 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." 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).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially relevant in this case:

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.

Applicant's admissions in his Answer, four credit bureau reports, his Chapter 7 bankruptcy petition, and statements made during his background investigation establish the three above disqualifying conditions under this guideline.

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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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), 20(c), and 20(d) are not established. Applicant's delinquent debts are recent, ongoing, and remain unresolved. He has not produced evidence of recent financial counseling, contacts with creditors, payments, payment plans, or any other evidence of efforts made to resolve his delinquent debts. He also failed to establish that he initiated and is adhering to a good-faith effort to repay his delinquent debts.

AG ¶ 20(b) is not fully established. Applicant attributed his financial situation to employment instability, such as working in low-wage jobs during the period, being in

between jobs, struggling to find work, and losing a job due to an accident at work. However, he filed Chapter 7 bankruptcy in August 2016, and his delinquent debts were discharged in December 2016. Moreover, Applicant has been gainfully employed since January 2021, and his household income at the end of the month after all bills are paid exceeds \$4,200. He has had the financial means to address his delinquent accounts, but for unknown reasons he has not. It is noted that he actively participates in his employer's 401(k) retirement plan, though the plan's worth is unknown. There is no indication that Applicant has acted responsibly, or that he has taken meaningful steps to substantively address his delinquent debts. He failed to provide sufficient evidence to mitigate financial considerations security concerns in this case though he is credited with addressing three of 14 financial concerns.

AG ¶ 20(e) is not established. Although the record indicates Applicant previously disputed two debts with the creditors, he did not present this as an argument in his Answer. Neither did he offer evidence to support a reasonable basis to dispute any of his delinquent debts.

AG ¶ 20(g) is not established. Though Applicant stated during his background interview that he would contact the IRS in 2022 to establish a payment plan to satisfy his delinquent federal income tax debt, there is no evidence that he ever took this action. He did not offer proof he paid off his delinquent federal income taxes. Nor did he offer proof that he is complying with payment arrangements made with the IRS. It is noted that Applicant's delinquent state income tax debt was satisfied only after the state government took action to garnish his wages after five years.

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

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 security concerns based on financial considerations.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.l:	Against Applicant
Subparagraph 1.m – 1.n:	For 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