



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



In the matter of:)
)
) ISCR Case No. 23-01228
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro Se*

03/25/2024

Decision

HESS, Stephanie C, Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant incurred delinquent debt due to circumstances largely beyond his control. He acted responsibly under the circumstances, has made a good-faith effort to resolve his delinquent debts, and has not incurred any recent delinquent debt. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 6, 2022. On August 4, 2023, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the allegations in the SOR on August 31, 2023, and requested a decision on the written record without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's written case on September 25, 2023. On October 2, 2023, a complete copy of the file of relevant material

(FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant. He received the FORM on October 6, 2023. The DOHA transmittal letter dated October 2, 2023, informed Applicant that he had 30 days after receiving it to file objections and to submit material to refute, extenuate, or mitigate the Government's evidence. He did not submit a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) I. The case was assigned to me on January 4, 2024. I admitted Government's Exhibits (GX) 1 through 6 without objection.

Findings of Fact

Applicant, 30, is a driver currently employed by a federal contractor since December 2021. He served honorably on active duty in the U.S. Army from April 2013 until April 2021. He earned his associate degree in 2018. He married in 2017 and divorced in 2020. He married again after his background investigation was completed and he and his wife have children. He has held a security clearance since 2013. (GX 3; Answer.)

The SOR alleges five delinquent credit-card accounts owed to the same creditor, totaling \$62,720, and one charged-off personal loan owed to another creditor with no amount listed. Applicant admits each of these debts. The delinquent debts are reflected in Applicant's credit-bureau reports (CBR). (GX 4; GX 5.) Applicant's admissions are incorporated in my findings of fact.

Between 2013 and August 2018, Applicant opened and paid off three credit cards, five personal loans, five vehicle loans, and a sales contract without any delinquencies. In 2018 or 2019, he and his first wife separated, and he began to experience financial difficulties. He had to move out of the marital home, rent his own housing, and continue to pay the costs for the marital residence. He became financially overburdened, and was no longer able to maintain his living expenses, his first wife's living expenses, and his credit-card payments. He stopped paying on the credit-card accounts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e in October 2019. (GX 4; GX 3; Answer.)

In May 2019, Applicant and his former wife took out a joint loan in the amount of \$15,000. They owned a business together and leased property for its operation. The business was ultimately shut down due to the pandemic. However, Applicant remained responsible for paying the lease payments for the business property and for the loan payments. (GX 4; Answer.)

Applicant left the military in April 2021 in the midst of the COVID-19 pandemic and was unable to find employment. He moved in with his parents where he resided until at least August 2022. He maintained his military-loan payments (SOR ¶ 1.f) until April 2021 when he became unemployed, was unable to make the payments, and the account became delinquent. His vehicle loan was for \$39,594. He maintained his vehicle-loan payments (SOR ¶ 1.d) until May 2021, was unable to pay, defaulted, and his vehicle was repossessed. The remaining balance on the defaulted loan is \$6,203. He was unemployed until December 2021. (GX 4; GX 3.)

During his eight-month period of unemployment, he used a credit card he opened in 2013 for living expenses, the joint-loan payments, and the business-property lease

payments. He was unable to afford to make any payments on his delinquent accounts. In July 2021, he became delinquent on this credit-card account. The outstanding balance was \$2,279. He paid off this account and it was closed in May 2022. (GX 4.)

The joint loan became past due in August 2021 during Applicant's eight-month period of unemployment. In January 2022, he made a lump-sum final payment of \$7,000 and the loan was closed. (GX 4.)

Applicant's November 2022 CBR shows that the military loan alleged in SOR ¶ 1.f was charged off in the amount of \$8,452. His September 2023 CBR shows a charged-off amount of \$2,936. He states in his February 2023 personal subject interview (PSI) and in his August 2023 answer to the SOR that he has paid this debt in full and that it is no longer on his credit report. He did not provide any supporting documentation. (GX 5; GX 4.)

Applicant consulted attorneys about pursuing bankruptcy or making minimum payments on his delinquent accounts. They advised him against making minimum payments and to let the debts lapse after seven years, stating that it would take him 30 years to repay the debts. Applicant's financial situation is now stable. He is able to timely pay his and his family's expenses. He has decided to follow this advice regarding the five SOR debts owed to the same creditor. (Answer; GX 6.)

Applicant stated in his answer to the SOR that he recently paid off \$10,000 of debt and that since paying of the military loan alleged in SOR ¶ 1.f, his credit score has gone up by 200 points. (Answer.)

Applicant's September 2023 CBR shows that he has one open credit-card account which he opened in March 2023. The credit limit is \$800, he had an existing balance of \$176 and had made consecutive timely payments. The CBR also shows that he took out a vehicle loan in August 2023 and made the first \$434 monthly payment on time. (GX 4.)

Applicant has been working for his current employer for over two years. His September 2023 CBR shows that he has not incurred any recent delinquent debt. His statements in his answer to the SOR were forthcoming and credible. (GX 4.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. 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." See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 19(a): an 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; and

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

Applicant's financial issues arose under unusual circumstances that are unlikely to recur and under conditions that were largely beyond his control. Specifically, while they were separated, his first wife remained in the marital home and Applicant paid the expenses as well as paying his own living expenses in a separate residence. They divorced in November 2020. Applicant and his first wife started a business together and leased property for its operation. In May 2019, prior to their separation, they took out a joint loan in the amount of \$15,000. Applicant became solely responsible for both the joint-loan payments and the lease payments. He became financially overburdened and defaulted on four of his credit-card payments.

Applicant separated from the military in April 2021 during the COVID-19 pandemic. He was unable to find work and was unemployed for eight months. He used his remaining credit card for living expenses but was ultimately unable to make the payments and

defaulted. He continued to make his vehicle-loan payments until May 2021, then defaulted on the loan and the vehicle was repossessed.

However, Applicant acted responsibly under the circumstances. After separating from the military, he moved in with his parents to reduce his expenses. He did not incur any additional debt. He sought and gained employment and has been with the same employer since December 2021. He defaulted on the joint loan in August 2021, but paid it in full in a lump sum in May 2022. In January 2022, he paid off the defaulted credit card that he used for living expenses while unemployed. He resolved the charged-off loan alleged in SOR ¶ 1.f and it no longer appears on his credit bureau report. His total recent repayment of debts was approximately \$10,000.

Applicant consulted attorneys about what actions to take regarding his delinquent accounts, to include the option of bankruptcy. He was advised to let the debts lapse. He has decided to follow this advice regarding the remaining outstanding SOR debts and is therefore not susceptible to coercion or exploitation regarding these debts. He is financially stable and supports his family. He has a single open credit card with a balance due of less than \$200 and a monthly vehicle-loan payment of \$434, and has made timely payments on both accounts. He has not incurred any recent delinquent debt and is financially stable.

Applicant has acted in good faith in his efforts to resolve his financial delinquencies within his means. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). A trustworthiness adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). While those granted access to sensitive information are held to a high standard of conduct, they are not held to a standard of perfection.

There is nothing in the record that suggests Applicant is likely to disregard his financial obligations in the future. He has established a track record of resolving his debts within his ability. His past financial struggles were not due to reckless or irresponsible spending, but rather were due to expenses incurred during his separation and divorce, a sustained period of unemployment during the COVID-19 pandemic, and a loss of a business. Applicant's past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), and 20(d) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the U.S. Army for eight years, during which time he was granted his first security clearance in 2013. He sought and achieved higher education. His past financial difficulties arose as a result of significant unforeseen events, not because of reckless or irresponsible spending. He resolved his financial issues to the best of his ability and has not incurred any recent delinquent debt. He was forthcoming and credible. Ultimately, the record shows that Applicant has demonstrated the good judgment, reliability, and trustworthiness required of those granted access to classified information.

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 mitigated the security concerns raised by his financial issues. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant.

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge