



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



In the matter of:)
)
) ISCR Case No. 23-02188
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro Se*

07/18/2024

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 May 10, 2022. On December 1, 2023, 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 December 12, 2023, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 31, 2024. On February 5, 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. The FORM included an amendment to the SOR, adding two additional allegations (SOR ¶¶ 1.i and 1.j). Applicant received the FORM on February 16, 2024, and he submitted a response on March 13, 2024, which consisted of Applicant's Exhibits (AX) A through F. Department Counsel did not object to AX A through F. Applicant did not object to the amendment to the SOR, but he did not admit or deny the facts alleged in SOR ¶¶ 1.i and 1.j. The case was assigned to me on June 7, 2024.

Evidentiary Issues

The FORM consists of 12 items. Items 1, 2, and 3 are the pleadings in the case. FORM Items 4 through 12 are the Government's evidence in support of the allegations in the SOR. The FORM included Items 6 and 7, which are summaries of personal subject interviews (PSIs) conducted on January 8, 2019; June 22, 2022; and October 26, 2022. The PSI 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 PSI summaries on the ground that they were not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI 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 4 through 12 and AX A through F are admitted in evidence.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 36-year-old field service technician employed by a defense contractor since November 2020. He served in the Army National Guard from May 2005 to October 2008, and on active duty in the Army from October 2008 to August 2019, receiving honorable discharges for both periods of service. He received a security clearance while on active duty. (GX 4 at 41) He had a brief period of unemployment after he left active duty, but he has been steadily employed until the present, except for a period of being "out of work" and drawing unemployment compensation during the COVID-19 pandemic. (FORM Item 7 at 7).

Applicant obtained an associate degree in 2021. He has taken additional college courses but has not received another degree. He married in June 2013. He has four children, born in 2006, 2007, 2012, and 2013, and three stepchildren, born in 2000, 2005, and 2008.

In February 2018, Applicant's military pay was garnished because he allegedly exceeded the weight limit for transporting his household goods in connection with a military reassignment. As a result, he fell behind on some of his debts. In December 2018,

he received a reimbursement of \$2,000 from the Defense Finance and Accounting Service. (FORM Item 6 at 4)

Applicant's financial problems were aggravated when his wages were garnished for a child-support arrearage of \$6,500 in June 2020. The arrearage was collected by withholding \$300 per month in addition to the child-support obligation of \$300 per month. (GX 5 at 46; GX 7 at 7) In his response to the FORM, he attributed his more recent financial problems in part to the expenses involved in obtaining emergency custody of two children in January 2022 and January 2023 after they were born with drugs in their bodies due to his oldest stepdaughter's use of drugs while pregnant. (AX A at 1)

In Applicant's response to the FORM, he provided W-2 wage and tax statements for 2022 and 2023. They reflect that in 2022, he earned \$77,709, and in 2023, he earned \$65,610 from a previous employer and \$19,069 from his current employer. His net pay from his current employer is \$2,619 per two-week pay period. (AX A at 2-6) His FORM response also included a budget analysis from a financial counseling service, reflecting that he has total monthly income of \$8,294, expenses of \$7,734, and a net monthly remainder of \$560. (AX E)

The SOR, as amended, alleges Applicant's Chapter 13 bankruptcy (SOR ¶ 1.h) and nine post-bankruptcy delinquent debts (SOR ¶¶ 1.a-1.g, 1.i, and 1.j) reflected in credit reports and court records. (FORM Items 9 through 12) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: auto loan charged off for \$5,075. This debt was incurred when Applicant's vehicle was repossessed in 2018. In the June 2022 PSI, he stated that he was making monthly \$100 payments on this debt and the account was in good standing. (FORM Item 7 at 8) However, a January 2024 credit report reflects that the last payment on this debt was in August 2018. (FORM Item 11 at 7) In Applicant's response to the FORM, he promised to pay \$141 on this debt in March 2024. (AX A at 1)

SOR ¶ 1.b: auto loan charged off for \$4,918. In the June 2022 PSI, Applicant stated that he had negotiated a settlement with the creditor to make a payment of \$737 in July 2022 to bring this account up to date. (FORM Item 7 at 8) He has submitted no evidence that he made the July 2022 payment. The January 2024 credit report reflects that the last payment on this debt was in December 2020. (FORM Item 11 at 5) In Applicant's response to the FORM, he promised to pay \$100 on this debt in March 2024. (AX A at 1)

SOR ¶ 1.c: credit-card account charged off for \$2,097. In the June 2022 PSI, Applicant admitted this debt and promised to contact the creditor to make a payment arrangement. (FORM Item 7 at 12) He has submitted no evidence of a payment arrangement. The January 2024 credit report reflects that no payments have been made on this debt since February 2018. (FORM Item 11 at 6) In Applicant's response to the FORM, he promised to pay \$100 on this debt in March 2024. (AX A at 1)

SOR ¶ 1.d: credit-card account placed for collection of \$835. This debt was for dental treatment for Applicant's daughter. In the January 2019 PSI, he stated that he had

arranged to pay between \$50 and \$70 per week, starting in February 2021. (FORM Item 6 at 4) In the June 2022 PSI, he admitted that he had not resolved the debt, but he promised to contact the creditor within 60 days. (FORM Item 7 at 8). He has submitted no evidence that he contacted the creditor in 2022 as promised. The January 2024 credit report reflects that the debt is disputed but unresolved. (FORM Item 11 at 5) In Applicant's response to the FORM, he attached documentation of an agreement to make 34 payments of \$30.16, beginning on March 5, 2024, and ending on June 17, 2025. (AX B)

SOR ¶ 1.e: credit-card account placed for collection of \$526. The January 2024 credit report reflects that the last payment on this debt was in June 2023. (FORM Item 11 at 6) Applicant submitted no evidence reflecting that the debt was resolved or was being resolved.

SOR ¶ 1.f: charge account placed for collection of \$456. This debt was incurred at a home-improvement store. In the January 2019 PSI, he promised to pay this debt by March 2019. (FORM Item 6 at 4) In the June 2022 PSI, he admitted that the debt was not resolved but promised to contact the creditor within 60 days. (FORM Item 7 at 8) The January 2024 credit report reflects that the debt is still unresolved. (FORM Item 11 at 4) In Applicant's response to the FORM, he attached documentation of an agreement to make 15 payments of \$30.19, beginning on March 5, 2024, and ending on September 24, 2024. (AX C)

SOR ¶ 1.g: telecommunication account placed for collection of \$456. The August 2023 credit report reflects that the amount of the debt is \$229. (FORM Item 10 at 3) In the January 2019 PSI, Applicant stated that the provider cancelled his service because they could not provide it in his area, but they charged him for the service he did not receive. (FORM Item 6 at 4) In the June 2022 PSI, Applicant stated that he disputed this debt. The dispute was resolved against Applicant. (FORM Item 7 at 14) He admitted the debt in his answer to the SOR. In his response to the FORM, he promised to pay the debt. (AX A at 1)

SOR ¶ 1.h: Chapter 13 bankruptcy. Applicant and his wife filed a Chapter 13 bankruptcy petition in November 2013, listing secured debts totaling \$26,238 and unsecured debts totaling \$53,098. They complied with the bankruptcy payment plan, the trustee was discharged, and the case was closed in May 2017. (FORM Item 8)

SOR ¶ 1.i: collection account for \$869. Applicant did not admit or deny this allegation in his response to the FORM. However, he submitted documentary evidence that he made a payment arrangement on March 5, 2024, and his first payment of \$50 was scheduled for March 12, 2024. (AX D)

SOR ¶ 1.j: judgment for \$3,396. A small claims judgment was entered against Applicant on September 8, 2021. (FORM Item 12) Applicant did not admit or deny this allegation in his response to the FORM. However, he attached a document that does not identify the creditor but appears to be a court-related collection document, acknowledging a payment of an unspecified amount. (AX F) His documentation is insufficient to show that the judgment was satisfied or is in the process of being satisfied.

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 "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* 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;

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(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.

AG ¶ 20(a) is not established. Applicant's debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. The garnishment of Applicant's military pay in February 2018 because of an overweight shipment of household goods was a condition largely beyond his control, but he was reimbursed for this loss in December 2018. His rescue of his oldest stepdaughter's newborn babies was voluntary and commendable, and it was a condition largely beyond his control. It is not clear from the record whether the dental bill for his daughter was for routine preventive care or a dental emergency. However, he has not acted responsibly. He has repeatedly promised to address his delinquent debts during two PSIs and his responses to the SOR, but has not carried out his promises.

AG ¶ 20(c) is not fully established. Applicant would have been required to obtain financial counseling as part of his Chapter 13 bankruptcy. In response to the FORM, he submitted evidence of financial counseling, but the evidence falls short of "clear indications" that his financial problems are under control.

AG ¶ 20(d) is not established. Applicant has submitted evidence of recent payment agreements, but sparse evidence of actual payments. He has repeatedly promised to resolve his debts. His recent financial analysis reflected that he has a net monthly remainder of about \$560 available to reduce his indebtedness. However, his promises to resolve delinquent debts in the future "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).

AG ¶ 20(e) is not established. Applicant initially disputed the telecommunications debt alleged in SOR ¶ 1.g, but he provided no documentation of the basis for the dispute. The dispute was resolved against him. He admitted the debt in his answer to the SOR, but it is not resolved.

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 military service. 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, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	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