



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05532
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2016

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 on June 25, 2014. On February 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on March 11, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11, 2016,

and the case was assigned to me on July 20, 2016. On July 26, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 16, 2016. The hearing was cancelled when Applicant requested additional time to retain an attorney. On September 9, 2016, Applicant was notified that his hearing was rescheduled for September 26, 2016. Applicant did not appear on September 26. He was contacted by Department Counsel, and he informed her that his attorney could not be available on September 26. The hearing was postponed until September 29, 2016. Applicant appeared on September 29, but he had not yet consulted with an attorney. At his request, I continued the case until a date to be determined.¹

On October 25, 2016, DOHA notified Applicant that his hearing was scheduled for November 14, 2016. I convened the hearing as scheduled. Applicant appeared and announced that he had decided to proceed *pro se*. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until November 30, 2016, to enable him to present documentary evidence. He did not submit anything further. DOHA received the transcript (Tr.) of the November 2016 hearing on November 22, 2016.

Findings of Fact²

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old sheet metal worker employed by a defense contractor since June 2003. He has been a supervisor since about September 2014, in charge of 10-15 employees. (Tr. 31.) He has never held a security clearance.

Applicant has never married, but he has lived with a cohabitant since November 2011. He has no children.

The SOR alleges 14 delinquent debts totaling about \$26,000, which are reflected in Applicant's credit bureau reports (CBRs) from July 2014 (GX 2), March 2015 (GX 3) and January 2016 (GX 4).

Applicant testified that he hired a law firm in May or June 2016 to help him resolve his delinquent debts. He pays the law firm \$99 per month. He testified that as of the date of the hearing, the law firm was working on his more recent debts, incurred within the last seven years. (Tr. 32-34.) He did not present any documentary evidence of his contract with the law firm or any listing of the debts currently being handled by the

¹ The procedural history of the case until to the hearing was finally held in November 2016 is set out in a separate transcript of the September 29, 2016 hearing.

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

law firm. He testified that he receives weekly reports from the law firm on the progress being made, but he provided no documentation to support his testimony. (Tr. 46-47, 55.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: delinquent rent payments referred for collection of \$5,277 in September 2009. Applicant's March 2015 CBR reflects that this debt is disputed (GX 3 at 1), but he admitted it in his answer to the SOR and at the hearing. His January 2016 CBR reflects that the debt became delinquent in August 2009. (GX 4 at 2.) He testified that this debt was incurred when he and several roommates rented an apartment. Around 2008 his roommates moved out, leaving Applicant responsible for the rent. He testified that he recently contacted the creditor, had received an offer to settle the debt for \$2,500, and intended to use his savings to pay it. He did not present any documentary evidence of the settlement offer or any payments on the debt. (Tr. 34-36.)

SOR ¶ 1.b: collection account for \$2,186. Applicant testified that he does not recognize this debt, and that his law firm is investigating it. (Tr. 37.) His January 2016 CBR reflects that the account became delinquent in February 2013. The original creditor is the same as the creditor alleged in SOR ¶ 1.c. (GX 4 at 2.) It is unresolved.

SOR ¶ 1.c: delinquent payments for furniture rental, charged off for \$1,271 in June 2012. Applicant testified that he rented furniture and it was damaged during a move, but the rental company would not pay to repair the damage. He testified that he received an offer to settle the debt for \$500, but he had not yet paid it. (Tr. 37-38.) He presented no documentation of a settlement agreement or any payments.

SOR ¶ 1.d: bill for college tuition referred for collection of \$765 in February 2012. Applicant testified that he incurred this debt when he enrolled in a college course, was unable to attend because his work shift was changed, and the college billed him for the whole semester. He testified that his law firm is handling this debt, but it is not yet resolved. (Tr. 39.)

SOR ¶¶ 1.e-1.g: unsatisfied judgments for \$452; \$1,030; and \$1,013 entered in April, July, and August 2009. Applicant testified that he knew nothing about these judgments. (Tr. 40.) They are unresolved.

SOR ¶ 1.h: automobile loan charged off for \$9,984. This account was opened in November 2004 and referred for collection in April 2010. (GX 2 at 4-5.) Applicant testified that he purchased an automobile, and that it needed expensive repairs that he could not afford. He surrendered the automobile and stopped making payments. He testified that his law firm was disputing the debt. (Tr. 40-41.) The debt is not resolved.

SOR ¶¶ 1.i, 1.j, and 1.k: cellphone account referred for collection of \$207 in May 2014; delinquent credit-card account referred for collection of \$361 in September 2007; and cable-service account, referred for collection \$102 in October 2013. Applicant testified that he paid these debts, but he provided no documentation of payment. (Tr. 42-43.)

SOR ¶ 1.l: unsatisfied judgment for \$2,250, filed in September 2015. Applicant testified that he leased an apartment for one year and then stayed in the apartment for another year and a half, paying rent monthly. He testified that when he moved out, he gave the landlord 30 days' notice, but the landlord charged him for two more months. He submitted no documentary evidence of the lease, his notification of intent to move out, or resolution of the debt. (Tr. 43-45.)

SOR ¶¶ 1.m and 1.n: telecommunications bill referred for collection of \$257; and credit-card account charged off for \$844. Applicant testified that he paid these debts, but he provided no documentation of payment. (Tr. 45.)

Applicant testified that his base salary is about \$65,000 per year. At the end of each month, he has a remainder of \$1,500-\$2,000 after paying all his bills. (Tr. 32.) He has about \$7,300 in savings that he intends to use to resolve his debts. (Tr. 36.) He has two 401(k) accounts, with about \$30,000 in one account and \$12,000 in the other. (Tr. 37.)

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 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." 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 evidence indicates that the debts alleged in SOR ¶¶ 1.b and 1.c involve the same debt. SOR ¶ 1.c alleges the original creditor, and SOR ¶ 1.b alleges the collection agency for the original creditor. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.c in favor of Applicant.

Applicant's admissions, corroborated by his CBRs, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated 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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. The failure of Applicant's roommates to pay their share of the rent and the breakdown of his automobile were conditions largely beyond his control. However, he has not acted responsibly. His testimony at the hearing, which is uncorroborated by documentary evidence, indicates no significant efforts to resolve the debts until recently, when he realized that his debts were an impediment to obtaining a security clearance.

AG ¶ 20(c) is not established. Applicant testified that he retained a law firm to assist him, but he provided no documentary evidence of his contract with the law firm

and no documentary evidence of actions to resolve his debts. He has not provided “clear indications” that his delinquent debts are under control.

AG ¶ 20(d) is not established. Applicant testified that several debts were paid, but he provided no documentary evidence of payments. When applicants testify that they have resolved delinquent debts, they are expected to support such testimony with documentary evidence. See ISCR Case No. 15-03363 (App. Bd. Oct. 19, 2016). Applicant stated at the hearing that he would provide documentary evidence to support his testimony, but he provided nothing, even though he was given additional time to obtain and submit it. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(e) is not established. Applicant’s March 2015 CBR reflected that the debt alleged in SOR ¶ 1.a was disputed, but he admitted it in his answer to the SOR and at the hearing. He testified that his law firm was disputing several other debts, but he provided no documentary evidence that any disputes were filed or the basis for the disputes.

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(a):

- (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 I have considered the factors in AG ¶ 2(a). 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 history of delinquent debts. Accordingly, I conclude he has not 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

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

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

Subparagraphs 1.a and 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraphs 1.d-1.n: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge