



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-04083
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2018

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 10, 2016. On February 6, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (EO) 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.

Applicant answered the SOR on February 20, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on April 4, 2017, and the case was assigned to me on November 9, 2017. On January 12, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 14, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 10 were admitted into evidence, without objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibits (HE) I through III, and the Government's exhibit list as HE IV. At the hearing, Applicant testified and submitted Applicant Exhibits (AE) A through D, which I admitted into evidence, without objection. At Applicant's request, I left the record open until February 28, 2018. Applicant untimely provided additional documents that were admitted into evidence as AE E over the Government's objection. DOHA received the transcript (Tr.) on February 23, 2018.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 27, has never married and has no children. He received his high school diploma in 2008 and attended trade school for two years between approximately 2009 and 2010. He has been employed by a defense contractor since 2016. This is his first application for a security clearance.⁴

Under Guideline F, the SOR alleged nine delinquent debts totaling approximately \$41,314, consisting primarily of student loan debts totaling \$37,114. Under Guideline E, the SOR alleged that Applicant was arrested and charged with criminal offenses in 2013 and 2015. The SOR cross-alleged under Guidelines F and E that Applicant was terminated by his employer in 2016, in part, for misusing a company credit card. In his SOR Answer, Applicant admitted to each of the SOR allegations.

Guideline F

Applicant has five delinquent student loan debts, including one private loan totaling \$18,273 (SOR 1.a), and four federal loans totaling \$18,841 (SOR ¶¶ 1.b through 1.e). He also has a \$1,957 delinquent debt for housing and meal expenses (SOR ¶ 1.g). These debts relate to the costs associated with attending trade school. Applicant claimed,

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD 4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD 4 ¶ B, *Purpose*). The SEAD 4 became effective on June 8, 2017 (SEAD 4 ¶ F, *Effective Date*). The new AG, which are found at Appendix A to SEAD 4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD 4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, his SCA (GE 1), and the summary of his June 2016 subject interview (GE 8).

⁴ GE 1 at 10; GE 8 at 3; Tr. at 8-10; 51-52.

without providing any corroborating documentation, that the collection agent for the debt alleged in SOR ¶ 1.g (Collection Agent A) was also acting on behalf of the creditors alleged in SOR ¶¶ 1.a through 1.e. Also, without providing any corroborating documentation, Applicant claimed that he negotiated on and off with Collection Agent A between 2011 and 2017 and that his mother made payments on his behalf in 2016. He claimed, without providing corroborating documentation (except as noted below), that he negotiated a plan in September 2017 to pay \$20 bi-weekly to Collection Agent A, which he initially began paying using his mother's credit card but then switched to his own credit card in January 2018. He provided documents to corroborate three payments made in January and February 2018, and to show an expected total payout to be \$1,275 as of August 2020.⁵

Applicant opened a credit card account in 2012. On his 2016 credit report, it was in collection status in the amount of \$416 (SOR ¶ 1.f). On his 2018 credit report, it was in charged-off status in the same amount. Without providing corroborating documents, Applicant claimed that he settled this debt sometime in 2015 or 2016.⁶

Applicant opened a cell phone account for which his sister promised to be solely responsible for paying. On his 2016 credit report, it was in collection status in the amount of \$1,004 (SOR ¶ 1.h). Without providing corroborating documents, Applicant claimed that his sister had made arrangements to resolve the debt.⁷

While residing with his then girlfriend in an apartment for a year between 2014 and 2015, Applicant agreed that he would pay the rent and that she would pay the electric bills. However, she failed to do so. On Applicant's 2016 credit report, the utility account was in collection status in the amount of \$823 (SOR ¶ 1.i). Applicant averred that the account remained unresolved because the creditor will not negotiate without his ex-girlfriend's consent.⁸

In 2016, Applicant's employer (Company A) terminated him for misusing his company credit card for personal purchases, such as cigarettes, and not having met the key components of his recent performance improvement plan (SOR ¶¶ 1.j and 2.c). He signed an agreement regarding the terms of his involuntary termination and a confidentiality agreement, in consideration for which he received severance pay. Applicant asserted that a former supervisor had authorized his use of the company card for any expenses, including personal, during his work-related travel, and that he was not aware that a new supervisor had changed the rules. The amount at issue was less than \$50 and Applicant was not asked to pay it back.⁹

⁵ AE E; Tr. at 40-41, 63-71, 73-75, 110-131.

⁶ GE 8 at 11; GE 9 at 7, and GE 10 at 3; Tr. at 41, 71-73, 131.

⁷ GE 9 at 11; Tr. at 41-42, 75-78; 78-79, 131-133.

⁸ GE 9 at 12; Tr. at 42, 133-134.

⁹ GE 2; GE 8 at 4 and 10; AE A and B; Tr. at 42-43, 57-59, 148-151.

Applicant attributed his financial indebtedness to periods of unemployment, and also to being young and irresponsible. After being laid off in November 2009, he remained unemployed until March 2011. He was then laid off in July 2012 and remained unemployed for one month. After an October 2014 layoff, Applicant was unemployed until December 2014. In January 2015, he was fired because of his assault charge, and remained unemployed until April 2015, when he was hired by Company A. After Company A terminated him for cause in January 2016, he was unemployed until March 2016, when he was hired by his current employer. For eight months between January 2017 and August 2017, Applicant was on “layoff” status where he remained an employee with medical benefits but without pay.¹⁰ Applicant also averred that payments totaling approximately \$5,000 to his sister between 2015 through 2016 (to reimburse her for advancing him money to pay the legal fees associated with his two arrests) also contributed to his inability to timely repay his debts.¹¹

Although it was not alleged in the SOR, Applicant failed to timely file his income tax returns for at least tax year 2016 and possibly 2014 because it “just slipped his mind.” He believed that he may owe federal and state taxes for those years. He planned to meet with a tax professional after the hearing to obtain assistance with getting his delinquent returns filed and ascertaining the taxes owed. Applicant’s most recent credit report revealed a cable account, not alleged in the SOR, that was placed for collection in 2016 in the amount of \$663.¹²

Applicant has not received financial counseling. Applicant’s income increased from \$45,000 to \$47,250 between March 2016 and February 2018. At the hearing, he stated that he planned to meet with his sister’s friend the next day to get help managing his finances and preparing a budget.¹³

Guideline E

In August 2013, during a traffic stop, a police officer smelled the odor of an alcohol beverage emanating from Applicant’s vehicle and observed Applicant’s eyes to be red and glassy. After performing a series of field sobriety tests and a breath test that registered a .118, the officer arrested Applicant. He was charged with misdemeanor Driving Under the Influence (DUI).¹⁴ In January 2014, the court found him guilty, sentenced him to 90 days in jail (suspended), placed him on unsupervised probation for

¹⁰ GE 2 at 11; Tr. at 51-60, 62-63.

¹¹ Tr. at 70-70, 134-135.

¹² GE 10 at 1; Tr. at 82-87, 138-142. Because these issues were not alleged in the SOR, I will consider them only to evaluate mitigation and whole person.

¹³ Tr. at 60, 87, 163-165.

¹⁴ He was also charged with driving without a license (nolle prossed) and speeding 49/35 (disposition not specified in record).

two years, and suspended his driver's license for one year. At the hearing, Applicant acknowledged his wrongdoing.¹⁵

In January 2015, a police officer was called to a hospital by the nursing staff who treated Applicant's then girlfriend for injuries sustained during an altercation. Applicant took her to the hospital after she requested him to do so. After interviewing Applicant's girlfriend and observing large bruises on her arms, face, hands, and shoulders, the officer arrested Applicant. He was charged with misdemeanor assault and battery,¹⁶ and an emergency protective order was issued against him. In February 2015, Applicant pled guilty to the charge for which he was sentenced to 90 days in jail (80 days suspended), placed on probation for one year, and ordered to undergo a substance abuse evaluation and complete a program for first offenders of domestic violence. Applicant and his then girlfriend broke up following this incident, and they have not had any contact except as related to the debt alleged in SOR ¶ 1.i.¹⁷

Policies

"[N]o one has a 'right' to a security clearance."¹⁸ 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."¹⁹ 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."²⁰

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

¹⁵ GE 3, 4, 5 (this exhibit was missing page 4), and 8 at 6-7; Tr. at 43-44, 88-93, 160-163.

¹⁶ He was also charged with felony abduction (nolle prossed) and prevent summoning law enforcement (nolle prossed).

¹⁷ GE 1 at 35; GE 3, 6, 7, and 8 at 7-8; AE C and D; Tr. at 44-50, 93-99; 103-106, 151-160.

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁹ *Egan* at 527.

²⁰ EO 10865 § 2.

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.”²¹ 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.²² “Substantial evidence” is “more than a scintilla but less than a preponderance.”²³ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁴ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁵ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²⁶

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁷ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁸

²¹ EO 10865 § 7.

²² See *Egan*, 484 U.S. at 531.

²³ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁴ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

²⁵ Directive ¶ E3.1.15.

²⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁷ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁸ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

Guideline F (Financial Considerations)

The 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).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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.

AG ¶ 20(a) is not fully established. The circumstances surrounding Applicant's company card misuse are not likely to recur, and it does not cast doubt on his current

reliability, trustworthiness, or good judgment. However, Applicant's delinquent debts, including substantial federal student loans, remain unresolved.

AG ¶ 20(b) is not established. The periods of unemployment following Applicant's layoffs and his 2017 "layoff" status were circumstances beyond his control. However, Applicant has not met his burden to establish that he has acted responsibly to resolve his delinquent debts.

AG ¶ 20(d) is not established. Applicant is credited with initiating action, and with the three payments he made, to resolve the debt alleged in SOR ¶ 1.g. Although I credit him with his self-perceived efforts to resolve the student loan debts alleged in SOR ¶¶ 1.a through 1.e, the evidence suggests that Collection Agent A is not associated with those accounts. Moreover, if it were deemed so, his corroborated payments are not sufficient to establish mitigation in light of the extent of his delinquencies and of recent evidence showing questionable financial judgment. Applicant failed to timely file his tax returns without good cause and had a new debt placed for collection. I cannot conclude that his financial problems are under control at this time.

Guideline E, Personal Conduct

The concern under this guideline, as set out in AG ¶ 15, includes: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."

Applicant's criminal misconduct and credit card misuse establish the following disqualifying condition under this guideline:

AG ¶ 16 (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The security concerns raised under this guideline have been mitigated by the following applicable factor:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Incorporating my comments under Guideline F, I conclude that Applicant's credit card misuse does not cast doubt on his current reliability, trustworthiness, and good judgment. It has been over four years since Applicant's DUI offense, and three years

since his assault offense. While I do not consider Applicant's physically assaulting his then girlfriend to be a minor offense, I find that his arrest resulted from isolated circumstances that are unlikely to recur. These offenses demonstrated a pattern of poor judgment and failure to follow rules. However, because so much time has passed without the recurrence of any similar offenses or any behavior that would suggest that they are likely to recur, I find that they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 Guidelines F and E in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated security concerns raised by his personal conduct, but not those raised by his financial indebtedness. Accordingly, Applicant 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 – 1.i: **Against Applicant**

Subparagraph 1.j: **For Applicant**

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a – 2.c: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge