



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-00483
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2018

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 October 30, 2015. On March 15, 2017, 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, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on April 7, 2017, and requested a decision based on the written administrative record, without a hearing before an administrative judge. He subsequently requested a hearing.² Department Counsel was ready to proceed on January 29, 2018, and the case was assigned to me on April 12, 2018. On April 23, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 21, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, but did not present the testimony of any witnesses or submit any documentary evidence. I kept the record open until June 6, 2018, to enable him to submit documentary evidence. He did not submit anything further. DOHA received the transcript (Tr.) on June 6, 2018.

Findings of Fact³

Applicant is a 52-year-old electrician employed by a defense contractor since August 2013. He was employed in the private sector as an electrician from March 2002 to 2013. He married in September 1998 and divorced in April 2013. He has a 12-year-old son. He has never held a security clearance.

The four delinquent debts alleged in the SOR are credit-card accounts reflected in credit reports from November 2015 (GX 2), December 2016 (GX 3), and May 2018 (GX 3.) The two debts alleged in SOR ¶¶ 1.a and 1.b were cancelled in December 2016 and an IRS Form 1099-C was issued for each debt. (Attachment to SOR Answer.) The debt alleged in SOR ¶ 1.c was cancelled and an IRS Form 1099-C was issued in December 2015. (GX 5.) Applicant testified that he paid taxes on the cancelled debts. (Tr. 19, 31.)

Applicant's financial problems began around 2012 or 2013. He attributed his financial problems to having too many credit cards and using one card to pay the balance on another. (Answer to SOR; Tr. 18.) He testified that he did not use the credit cards for purchases, but to pay bills because using a credit card was more convenient than writing a check. (Tr. 40-41.)) For a while, he was making less than the minimum payments on the accounts alleged in SOR ¶¶ 1.a and 1.b. He then stopped making payments on these two accounts in an effort to catch up with his other bills. (Tr. 25.) He testified that he had no records of payments on the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. (Tr. 36.)

Applicant testified that he did not know why the creditors alleged in SOR ¶¶ 1.a, 1.b, and 1.c cancelled the debts. He testified that he did not ask the creditors to cancel the debts or issue an IRS Form 1099-C, but that they "just showed up in the mail." (Tr. 46.) He testified that he contacted the creditor who sent the forms for the debts alleged in SOR ¶¶ 1.a and 1.b, and a creditor's representative told him that they could not find his accounts. (Tr. 43.)

² Applicant did not expressly admit or deny any of the allegations in his answer to the SOR.

³ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant testified that he was making regular payments of \$465 per month on the credit-card account alleged in SOR ¶ 1.d, and that it would be paid off in two months. (Tr. 36, 52-53.) He provided no documentary evidence of a payment agreement or any payments. However, the May 2018 credit report reflects that he made a payment on the account in March 2018, and he has reduced the balance from \$14,708 (the amount alleged in the SOR and reflected in GX 2) to \$2,123. (GX 4 at 2.)

In 2013, Applicant was earning about \$50,000 per year, his then wife was making about \$60,000 per year, and they were able to keep up with the payments on the home mortgage loan and their car payments. (Tr. 28.) The mortgage lender was the same bank as the creditor in SOR ¶¶ 1.a and 1.b. (Tr. 26.)

Applicant's divorce was the result of financial problems. (Tr. 27.) He testified that he is now earning about \$60,000 per year. He has never received financial counseling. (Tr. 38.) However, he testified that he now has a net monthly remainder of about \$1,000 and is financially "doing well." (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 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*, 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. 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*, 484 U.S. 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. . . . 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 documentary evidence and Applicant's testimony at the hearing 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 following mitigating conditions are potentially relevant:

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; 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), 20(b), and 20(c) are not established. Applicant's delinquent debts are recent, numerous, were not incurred under circumstances making them unlikely to recur, and were not incurred due to conditions largely beyond his control. He has not received financial counseling. Although the cancellation of the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c reduces Applicant's vulnerability to coercion or exploitation and the temptation to engage in illegal conduct, the cancellation of the debts does not overcome the evidence of financial irresponsibility that caused the debts and does not constitute a good-faith effort to resolve them.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.d. Although Applicant presented no documentary evidence of a payment plan or systematic payments on the debt, the May 2018 credit report reflects a payment in March 2018 and a significant reduction in the balance due.

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 and applying the adjudicative factors in AG ¶ 2(d).⁴

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant has made progress in resolving his financial problems, but insufficient time has passed to conclude that he has left his bad financial habits behind him. 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.c:	Against Applicant
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Subparagraph 1.d:	For Applicant
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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

⁴ The factors are: (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.