



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-02052
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Barbara T. Hanna, Esq.

03/09/2018

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.

History of the Case

Applicant submitted a security clearance application (SCA) on November 12, 2015. On June 29, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on July 18, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 5, 2017, and the case was assigned to me on October 23, 2017. On November 13, 2017,

the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 7, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until January 5, 2018, to enable him to submit additional documentary evidence. At his request, I extended the deadline until January 12, 2018. He timely submitted AX F through K, which were admitted without objection. DOHA received the transcript (Tr.) on December 20, 2017.

Findings of Fact¹

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

Applicant is a 35-year-old electrical foreman employed by a defense contractor. He has worked for his current employer and held a security clearance since January 2001. He married in February 2007 and has two children, ages 11 and 8.

Applicant's spouse was employed from 2007 to October 2012, earning about \$18 per hour. She left her job when Applicant was reassigned to the same shift she worked, making it difficult to care for their children, who were then two years old and seven years old. With only one income, they had difficulty paying their bills. (Tr. 15-18.)

In 2015, Applicant and his wife separated. They reconciled after about eight months. (Tr. 19.) During their separation, they fell behind on their mortgage-loan payments, but they were able to obtain a loan modification in the summer of 2015. (Tr. 20.) Their loan payments are current. (GX 3 at 1.)

Applicant's wife decided to return to the work force, and she completed training as a dental assistant in April 2017. Applicant paid for her training by borrowing about \$7,500 from his 401(k) retirement account in January or February 2017. The loan is being repaid by deductions from his pay of \$95 per two-week pay period. (AX F; Tr. 57.) She worked in a dental practice for about a month, but she left because the job required her to commute to and between various nearby cities, and the additional commuting time was not compatible with the care of their children. As of the date of the hearing, she was looking for employment. (Tr. 22-25.)

The SOR alleges seven debts totaling about \$15,000, which are reflected in credit reports from December 2015 and May 2017. (GX 2; GX 3.) When Applicant answered the SOR, he had not taken any action to resolve the debts that were alleged. The evidence concerning these debts is summarized below.

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

SOR ¶¶ 1.a and f: collection accounts for \$7,836 and \$676. About 13 years ago, Applicant cosigned student loans for his niece totaling about \$9,000. When his niece stopped making payments, the collection agency contacted Applicant. The date of last activity was October 2013 for the larger loan and April 2014 for the smaller loan. When Applicant submitted his SCA in November 2015, he stated that he had made an arrangement to pay \$50 per month on these debts. (GX 1 at 34-35.) After the hearing, Applicant submitted evidence that he made his first \$50 payment on January 5, 2018. (Tr. 40-41; AX K.)

SOR ¶ 1.b: credit-card account charged off for \$5,864. In Applicant's answer to the SOR, he stated that this credit card was "maxed out," when his wife quit her job in October 2012. The November 2015 credit report reflects that the date of last activity on this debt was March 2013. (GX 2 at 4.) When Applicant submitted his SCA, he disclosed this debt and stated that he had made an arrangement to pay \$50 per month. (GX 1 at 32.) At the hearing, Applicant testified that he contacted the creditor but was unable to negotiate a payment agreement because the debt was so old. He testified that he intended to begin making payments of \$100 per month, but he submitted no evidence of any payments. (Tr. 39-40.)

SOR ¶ 1.c: collection account for \$502. Applicant testified that the original creditor for this debt is a department store. In his SCA, he stated that he had made an arrangement to pay \$50 per month. (GX 1 at 33.) At the hearing, he testified that he contacted the collection agency alleged in the SOR and was informed that the debt was sold to another entity. As of the date the record closed, he had not made any payments to resolve this debt. (Tr. 53-54.)

SOR ¶¶ 1.d and e: cellphone accounts placed for collection of \$339 and \$309 in 2013. These debts are duplicates. In December 2017, Applicant settled the debt for \$200. (Tr. 38; AX I.)

SOR ¶ 1.g: medical bill placed for collection of \$81. In December 2017, Applicant contacted the collection agency, who determined that the bill was erroneous. (AX H.) The debt is resolved.

In November 2017, Applicant sought and received financial counseling from his credit union. He prepared a detailed financial statement and identified ways to reduce spending and accumulate savings. He made a follow-up appointment for mid-January 2018 with his financial counselor to review his progress. (Tr.45-46; AX A.)

In an effort to increase his income, Applicant started a lawn-care business about two years ago. He testified that he spent about \$1,000 for second-hand equipment (Tr. 49.) His federal and state income tax returns for 2016 reflected a business loss of \$12,395. (AX G.). Because he did not submit the Schedule C reflecting his business income and expenses, it is not clear whether the business loss reflected on his income tax return involves more than his lawn-care business. For 2017, his income from the

lawn-care business was about \$7,170 and his expenses were about \$5,671, amounting to a profit of about \$1,500. (AX J.)

Two of Applicant's co-workers, who have known him for 17 years and 14 years respectively, submitted statements attesting to his honesty, dependability, selflessness, strong work ethic, and devotion to his family. (AX C; AX D.) In December 2017, he was selected by his employer for an "Excellence in Action" honoree. (AX E.)

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. . . . 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 documentary evidence submitted at the hearing establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); 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;

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 fully established. Applicant's delinquent debts are numerous and recent. They were not incurred under circumstances making them unlikely to recur, except for the delinquent student loans. Applicant was only 21 years old when he cosigned for his niece's student loans, and he is not likely to make that mistake again.

AG ¶ 20(b) is not established. The assignment of Applicant to work the same shift as his wife was a circumstance beyond their control, leaving them little choice but for one of them to resign or to incur significant costs for child care. Their temporary marital separation was a circumstance beyond their control. However, Applicant has not acted responsibly. He disclosed the debts alleged in SOR ¶¶ 1.a-1.c in his November 2015 SCA, and he represented that he had made payment arrangements to resolve them. However, when he answered the SOR in July 2017, he had not taken any steps to resolve them. He finally made his first \$50 payment in January 2018 on the student loans alleged in SOR ¶¶ 1.a and 1.f. At the hearing, he promised to begin making payments on the credit-card debt alleged in SOR ¶ 1.b, but he had not made any payments as of the date the record closed. 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). He has presented no evidence of payments or a payment agreement for the debt alleged in SOR ¶ 1.c.

AG ¶ 20(c) is not fully established. Applicant sought and received financial counseling from his credit union, but he has not presented sufficient evidence to provide "clear indications" that his financial situation is under control.

AG ¶ 20(d) is established for the cellphone debts in SOR ¶¶ 1.d and 1.e, but not for the other debts alleged in the SOR. Applicant has made only one \$50 payment on the student loans. He submitted no evidence of payments or payment agreements for

the other debts alleged in the SOR. Applicant has been aware of his delinquent debts since he submitted his SCA in November 2015, but he did not begin taking meaningful action to resolve them until his hearing was imminent. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

SOR ¶ 20(e) is established for the medical debt alleged in SOR ¶ 1.g. Applicant has not disputed the other debts alleged in the SOR.

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).² 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
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

² 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.

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge