



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



In the matter of:)	
)	
[Redacted])	ISCR Case No.17-02184
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2018

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 on November 18, 2016. On June 29, 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions issued on or after June 8, 2017.

Applicant answered the SOR on August 16, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 12, 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 6, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 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 December 21, 2017, to enable him to submit documentary evidence. He timely submitted AX A and B, which were admitted without objection. DOHA received the transcript (Tr.) on December 14, 2017.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.f, and 1.h. He denied the allegations in SOR ¶¶ 1.g and 1.i. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 57-year-old employee of a defense contractor, serving as the assistant chief of mobility for an Air Force fighter squadron since October 2016. He served in the U.S. Air Force from June 1982 to July 2004, when he retired as a technical sergeant (pay grade E-6). He has worked for defense contractors since September 2004, except for periods of unemployment from January to August 2013 and May to October 2016. He held a security clearance while on active duty and retained it as an employee of a defense contractor.

Applicant married in October 1984, divorced in August 1992, remarried in August 1994, and divorced in November 2013. Applicant's second wife was a retired Army master sergeant (pay grade E-8). He has an adult daughter from his second marriage. His ex-wife has a grandson whom Applicant financially supported and regarded as his grandson until the marital breakup. (Tr. 37, 47.)

After Applicant retired from the Air Force, he found himself earning considerably less than when he was on active duty. His financial problems were exacerbated by periods of unemployment. In 2013, his wife had an affair and moved out of the marital home. His daughter stayed in the home with him until she graduated from high school. The delinquent debts alleged in the SOR arose after Applicant's marital breakup and are reflected in a March 2017 credit report. (GX 2.) Left with only one income, he used credit cards for living expenses, but he was unable to pay the amounts due on the accounts. The debts alleged in SOR ¶¶ 1.a (judgment for \$23,402 filed in March 2016) and 1.b (credit-card account charged off for \$24,753) are the same debt. Applicant testified that he had telephonic discussions with a representative of the creditor, who was unwilling to accept partial payments and insisted on a lump-sum payment. (Tr. 29-31, 45-46.) The debt is not resolved.

After Applicant's ex-wife left him, he was unable to make the payments on the marital home, and the first mortgage was foreclosed. There is no evidence of a deficiency

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

after the foreclosure sale. However, the foreclosure did not resolve a joint second mortgage on the home, alleged in SOR ¶ 1.c. Applicant testified that he and his ex-wife had a verbal agreement that she would pay the second mortgage loan, but she felt no obligation to pay it after she moved out of the home. (Tr. 32-33, 47.) The debt was charged off for \$14,885 in May 2013. Applicant testified that he had verbal conversations with the lender about settling the debt, to no avail. (Tr. 32-33.) It is not resolved.

Applicant denied having a credit card from the creditor alleged in SOR ¶ 1.d. The March 2017 credit report reflects that it was a joint account charged off for \$6,050 in April 2013 and closed by the consumer. Applicant has not tried to resolve the debt, and he has not disputed it with the creditor or the credit bureaus. (Tr. 33-34.)

Applicant testified that the debt alleged in SOR ¶ 1.e, charged off for \$3,946 in March 2013, was for furniture purchased during the marriage. Although it is listed in the March 2017 credit report as Applicant's individual debt, he believes that his ex-wife should pay it, because she purchased the furniture. Applicant has not contacted the creditor, and the debt is not resolved. (Tr. 34.)

Applicant was unable to provide any information regarding the debts alleged in SOR ¶ 1.f, a revolving charge account charged off for \$2,916 in May 2013, and SOR ¶ 1.g, a collection account opened in July 2015 for \$795. Both debts are reflected in the March 2017 credit report as Applicant's individual accounts, and they are not resolved. (GX 2 at 4, 7.)

Applicant testified that the medical debt alleged in SOR ¶ 1.h was incurred for his ex-wife's grandson and was his ex-wife's responsibility. (Tr. 37.) However, it is reflected in the March 2017 credit report as Applicant's individual account. It is not resolved.

Applicant testified that the cable service debt alleged in SOR ¶ 1.i has been paid. (Tr. 38.) After the hearing he submitted a document showing that he currently has service with the same cable service provider. (AX A.)

Applicant's current annual salary is about \$44,000, considerably less than the \$79,000 per year he earned while on active duty. His military retired pay is \$1,700 per month, which is about \$20,400 per year. (Tr. 38-39.) In a good month, he has about \$300 left after paying bills, which he uses for food and gas. He has about \$700 in savings and \$500 in his checking account. (Tr. 42-43.) He has no debts based on his daughter's college education, because his daughter attended college on athletic scholarships. (Tr. 43.) She has graduated from college, and she is now a financially independent professional athlete. (Tr. 24.) Applicant drives a 10-year-old truck on which the loan is paid.

Applicant received financial counseling from a certified public accountant at his church. He testified that he received good management advice, but that with his limited income there was nothing to manage. (Tr. 43.) He testified that he briefly consulted with a bankruptcy attorney, but he abandoned bankruptcy as a course of action after the

attorney told him that he would be required to sell his truck if he filed a bankruptcy petition. (Tr. 38.)

Applicant's squadron commander, an Air Force lieutenant colonel, submitted a letter supporting continuation of Applicant's security clearance. He describes Applicant as a "consummate professional," a person with strong moral character, and a valuable member of the squadron who fosters an environment of accountability in the unit. (AX B.)

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).

The judgment alleged in SOR ¶ 1.a and the charged-off debt alleged in SOR ¶ 1.b are the same debt. 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 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved the allegation in SOR ¶ 1.b in Applicant's favor.

Applicant's admissions and the documentary evidence submitted at the hearing establish the 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;

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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's marital breakup, significant income reduction after his retirement, periods of unemployment, and his ex-wife's refusal to share responsibility for the joint second mortgage loan on the marital home were conditions beyond his control. To his credit, he telephonically contacted the creditors alleged in SOR ¶¶ 1.a and 1.c, but he made no further efforts after being initially rebuffed. He has made no efforts to pay, settle, or dispute the other delinquent debts alleged in the SOR.

AG ¶ 20(c) is not fully established. Applicant attended classes by a certified accountant, but there is no evidence that his financial problems are under control.

AG ¶ 20(d) is established for the cable service debt alleged in SOR ¶ 1.i. It is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant denied owing the debt alleged in SOR ¶ 1.d and asserted that he had no knowledge of the debt alleged in SOR ¶ 1.g, but he has not disputed the debts with the original creditors, collection agencies, or credit bureaus.

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

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant served honorably in the U.S. Air Force for 22 years. He has held a security clearance since the beginning of his Air Force service. His current supervisor holds him in high esteem and has supported his application to continue his security clearance. He was left with numerous household and marital debts when his ex-wife left him and their daughter in pursuit of extramarital romance.

On the other hand, Applicant has been employed continuously for more than a year, with income from his current job and military retired pay totaling about \$64,400. His daughter is financially independent, and he is not responsible for supporting anyone except himself. Nevertheless, he has done virtually nothing to rectify his financial situation. At the hearing, he seemed overwhelmed by his financial situation. He has no plan to resolve his delinquent debts and, except for the cable service debt, has not taken any significant steps to resolve them. 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**

Subparagraph 1.a: **Against Applicant**

Subparagraph 1.b: **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.

Subparagraphs 1.c-1.h;

Against Applicant

Subparagraph 1.i:

For Applicant

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