



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 17-02922 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2018

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 (SCA) on September 8, 2016. On September 5, 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 October 28, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 29, 2017. On December 1, 2017, a complete copy of the file of relevant

material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 11, 2017, and submitted Applicant's Exhibit (AX) A, a cover letter with 17 exhibits, which was admitted without objection. The case was assigned to me on April 13, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.i. He denied SOR ¶ 1.j. His admissions are incorporated in my findings of fact.

Applicant is a 42-year-old graphic artist employed by a defense contractor since May 2013. He has held a top secret clearance and eligibility for access to sensitive compartmented information in the past, and he currently holds a secret clearance. For the past three years, he has received outstanding performance reviews ("frequently exceeds expectations" in 2014 and 2015; "far exceeds expectations" in 2016). (AX A, Exhibit 16.)

Applicant served on active duty in the U.S. Air Force from June 1993 to January 2003, and in the Air Force Reserve from January 2003 to December 2010, when he was medically retired. He has worked as a graphic artist for most of his career, with federal contractors from May 2004 to January 2011, and in private-sector jobs from February 2012 to May 2013.

Applicant married in 1995 and divorced in 2007. He remarried in 2008 and divorced in 2011. (Answer to SOR at 3.) He has lived with a cohabitant since June 2012. He has a 16-year-old son from his first marriage.

In April 2008, an investigator from the state child protective services determined that Applicant's son had been physically and emotionally abused and injured when his stepfather (2nd husband of Applicant's first wife) disciplined him. The record reflects that the stepfather also accessed child pornography on the family computer and was arrested for solicitation of prostitution. A juvenile court judge gave Applicant temporary custody of his son. (AX A, Exhibit 1.) In January 2010, Applicant and his first wife were given shared custody of their son. Applicant's ex-wife was held in contempt on several occasions for depriving Applicant of visitation and attempting to remove their son from the state without court permission. (AX A, Exhibit 8.) In August 2013, Applicant's ex-wife relinquished custody because of her medical and financial problems.

In November 2013, Appellant arranged for a psychiatric examination of his son because of behavioral problems at home and at school. His son was diagnosed with attention deficit hyperactivity disorder and autistic spectrum disorder. (AX A, Exhibit 11 at 3.). In June 2014, a licensed clinical psychologist made the same diagnosis. (AX A,

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

Exhibit 11 at 5-6.) Applicant incurred about \$650 in uninsured medical expenses for these services. (Response to FORM.)

In May 2014, Applicant sought sole custody of his son and a “protection from abuse” order after his son reported additional instances of physical abuse by his stepfather. (AX A, Exhibits 5 and 6.) In September 2017, a family court judge ruled that his son was of sufficient age to decide which parent he preferred to live with during the school year. (AX A, Exhibit 10.) Applicant incurred about \$9,500 in legal fees during this litigation. (Response to FORM.) Applicant’s son has lived with him since 2013, but has regularly visited his mother, who resides in another state.

The SOR alleged ten delinquent debts totaling about \$160,612, the largest of which are student loans placed for collection of about \$102,073 (SOR ¶ 1.a) and a child-support arrearage of about \$50,079 (SOR ¶ 1.b). The debts are reflected in Applicant’s SCA and credit reports from November 2016 and August 2017. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶1.a: student loans placed for collection of about \$102,073. Applicant disclosed delinquent student loans in his SCA. (FORM Item 3 at 38.) In his answer to the SOR, he stated that the loans became delinquent because his level of income and the cost of litigating custody of his son made him unable to make the payments. A November 2016 credit report reflected that he was making monthly \$5 payments on several delinquent student loans that had been referred for collection in October 2016. (FORM Item 4.) These payments apparently were pursuant to a rehabilitation program that was not successful. In Applicant’s answer to the SOR, he stated that he had contacted the collection agency but had not yet made any payments, payment agreements, or arrangements to rehabilitate the loans. He did not report any further progress on resolving these debts in his response to the FORM.

SOR ¶ 1.b: child-support arrearage placed for collection of about \$50,079. Applicant admitted this debt in his answer to the SOR but disputed the amount. He attributes the excessive amount to vindictive actions by his first ex-wife to avenge his efforts to gain custody of their son. His claim of vindictiveness is supported by a printout of a contentious text-message exchange between them. (SOR Answer, Exhibit 1.b.) Applicant has had custody of his son since at least August 2013, and his November 2016 credit report reflects no arrearage and states that the account in the jurisdiction where his son was born was current as of June 2015. (FORM Item 4 at 10.) However, his August 2017 credit report reflects that the child-support account in the jurisdiction where Applicant and his son now reside was opened in January 2016 and is past due for \$50,079. (FORM Item 5 at 2.) In his SCA, Applicant stated that he is making weekly payments on the arrearage by payroll deduction. (FORM Item 3 at 37.) Department Counsel conceded that Applicant’s pay had been garnished for \$20,740 in July 2016, even though there are no documents in the FORM reflecting the garnishment. (Department Counsel’s submission at 2.) In Applicant’s response to the FORM, he stated that 40% of his income is deducted for child support and the arrearage, and that he

intended to hire an attorney and contest the amount of the arrearage. The dispute about the amount of the arrearage has not been resolved.

SOR ¶ 1.c: deficiency of \$2,441 after repossession of a vehicle. The deficiency was assessed in April 2008 and referred for collection in March 2011. Applicant stated in his answer that the debt was resolved in 2012, but he provided no documentation to reflect resolution of the debt. It is still reflected in the November 2016 and August 2017 credit reports. (FORM Item 4 at 8 and Item 5 at 2.)

SOR ¶ 1.d: educational debt for \$1,396. Applicant attended college from January 2012 to June 2013. He did not receive a degree, but he incurred this debt, which is not resolved.

SOR ¶¶ 1.e, 1.f, 1.h, and 1.i: credit-union overdraft, charged off for \$847; department-store charge account, charged off for \$462; telecommunications debt, placed for collection of \$1,796; and cable-service debt, placed for collection of \$783. In Applicant's answer to the SOR, he attributed all of these debts to his second ex-wife's actions on joint accounts. He submitted no evidence of actions to resolve them.

SOR ¶ 1.g: educational debt for \$299, placed for collection. Applicant attended a community college from January 2015 to May 2015, did not receive a degree, and incurred this debt, which is not resolved.

SOR ¶ 1.j: auto insurance premium placed for collection of \$436. Applicant denied this debt in his answer to the SOR, and stated that he had disputed it. He submitted no evidence of a dispute or its resolution. However, he submitted evidence that he is a current customer in good standing. (SOR Answer, Exhibit 1.j.)

In Applicant's answer to the SOR, he stated that his jobs before May 2013 paid only about one-third of his current income, making it difficult to pay his living expenses. He provided no specific information about his income or expenses.

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 in the FORM establish the following potentially 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 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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 partially established. Applicant's debts are numerous and recent, but his inability to pay them is due in part to the expenses of litigating the custody of his son, which are unlikely to recur. However, Applicant has provided insufficient information to determine the impact of his legal expenses on his overall financial situation.

AG ¶ 20(b) is partially established. Applicant's two divorces, the abuse of his son by his first ex-wife's husband, Applicant's legal difficulties in gaining custody of his son,

and the emotional and financial stress of litigation were circumstances beyond his control. However, he has not acted responsibly toward his student loans. He submitted no evidence of contacts with the collection agency or progress in negotiating a resolution of the debts. He claimed that he resolved the repossession deficiency alleged in SOR ¶ 1.c, but he submitted no documentary evidence to support his claim. He acknowledged that he was responsible for the joint debts incurred by his second ex-wife, but he has taken no action to resolve them. He has taken no action to resolve the educational debts alleged in SOR ¶¶ 1.d and 1.g.

AG ¶ 20(d) is not established. Applicant provided no documentary evidence to support his claim that the repossession deficiency alleged in SOR ¶ 1.c was resolved. He has not made any payments or established payment plans for the other debts alleged in the SOR, except for the insurance debt alleged in SOR ¶ 1.j, which appears to be resolved.

AG ¶ 20(e) is established for the amount of the child-support arrearage alleged in SOR ¶ 1.b. Department Counsel conceded that \$20,740 of the debt is being collected by garnishment, and Applicant has disputed the remainder of the arrearage. The discrepancies between the two credit reports in the record and the evidence that Applicant has had physical custody of his son since at least August 2013 establishes the basis for a legitimate dispute of the amount of the arrearage.

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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his sincerity based on demeanor or to question him about his financial situation. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). The evidence in the record establishes that Applicant has been through an emotionally and financially stressful period, but it does not justify his lack of contact with his creditors or efforts to resolve his debts. Individuals entrusted with classified information are expected to act responsibly, even under stressful situations. "Once a

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.

concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991).

A security-clearance adjudication is not a one-time event. If Applicant takes timely and responsible actions to resolve his delinquent debts, he may well qualify for reinstatement of his security clearance at some time in the future. See Directive ¶ E3.1.37 through E3.1.41 (reconsideration authorized after one year). However, on the record before me, I am compelled to resolve this case in favor of national security.

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 delinquent debts.

Formal Findings

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

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

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|------------------------|-------------------|
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraphs 1.c-1.i: | Against Applicant |
| Subparagraph 1.j: | 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