



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03365
)	
Applicant for Security Clearance)	

Appearances

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

08/02/2018

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 November 18, 2016. On December 6, 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 on or after June 8, 2017.

Applicant answered the SOR on December 28, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 26, 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 22, 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 other witnesses or submit any documentary evidence.

I kept the record open until June 8, 2018, to enable Applicant to submit documentary evidence. At his request, I extended the deadline for submitting evidence to June 15, 2018. On June 16, 2018, he submitted AX A through N, and he requested that the record remain open until July 31, 2018. Department Counsel did not object to AX A through N, but objected to any further extension of the deadline for submitting evidence. I admitted AX A through N but denied Applicant's request for additional time. (Hearing Exhibit I). DOHA received the transcript (Tr.) on June 7, 2018.

Findings of Fact¹

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

Applicant is a 38-year-old marine painter employed by a defense contractor. He served on active duty in the U.S. Navy from June 1999 to May 2003 and received an honorable discharge. He served in the U.S. Navy Reserve from May 2005 to August 2007, when he received an administrative discharge based on family hardship. He received a security clearance in the Navy and retained it as an employee of a defense contractor.

Applicant was employed by a defense contractor as a pipefitter from May 2003 to March 2006 and has worked as a marine painter since July 2007. He was laid off and unemployed from November 2012 to March 2013, and worked for defense contractors from April 2013 until he was hired by his current employer in January 2014. He was laid off from February to June 2016, and then rehired by his current employer. (GX 2 at 12.)

Applicant married in January 2001 and divorced in February 2010. He remarried in February 2014. He has two children from his first marriage, ages 14 and 17.

The SOR alleges that Applicant failed to file his federal tax returns as required for "at least" 2014 through 2016 (SOR ¶ 1.a); failed to file his state income tax returns as required for "at least" 2010 through 2016 (SOR ¶ 1.b); and that he owes \$3,194 in state taxes for "at least" tax year 2011 (SOR ¶ 1.c). It also alleges that he owes the state tax authority \$3,570 for an overpayment of unemployment benefits. (SOR ¶ 1.d) and owes a child-support arrearage of about \$23,000 (SOR ¶ 1.q.). Finally, it alleges 11 delinquent consumer debts totaling almost \$36,000 (SOR ¶¶ 1.e-1.m and 1.o-1.p) and a delinquent \$25 medical bill (SOR ¶ 1.n). The debts alleged in SOR ¶¶ 1.e-1.p are reflected in credit reports from March 2017 (GX 3), February 2017 (GX 4) and May 2018 (GX 5.) The tax

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

delinquencies alleged in SOR ¶¶ 1.a-1.c, overpayment of unemployment benefits alleged in SOR ¶ 1.c, and the child-support arrearage alleged in SOR ¶ 1.q are not reflected in the credit reports but were disclosed by Applicant in his SCA (GX 1) and during a personal subject interview (PSI) in June 2017 (GX 2). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a, 1.b, and 1.c: delinquent federal and state income taxes. In a personal subject interview (PSI) in June 2017, Applicant told a security investigator that he had no good reason for not filing his income tax returns. (GX 2 at 18.) At the hearing, he admitted that his failure to timely file his tax returns was ridiculous and irresponsible. (Tr. 56.) In November 2017, Applicant responded to DOHA financial interrogatories and stated that he was “in process of filing” his federal income tax returns for 2014, 2015, and 2016. He also stated that he was “in process of filing” his state tax returns for 2012 through 2016 and that he was making payments on the \$3,194 he owed in state income taxes for tax year 2011. (GX 2 at 2.)

In Applicant’s answer to the SOR, he stated that his federal income tax returns had been filed and that his state income tax returns were in the process of being filed. At the hearing, he testified he filed his federal income tax returns in February 2018, owed about \$20,000 in federal taxes, and had a payment plan providing for payments of \$150 per month, starting in May 2018. He provided no documentary evidence that he filed his federal returns, had a payment plan, or made any payments. He admitted that he had not timely filed his 2017 federal tax return and had not requested an extension of time to file. (Tr. 22-24.) As of the date of the hearing, he had not yet filed his past-due state tax returns. (Tr. 59.)

Applicant testified that he had a payment plan for his delinquent state taxes providing for monthly \$175 payments. (Tr. 27.) After the hearing, he submitted evidence that city taxes were being paid by garnishment starting in July 2017. (AX G.) However, he submitted no documentation of a payment plan or payments for his state taxes.

SOR ¶ 1.d: overpayment of unemployment benefits (\$3,570). In the June 2017 PSI, Applicant told the investigator that he continued to accept unemployment benefits for 10 months after finding employment, and that he knew he was not entitled to the benefits but kept them because he needed the money. (GX 2 at 17.) He testified that he requested that the debt be paid by garnishment, which began in December 2015. The debt has been satisfied. (Tr. 28-29; AX A-C)

SOR ¶¶ 1.e-1.h: cellphone accounts referred for collection of \$1,540, \$1,276, \$886, and \$474. In the June 2017 PSI, Applicant told the investigator that each of these debts were incurred when he cancelled the accounts for various reasons and was charged a cancellation fee and the cost of the cellphone. (GX 2 at 22-23.) At the hearing, he testified that he was making payments to one of the providers but had not yet set up payment plans or made any payments to the others. (Tr. 29-30, 51.) He did not submit any evidence of payment plans or payments.

SOR ¶ 1.i: telecommunications account referred for collection of \$336. In the June 2017 PSI and in Applicant's response to the SOR, he stated that he never had service from this provider and did not know the basis for this debt. (GX 2 at 23.) At the hearing, he testified that the debt might have been for the marital residence during his first marriage. (Tr. 31.) The debt is not resolved.

SOR ¶ 1.j: charge account referred for collection of \$303. In the June 2017 PSI and Applicant's answer to the SOR, he admitted this debt and admitted that he stopped making payments in order to pay other bills. He received a settlement offer but did not respond to it. (GX 2 at 24.) At the hearing, he testified that he was in the process of paying off this debt. (Tr. 32.) He did not provide any documentation of payments.

SOR ¶ 1.k: judgment filed in 2011 for \$6,296. Applicant incurred this debt when he voluntarily surrendered a vehicle that was having mechanical problems. He was notified of a court date but did not appear. He made no attempt to resolve the judgment. (GX 2 at 25.) In his answer to the SOR, he stated that he was making payments on the debt. After the hearing, he submitted evidence that between August 2013 and October 2016, he paid \$781 on this debt. (AX M.) He provided no evidence of payments after October 2016.

SOR ¶ 1.l: judgment filed in 2013 for \$577. In the PSI, Applicant said he was unable to identify this debt. (GX 2 at 25.) In his answer to the SOR, he stated that he was working to pay it. However, at the hearing, he testified that he was unable to identify it. (Tr. 32.)

SOR ¶ 1.m: credit-card account referred for collection of \$588. In the PSI, Applicant stated that he opened this account shortly before being laid off and made payments on the account until December 2016. He contacted the creditor in 2017 and agreed to a payment plan, but he made no payments pursuant to the plan. (GX 2 at 22.) A garnishment of his pay for \$25 per pay period began in February 2018. (AX H.) Applicant testified that he requested that the debt be collected by garnishment. (Tr. 33.)

SOR ¶ 1.n: medical bill referred for collection of \$27. In the PSI, Applicant stated that he did not know the source of this bill. He admitted the bill in his answer to the SOR and stated that he would pay it as soon as possible. At the hearing, he testified that he knew the source of the bill, and he would pay it if it was not covered by his medical insurance. (Tr. 33.) He has provided no documentation of the status of this debt.

SOR ¶ 1.o: deficiency of \$20,000 after vehicle repossession. Applicant purchased a vehicle in the summer of 2010 and financed \$19,000. He stopped making payments because the vehicle had major mechanical problems. The vehicle was repossessed and a default judgment was entered against him. His pay was garnished, but the garnishment was stopped when his pay was garnished for a child-support arrearage and unpaid state taxes. (GX 2 at 21.) Since July 2017, his pay has been garnished for this debt at the rate of \$25 per pay period. (AX D-F.)

SOR ¶ 1.p: deficiency of \$4,000 after vehicle repossession. Applicant purchased a vehicle in 2013. In May 2016, he discovered that the vehicle had major damage, apparently from flooding. Applicant surrendered the vehicle and stopped making payments. In his response to the SOR and at the hearing, he stated that he intended to sue the dealer under the “lemon laws.” (Tr. 34.) As of the date the record closed, he had taken no action to resolve this debt.

SOR ¶ 1.q: child-support arrearage of \$23,000. When Applicant divorced, he was ordered to pay \$823 per month in child support. He missed some child-support payments during the periods when he was unemployed. (GX 2 at 10-11.) At the hearing, he estimated that the child-support arrearage totaled about \$24,000. (Tr. 25-26.) Since at least February 2014, his pay has been garnished for about \$200 per pay period. (AX I-K.)

Applicant’s annual salary is about \$45,000 and his wife earns about \$35,000 per year. (Tr. 31.) He receives about \$135 per month for a service-connected disability. (Tr. 48.) He testified that he does not have a significant net monthly remainder after paying his bills. He has virtually no savings. (Tr. 40.) He does not have a budget. He testified that he and his wife are working with a financial counselor at their church, but he provided no information about any financial measures he has taken as a result of the counseling. (Tr. 45.)

At the hearing, Applicant testified that his father passed away on May 4, 2018. Based on conversations with his mother, Applicant believes that he will inherit about \$20,000. (Tr. 29, 42-43.) In Applicant’s request for additional time to submit evidence, he stated that he intended to use his inheritance to pay off some of his debts, and he needed additional time to pay debts and obtain documentation of payments. I denied his request for additional time because of the amount of time to resolve his debts that he had already been given since issuance of the SOR, because his expectations regarding an inheritance were vague, based solely on conversations with his mother; and because his track record of financial irresponsibility made it unlikely that he would significantly improve his financial situation within the six weeks of additional time he requested.

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 potentially disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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(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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 established. Applicant's periods of unemployment and his repeated purchases of defective vehicles were conditions largely beyond his control. However, he has not acted responsibly. He walked away from the defective vehicles and allowed default judgments to be entered against him. He has not maintained contact with his creditors. He claimed to have made payment agreements for some of his debts, but he submitted no documentary evidence of payment agreements or payments.

AG ¶ 20(c) is not established. Applicant testified that he received financial counseling from a member of his church, but he provided no information about the qualifications of the counselor and no documentary evidence of counseling. Although some debts have been resolved by garnishment of his pay, his overall financial situation is not under control.

AG ¶ 20(d) is not established. Applicant provided evidence that the debts in SOR ¶¶ 1.d, 1.m, 1.o, and 1.p were being satisfied by garnishment of his pay. Payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). Applicant testified that the garnishment to collect the debts in SOR ¶¶ 1.d and 1.m was voluntary, and I have given him credit for payments on these two debts. However, payment of the debt alleged in SOR ¶ 1.d does not mitigate the fraudulent conduct that caused the debt.

Applicant claimed that he was making payments on one of the delinquent cellphone accounts (SOR ¶¶ 1.e-1.h) and the debt alleged in SOR ¶ 1.j, but he submitted no documentary evidence to support his claim. Applicants who claim that they have paid or are paying a debt are expected to present documentary evidence supporting their claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Applicant submitted evidence that he made payments on the judgment alleged in SOR ¶ 1.k, but he provided no evidence of any payments after October 2016.

AG ¶ 20(e) is not established. Applicant claimed that the repossessed vehicle alleged in SOR ¶ 1.p was a “lemon,” but he produced no evidence that he carried out his intent to sue the dealer who sold it to him. He has not disputed any of the debts alleged in the SOR.

AG ¶ 20(f) is not established. Applicant claimed that he filed his past-due federal income tax returns and made payment plans for his federal and state tax debts, but he produced no documentary evidence to support his claims.

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 and applied the adjudicative factors in AG ¶ 2(d). 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 fraudulent conduct and 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.q:

Against 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