



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



In the matter of:)
)
) ISCR Case No. 17-03624
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis Esq., Department Counsel
For Applicant: *Pro se*

06/27/2018

Decision

GLENDON, John Bayard, 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

On November 8, 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 November 22, 2017, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 11, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 12, 2018, and he did not object to the Government's evidence, including Item 7,¹ submit any additional evidence or otherwise respond. The case was assigned to me on June 19, 2018.

Findings of Fact²

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

Applicant is a 34-year-old field avionics technician employed by a defense contractor since July 2015. He served on active duty in the U.S. Air Force from April 2003 to December 2013. In 2012 he was reduced from E-5 to E-4 following an Article 15 adjudication. He claimed that he was discharged from the Air Force in December 2013 due to a "force reduction." (FORM Item 7 at 5.)

Applicant has been married twice. His first marriage ended when his wife moved out of the marital home (FORM Item 7 at 13) with their three children, all under the age of eight at the time. He was divorced in December 2010. He remarried a year later, and he and his second wife have two children, who are presently six and three. The combination of his divorce and his loss of income due to his reduction in rank resulted in financial distress. (FORM Item 7 at 2.)

In anticipation of the loss of his military income and his planned move with his second wife and the first of their children to another state, Applicant decided in October 2013 to stop paying his mortgage. Following his move with his new family, Applicant was unemployed from January 2014 to July 2015, which further aggravated his financial situation. He attended a certification program during the period May 2014 to July 2015. He incurred over \$13,000 in student loans to pay for the program. (FORM Item 5 at 5.) Once he earned his certificate in July 2015, he obtained employment in a third state and moved himself and his family, which included a second child at that point, again. During the five-year period following his divorce through the end of his unemployment, he was unable to pay a number of bills.

The SOR alleges 12 delinquent debts totaling about \$22,000. In addition, the SOR alleges Applicant's 2013 default on his mortgage loan resulting in the bank foreclosing on

¹ FORM Item 7 was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant in her FORM that in his response to the FORM, Applicant could comment upon, make corrections, additions deletions and updates as necessary, or alternatively that he could object to Item 7 on the ground that it was unauthenticated by a Government witness. Applicant did not respond to the FORM. I conclude that he waived any objections to Item 7. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

² Applicant's personal information is extracted from his security clearance application (FORM Item 3) unless otherwise indicated by a parenthetical citation to the record.

Applicant's former residence and an unpaid state tax lien in the amount of \$771 filed in 2014. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: October 2013 default on mortgage loan and April 2016 foreclosure. In his answer to the SOR, Applicant blamed his default on a number of circumstances, specifically his upcoming separation from the Air Force in January 2014, his lack of finances needed to make necessary repairs, his relocation with his new family to another state, and his unemployment after his military discharge. (FORM Item 3 at 1.) In the Report of Investigation summarizing Applicant's Personal Subject Interview conducted on July 18, 2017 (PSI), he also blamed his reduction in rank and income, which occurred in July 2012, his divorce from his first wife, and his obligation to pay for the support of his three children from his first marriage. (FORM Item 7 at 2.) He decided to default on his monthly mortgage payments of \$1,050 and to save the money for his relocation. (FORM Item 7 at 2.) The record evidence is unclear why Applicant did not try to sell or rent his home before defaulting on the mortgage loan. He did state that the house was old and needed repairs. (FORM Item 7 at 2.) The record is also unclear whether the foreclosure auction paid off the outstanding loan balance of \$99,430 or whether there was a deficiency. No deficiency debt appears on either of the two credit reports in the record. (FORM Items 5 and 6.) Applicant's comments in the PSI, however, suggest that he believed there may have been a deficiency. (FORM Item 7 at 10 and 13.) He acknowledged in his interview that his decision to default on the mortgage "was a mistake and irresponsible of him." (FORM Item 7 at 2.)

SOR ¶ 1.b: unsecured loan charged off for \$3,025. Applicant took out this loan in September 2012 in the amount of \$4,945 to pay for the expenses related to his divorce and to provide spousal and child support. (FORM Item 5 at 4 and Item 3 at 1.) He defaulted on the loan when he separated from the Air Force and lost his income, and the loan was subsequently charged off. (FORM Item 3 at 1 and Item 5 at 4.) The purpose of the loan was to pay for furniture to replace what his ex-wife took as part of their divorce. (FORM Item 7 at 12.) Applicant has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.c: telecommunications account in collection with a balance of \$1,208. Applicant opened this account with a cellphone service provider in July 2017 while working for his current employer, after he signed his SCA and in the same month as his PSI. (FORM Item 6 at 2 and Item 7 at 1.) Applicant defaulted on his payments shortly thereafter and the account was referred to collections with a balance as alleged in the SOR. (FORM Item 6, dated October 18, 2017, at 2.) Applicant claimed in his November 22, 2017 answer to the SOR that the day before he submitted his answer, he made an agreement with the creditor to pay off the debt with three monthly payments, however, he submitted no evidence to substantiate his claim. (FORM Item 3 at 1.)

SOR ¶¶ 1.d, 1.g: credit card accounts charged off for \$425 and \$4,796. Applicant opened these accounts in May 2008 and November 2006, respectively, while married to his first wife. He defaulted on paying the accounts in April 2012 and November 2010, after his separation and divorce but before his discharge from the Air Force. (FORM Item 5 at 4.) In his PSI, Applicant did not recall the debt alleged in SOR ¶ 1.d, but he did

recall using the other credit card to purchase furniture. (FORM Item 7 at 15 and 11.) The creditors charged off both delinquent accounts. (FORM Item 5 at 4.) He has submitted no evidence of actions to resolve these debts.

SOR ¶ 1.e: 2014 state tax lien for \$771. A state tax lien in the amount of \$771 was filed against Applicant in September 2014. (FORM Item 5 at 3.) In his answer to the SOR, Applicant admitted the allegation, but disputed this debt. He claimed that the state of his residence while in the Air Force mistakenly taxed his military income when this income was only taxable in another state, which was his home of record for tax purposes. (FORM Item 3 at 1 and Item 7 at 10.) In his July 2017 PSI, he stated that the tax authorities gave him directions to address the problem, but he never followed through. (FORM Item 7 at 10.) In his November 2017 answer to the SOR, he claimed that "I attempted to reconcile this error by refiling in 2014, but I never heard back from the State Treasury department." (FORM Item 3 at 1.) Applicant provided no evidence to support his dispute and claimed resolution of this tax debt. The tax lien, however, does not appear in the most recent Equifax credit report in the record. (FORM Item 6 at 4.) Applicant believes that the state "self-identified the error and corrected the records." (FORM Item 3 at 1.)

SOR ¶ 1.f: auto loan charged off for \$8,176. This loan was taken out in October 2007. Applicant defaulted in early 2011. (FORM Item 5 at 3.) Applicant stated that the vehicle was repossessed by the lender because he could no longer afford the payments following his divorce in 2010. (FORM Item 3 at 1.) In his PSI, Applicant provided more details. He stated that he gave his car to his ex-wife who was employed and supposed to pay the loan, but she failed to do so. (FORM Item 7 at 11.) Applicant failed to pay the deficiency after the repossession, and the creditor charged off the account. (FORM Item 5 at 3.) He has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.h: auto loan account charged off for \$2,115. Applicant opened this loan account for \$12,285 in March 2010 and defaulted on the monthly payments in December 2010. (FORM Item 5 at 4.) He stated in his answer to the SOR that the auto was repossessed. (FORM Item 3 at 1.) In his PSI, he stated that the loan was for his ex-wife's car and that he co-signed the note. His ex-wife was supposed to pay the loan, but she failed to do so. The car was subsequently surrendered to the bank, and the balance owed was charged off. (FORM Item 7 at 10 and Item 5 at 4.) He has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.i: telecommunications account in collection with a balance of \$1,028. This cellphone debt is owed to a different carrier than the debt alleged in SOR ¶ 1.c. (FORM Item 5 at 10.) The account became delinquent and the debt was referred for collection in December 2013, before Applicant's discharge from the Air Force. (FORM Item 5 at 10.) In his answer to the SOR, Applicant stated that he could no longer afford the service and stopped paying. (FORM Item 3 at 1.) He has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.j: bank debt account in collection for \$433. This delinquent debt was referred for collection in November 2012, more than a year before Applicant's military

discharge and loss of income. (FORM Item 5 at 10.) In his PSI, Applicant could not recall the name of the original creditor or the reason for incurring this debt. (FORM Item 7 at 11-12.) He has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.k: utility account in collection for \$358. This debt became delinquent and was referred for collection in March 2014, shortly after Applicant's discharge from the Air Force and his relocation to a new state. (FORM Item 5 at 10.) In his PSI, Applicant stated that he originally did not agree with this bill, but once he learned how the utility company's billing system worked, he concluded that he owed the bill and would pay it. (FORM Item 7 at 14-15.) In his answer to the SOR, he stated that he was not working during the period January 1, 2014 through July 15, 2015, so he could not afford to pay the utility bill. He has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.l: cable account in collection for \$270. The SOR alleges that this delinquent account is owed to a cable company and was referred for collection in November 2015. (FORM Item 5 at 10.) In his answer to the SOR, Applicant stated that he could no longer afford the service and discontinued it. (FORM Item 5 at 10.) In his PSI, he referred to a debt to a different cable company and stated that he stopped making payments two months before he moved in January 2014, following his military discharge. (FORM Item 7 at 13.) The Government's credit report substantiates the SOR allegation. (FORM Item 5 at 10.) Applicant has submitted no evidence of actions to resolve this debt.

SOR ¶ 1.m: insurance account in collection for \$136. Although Applicant admitted this allegation in his answer to the SOR, he actually disputes this debt. (FORM Item 3 at 2.) He claims that he asked the insurance company for a quote and never agreed to purchase the insurance. He claims further that he tried to cancel the insurance. (FORM Item 7 at 12.) Applicant never paid this debt, and it was referred for collection. (FORM Item 5 at 10.) Applicant provided no documentary evidence to substantiate that he actually disputed this debt with the creditor.

SOR ¶ 1.n: medical account in collection for \$56. Applicant claimed in his answer to the SOR that he paid this debt in 2016. (FORM Item 3 at 2.) The Government's evidence confirms that this debt has been paid. (FORM Item 6 at 2.)

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 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]

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

AG ¶ 20(a) is partially established. For the most part, Applicant's debts arose during the period from his divorce in 2010 through July 2015, when he began working for his current employer. The circumstances under which he incurred these debts may not recur, but it cannot be said that such circumstances are unlikely to recur since he could suffer a loss of his job or marriage in the future. After July 2015, Applicant did not act responsibly by failing to pay the debts he previously incurred. This failure casts doubt on his current reliability, trustworthiness and good judgment. Applicant has not provided sufficient evidence to mitigate or explain his past conduct so as to overcome the doubt raised by his consistent failure to act responsibly since 2010.

AG ¶ 20(b) is partially established. Applicant's divorce and discharge from the Air Force were circumstances beyond his control. The fact that he had three children to help support after his divorce certainly created financial stress. There is a serious question, however, whether he acted responsibly under the circumstances. With five children and at least a wife, and possibly an ex-wife to support, Applicant chose not to work for 18 months while he obtained a certificate. Without that income, he was unable to pay the debts he accumulated following his divorce and the loss of his military income. When he became employed, he never looked back at his outstanding debts and presented no evidence that he intended to address them. Under these circumstances, Applicant has not acted responsibly.

AG ¶ 20(d) is not established with respect to Applicant's mortgage loan or any of his other debts, with the exception of the small debt alleged in SOR ¶ 1.n, which he paid. With respect to the more recent delinquent debt alleged in SOR ¶ 1.c, Applicant claims that he made an agreement with that creditor to pay this debt in three monthly installments, but provided no evidence to support his claim or to prove that he actually made the payments. With respect to his mortgage loan, Applicant made the strategic decision that it was in his best interest to default on this loan and pass on the financial burden of his old, run-down house to his lender. (FORM Item 5 at 3.) Such strategic defaults do not constitute good-faith efforts to resolve a financial obligation, here Applicant's largest debt. See ISCR Case No. 15-048851 at 3-4 (App. Bd. Apr. 28, 2017). Applicant's failure to address the possible post-foreclosure deficiency on his mortgage loan or any of the other debts alleged in the SOR also renders AG ¶ 20(d) inapplicable.

AG ¶ 20(e) is partially established with respect to the debts alleged in SOR ¶¶ 1.e and 1.n, which Applicant disputes. The circumstances surrounding these two debts support Applicant's claims that he has a reasonable basis to dispute the legitimacy of these two debts. AG ¶ 20(e) is not fully established, however, because Applicant failed to provide "documented proof to substantiate the basis of the dispute[.]"

AG 20 (g) is not applicable because Applicant has established that he was not obligated to pay the income taxes that were the subject of the tax lien levied against him.

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).³

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have considered Applicant's age at the time of his divorce and his ten years of military service. I have also considered the emotional distress he experienced following his divorce and the financial pressures the divorce created. I have given some weight to his recognition of his past "foolishness" and his determination to "move on." (FORM Item 3 at 2.) On the other hand, Applicant's refusal to address the debts he incurred in the past after he became employed as a defense contractor raises serious doubts about his trustworthiness, reliability and judgment. Also, the fact that he incurred a new delinquent debt in 2017 just a few months after he opened the account (SOR ¶ 1.c) raises further doubts about whether Applicant's past financial irresponsibility is truly 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 past actions.

³ 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.

Formal Findings

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraphs 1.f-1.m: Against Applicant

Subparagraph 1.n: For Applicant

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.

John Bayard Glendon
Administrative Judge