



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00163
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2018

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 on August 23, 2016. On January 26, 2018, 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 March 13, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 29, 2018. On June 6, 2018, 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. The FORM included summaries of interviews conducted by a security investigator on May 12, 2017; September 6, 2017; September 13, 2017; and October 3, 2017. He received the FORM on June 12, 2018, and did not respond. The case was assigned to me on September 6, 2018.

The interview summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions or updates; or object to consideration of the summaries on the ground that they were not authenticated. I conclude that he waived any objections to the summaries by failing to respond to the FORM. 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) See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b, 1.c, and 1.e-1.k. He denied the allegations in SOR ¶ 1.a and 1.d. His admissions are incorporated in my findings of fact.

Applicant is a 35-year-old fuels distribution systems operator employed by a defense contractor since August 2016. He is married and has a 9-year-old child. He and his wife separated in July 2016. (Item 3 at 9.) He has never held a security clearance.

Applicant graduated from high school in June 2001. He worked in the private sector from October 2002 to October 2005. He worked for defense contractors from October 2005 to December 2011, was unemployed from December 2011 to August 2012, worked for a defense contractor from August 2012 to January 2013, was unemployed in January and February 2013, and worked for a defense contractor from February to August 2013. He was unemployed for one month in 2013, worked in the private sector from September 2013 to January 2016, was unemployed from January to May 2016, worked in the private sector for one month, and was unemployed from June 2016 until he was hired for his current job.

The SOR alleges 11 delinquent debts that are reflected in credit reports from September 2016, December 2017, and April 2018 (Items 4, 5, and 6.). 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: federal income tax debt of \$22,885 for tax year 2010. The debt was incurred when Applicant returned from a deployment early, and he spent too many days in the United States during tax year 2010 to qualify for a tax exemption. (Item 3 at 6.) In his answer to the SOR, he stated that a tax lawyer is investigating his case. The debt is not resolved.

SOR ¶ 1.b: judgment for credit-card debt, filed in July 2012 for \$7,783. Applicant made a payment agreement in February 2018 providing for an initial payment of \$75, followed by monthly \$150 payments. (Answer to SOR.) He did not submit any documentary evidence showing that he made the required payments.

SOR ¶ 1.c: judgment for apartment rent, filed in July 2015 for \$1,823. Applicant incurred this debt by co-signing an apartment lease for his mother. His mother could not pay the rent and was evicted. (Item 3 at 7.) He settled this debt for \$1,181 in February 2018. (Answer to SOR.)

SOR ¶ 1.d: delinquent car loan, charged off for \$26,251. Applicant stated that he and his wife have separated, are pending divorce, and have not resolved this debt.

SOR ¶¶ 1.e and 1.k: medical debts for \$1,683 and \$98. Applicant made a payment agreement and paid \$100 per month from September through December 2017. (Answer to SOR.) He did not submit documentary evidence of any further payments.

SOR ¶ 1.f: satellite-television debt, referred for collection of \$726. Applicant submitted evidence of a \$121 payment in January 2018, but no evidence of further payments.

SOR ¶¶ 1.g and 1.i: telecommunications bills, referred for collection of \$652 and \$487. Applicant submitted evidence of a payment agreement providing for six payments of \$121. He submitted evidence of a \$203 payment in January 2018 and a \$195 payment in February 2018, but he did not submit evidence that any further payments were made. (Answer to SOR.) However, the April 2018 credit report reflects a zero balance, with the last payment being made in January 2018.

SOR ¶ 1.h: personal loan, charged off for \$565. Applicant submitted evidence of a \$200 payment in February 2018, but no evidence of any further payments.

SOR ¶ 1.j: utility bill, referred for collection of \$300. Applicant submitted evidence of a \$102 payment in February 2018, but no evidence of any further payments. The April 2018 credit report reflects that a balance of \$200 remained unpaid as of April 20, 2018. (Item 4 at 1.)

When Applicant was interviewed by a security investigator, he described his financial situation as “manageable.” (Item 3 at 9.) However, the record contains no specific information about his income and 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;

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

AG ¶ 19(f): 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 recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's numerous periods of unemployment and his marital breakup were conditions largely beyond his control. However, he has not acted responsibly. He has been continuously employed since August 2016, but he did not take any significant actions to resolve his delinquent debts until he was confronted with the evidence and realized that they were an impediment to obtaining a security clearance.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c, 1.g, and 1.i, which have been resolved, but it is not established for the other delinquent debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant has taken preliminary steps to resolve the delinquent income tax debt, but he has not articulated a reasonable basis to dispute it. He has not disputed any of 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

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	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 grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge