



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00803

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2018

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 March 28, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); 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 April 16, 2018, 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 June 14, 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 July 3, 2018. He responded with a one-page handwritten note and provided a two-page document addressing the debt alleged in SOR ¶ 1.b and a one-page document addressing the debt alleged in SOR ¶ 1.d. He did not object to the Government's evidence, including Item 9.¹ The case was assigned to me on July 19, 2018.

On July 25 and 31, 2018, Applicant submitted additional information in two emails that he asked to be added to the record. Department Counsel raised no objection to my consideration of this additional information. I have marked the email threads as Applicant Exhibits A and B, and I have admitted the exhibits into the record.

Findings of Fact²

In Applicant's response to the SOR, he admitted the allegations set forth in SOR ¶¶ 1.a-1.d and denied the allegations in SOR ¶¶ 1.e-1.g. His admissions are incorporated in my findings of fact.

Applicant is a 28-year-old and is being sponsored for a security clearance by a defense contractor. He graduated from high school in June 2009, and he enlisted in the Air Force in November 2010. He was honorably discharged in July 2014. (FORM Item 9 at 7.)

Applicant has been married twice, once for about ten months (August 2011 to June 2012) and a second time for about nine months (June 2014 to March 2015). Both marriages ended in divorce. He had no children with either wife. (FORM Item 9 at 7.) In March 2015, he began living with a third woman, but they ceased living together in January 2017. (FORM Item 9 at 7.)

Applicant has two children. The first was born in 2014, and the second was born in 2016. In July 2014, Applicant was ordered by a court to pay monthly child support for his first child in the amount of \$1,030. (FORM Item 9 at 8.) He sought a reduction of his child-support payment, but in September 2014, he was ordered to continue to pay the same amount of child support through a wage garnishment. (FORM Item 9 at 8-9.) The record is silent with respect to any court-ordered, child-support payment obligations for

¹ FORM Item 9 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 9 on the ground that it was unauthenticated by a Government witness. Applicant responded to the FORM, but did not object to Item 9 or any other evidence presented by the Government. I conclude that he waived any objections to Item 9 and admit the item into evidence in the record. 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, dated February 17, 2016 (FORM Item 5), unless otherwise indicated by a parenthetical citation to the record.

his second child. In his Personal Subject Interview (PSI), he reportedly denied paying any child support for his youngest child. (FORM Item 9 at 7.) Applicant wrote in his response to the FORM, however, that he has “two young children to feed.” (Response to FORM at 1.)

In October 2014, Applicant purchased a 2014 luxury automobile (FORM Item 4 at 1; FORM Item 9 at 9) for about \$47,000 (FORM Item 5 at 35) and borrowed over \$44,000 to finance it. (FORM Item 8 at 4.) The monthly payment was \$998. In or about December 2014 or January 2015, he defaulted on the auto loan. (FORM Item 8 at 4.) After more than 120 days of non-payment on the loan, the lender repossessed the car and sold it in an auction in May 2015. (FORM Item 9 at 9.)

The SOR alleges seven delinquent debts. Applicant has denied three of the debts (SOR ¶ 1.e-1.g) to a cable company (the Cable Provider) on the grounds that they are encompassed by a fourth, larger alleged debt owed to the same creditor (SOR ¶ 1.d). The four admitted debts (SOR ¶ 1.a-1.d) total about \$30,000. In his response to the SOR, Applicant stated that he planned on resolving three of the admitted debts (SOR ¶ 1.a, 1.c-1.d) and was in the process of resolving the fourth (SOR ¶ 1.b), having made the first of three installment payments. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: auto loan account with a deficiency balance of \$20,152. Following the repossession of Applicant’s auto and the sale of the car at auction in May 2015, Applicant owed the lender a deficiency of \$20,152. (FORM Item 7 at 1.) The lender obtained a default judgment on the deficiency in September 2016 in the amount of \$20,152, plus costs of \$84 and interest from December 31, 2015, at the rate of 18%. (FORM Item 6 at 1.) Applicant admitted in his February 2016 security clearance application (SCA) that he could not afford the monthly car payment of \$997 and the monthly child support payment of \$1,030. In both his February 2016 SCA and his March 2017 PSI, he blamed his default on the car loan on the court-ordered child support obligation, which he claimed was issued after he purchased the car. (FORM Item 5 at 35 and Item 9 at 9.) The record evidence does not support this timeline. Applicant subsequently blamed his default on his failure to plan for taxes to be taken out of a bonus his new employer promised to pay him. (FORM Item 4 at 1.) Applicant explained further in his recent submission that he expected a bonus of \$8,000, but only received about \$3,800 after tax deductions. (Applicant Exhibit A at 2.) As a result, he could not afford the car, the remaining payments on a residential lease that he broke to relocate for new employment in a different state, and his moving expenses. (Applicant Exhibit A at 2.) In his response to the FORM, Applicant admitted that this debt remained outstanding and wrote that he has “plans on mitigating but it’s going to take time.” (Response to FORM at 1.) He also wrote that he was “in talks with lawyers to weigh my bankruptcy options but no action has been taken as of yet.” (Response to FORM at 1.)

SOR ¶ 1.b: Unpaid rent in collection with a balance of \$5,431. In July 2015, Applicant broke his lease in State A so that he could relocate to State B for a new employment opportunity. (FORM Item 9 at 8.) The term of his lease did not expire until

November 2015, leaving three months of rent to be paid. (FORM Item 9 at 8.) Applicant moved without paying the balance due on his lease, which was \$5,431. (FORM Item 7 at 2.) He did not disclose this debt in his February 2016 SCA. He discussed the debt in his March 2017 PSI and reportedly stated that he intended to contact the creditor within a week to make a payment arrangement because he understood that paying this debt was important to keeping his job. (FORM Item 9 at 8.) With his July 2018 response to the FORM, he provided documentary evidence from the creditor that he settled this debt on May 4, 2018, with a total payment of \$2,715, which represents 50% of the original debt.

SOR ¶ 1.c medical debt for \$3,182. The Government's January 8, 2018 credit report lists this medical debt as a collection account for the alleged amount. (FORM Item 7 at 2.) The debt does not appear in the Government's earlier credit report, dated February 26, 2016. (FORM Item 8.) Neither Applicant's SCA nor his PSI make any mention of this debt, suggesting that it may have been incurred after Applicant's PSI in March 2017. (FORM Items 5 and 9.) In his April 2018 response to the SOR, Applicant admitted this debt and explained it was for "an emergency trip to the ER" and that he planned on resolving the debt. (FORM Item 4 at 1.) Applicant again admitted this debt in his response to the FORM and wrote that he has "plans on mitigating but it's going to take time." (Response to FORM at 1.) He also wrote that he was exploring the option of filing for bankruptcy with respect to this debt. (Response to FORM at 1.)

SOR ¶ 1.d cable account in collection for \$752. Applicant admits that when he moved in 2011, he failed to return the cable equipment and was indebted to the Cable Provider for this collection account. (FORM Item 4 at 1.) Applicant provided documentation of a payment to the creditor on June 26, 2018, in the amount of \$752 with his response to the FORM. (Response to FORM at 4.)

SOR ¶ 1.e-1.g cable bills in collection for \$438, \$254, and \$60, respectively. Applicant disputes these three bills owed to the Cable Provider as duplicates of the debt alleged in SOR ¶ 1.d. In support of his position, he notes that the total of the three bills was the same as the delinquent account alleged SOR ¶ 1.d. The Government accepts Applicant's point. (FORM at 6.) I find that the parties are correct that these three alleged debts are duplicates of the debt alleged in SOR ¶ 1.d.

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"); 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(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 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 failed to pay four debts when they were originally due. Two of the debts became delinquent in 2015, one in 2017, and the fourth in 2011. Two of the debts were paid after Applicant's receipt of the SOR, and the other two remain outstanding. The debts cannot be said to be infrequent or unlikely to recur, and they cast doubt on Applicant's current reliability, trustworthiness and good judgment.

AG ¶ 20(b) is not established. The record contains no evidence to show that Applicant's financial problems were caused by conditions beyond his control. In fact, the largest debt for the balance due on his October 2014 purchase of a luxury car was entirely within his control. He knew as of July 2014 that he had been ordered to pay \$1,030 in monthly child support. He tried to reduce the amount, and after he was unsuccessful, he took out a large car loan with a monthly payment of \$997, which he could not afford. Moreover, Applicant has taken no steps to address this debt since the repossession of the car in 2015 and the entry of a default judgment against him in 2016. He has not acted responsibly by failing to resolve this outstanding debt or the more recent medical debt alleged in SOR ¶ 1.c.

AG ¶ 20(c) is partially established. There is no evidence that Applicant has received any financial counseling from any source, although Applicant claimed in his response to the FORM that he had talked with lawyers about a possible bankruptcy option to resolve his two remaining debts. There is evidence that Applicant has resolved two of the outstanding debts within the past two or three months. There is no evidence, however, that the two remaining debts, which total more than \$23,000, are being resolved or are otherwise under control.

AG ¶ 20(d) is partially established. There is evidence that Applicant has recently initiated efforts to repay, and has repaid, two of the four properly alleged SOR debts. His lack of efforts since 2015 to commence repayment of his largest debt for the car loan deficiency and the recency of his two debt repayments undercut an argument that he is exercising good faith in his efforts to repay his creditors.

AG ¶ 20(e) is partially established. Applicant's alleged indebtedness to the Cable Provider set forth in SOR ¶¶ 1.e-1.g was properly denied and shown to be duplicated by the debt alleged in SOR ¶ 1.d, which he has documented was recently paid. The two remaining debts alleged in SOR ¶¶ 1.a and 1.c are undisputed.

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 the four debts properly alleged in the SOR became delinquent, particularly his age of 24 at the time he borrowed a large sum of money to purchase a luxury car he could not afford. I have reviewed the record evidence in its totality to assess whether Applicant has shown significantly more mature judgment and financial control since 2015. The evidence in the record and the lack of significant evidence from Applicant do not convince me that he has matured in recent years. The fact that he waited until 2018 to contact his former landlord to pay for a lease he broke in 2015 and to pay a 2011 cable bill for unreturned cable equipment following a move, is further evidence of a lack of maturity and financially responsible behavior. Applicant's evolving excuses for his default on his large car loan also evidence a lack of maturity and trustworthiness. Moreover, Applicant's limited remedial actions occurred after his receipt of the SOR when he became aware that his security clearance and his employment were in jeopardy. Taken as a whole, the record evidence raises concerns about Applicant's ability to properly safeguard classified information. Applicant has not carried his burden of persuasion to mitigate the Government's security concerns. Directive ¶ E3.1.15.

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.

Formal Findings

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.g:	For Applicant

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.

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