



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00938
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2018

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 October 3, 2016. On April 19, 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 May 25, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on June 19, 2018. On June 21, 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. He received the FORM on June 18, 2108, and he submitted an additional statement and receipts for payment of the debts alleged in SOR ¶¶ 1.e and 1.f.¹ (Applicant's Exhibits (AX) A, B, and C.) The case was assigned to me on September 12, 2018.

Findings of Fact²

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

Applicant is a 35-year-old military systems specialist employed by a defense contractor since May 2015. He served on active duty in the U.S. Marine Corps from January 2005 to February 2013, deployed to Afghanistan from August 2011 to February 2012, and received an honorable discharge. He has a 60% service-connected disability, for which he receives disability benefits.

Applicant was employed by a defense contractor from February 2013 to May 2014. He moved to another state to be nearer to family due to his wife's recurring mental and physical problems, and he was unemployed for two months. He was employed by a defense contractor from August 2015 until he began working for his current employer. He received a security clearance while on active duty and retained it as an employee of defense contractors.

The SOR alleges 11 delinquent debts totaling about \$29,406 that are reflected in credit reports from January 2017 and March 2018 (FORM Items 6 and 7). The evidence concerning these debts is summarized below.

SOR ¶ 1.a: delinquent auto loan, past due for \$1,322, with a total balance of \$22,840. This debt is not resolved.

SOR ¶ 1.b: delinquent student loan, referred for collection of \$20,615. Applicant attended college, dropped out, worked in the private sector, and then enlisted

¹ The FORM included a summary of a personal subject interview (PSI) conducted on September 21, 2017. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. 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).

² Applicant's personal information is extracted from his security clearance application (FORM Item 4) unless otherwise indicated by a parenthetical citation to the record.

in the Marine Corps. The debts were in forbearance while he was on active duty. In his answer to the SOR, he stated his intention to apply for a rehabilitation program, but he has submitted no evidence that he carried out his intention.

SOR ¶ 1.c: collection account for \$1,627. This debt was incurred for cleaning and moving expenses during Applicant's move out of military leased housing when he left active duty. He admitted the debt in his answer to the SOR but disputed the amount. The debt is not resolved.

SOR ¶ 1.d: collection account for \$1,581. In May 2018, Applicant set up a payment agreement providing for monthly \$30 payments and made the first payment. (Answer to SOR.) He submitted no evidence of subsequent payments in his response to the FORM.

SOR ¶¶ 1.e and 1.f: medical bills referred for collection of \$122 and \$48. Applicant paid these bills in July 2018. (AX B; AX C.)

SOR ¶ 1.g: utility bill referred for collection of \$347. This debt is not resolved.

SOR ¶ 1.h: credit-card account referred for collection of \$956. Applicant stated that he had a payment plan for this debt, but he submitted no documentary evidence of a plan or any payments.

SOR ¶ 1.i: credit-card account referred for collection of \$517. This debt is not resolved.

SOR ¶ 1.j: medical bill referred for collection of \$367. Applicant denied this debt. It is reflected on the credit report from January 2017. (FORM Item 7 at 10.) Applicant has not disputed the debt with the creditor or any of the credit bureaus.

SOR ¶ 1.k: unsecured loan charged off for \$1,904. This debt is not resolved.

Applicant's wife suffers from depression, anxiety, and bipolar disorder. His financial problems have been exacerbated when his wife has overspent during her manic periods. His wife also suffers from fibromyalgia, which is treated with medication and injections.

In May 2018, Applicant received a pay raise, increasing his annual salary from \$81,504 to \$83,136. He provided no other specific information about his living and medical expenses. His annual performance appraisal for the period ending in April 2018 rated him as "outstanding," the highest rating.

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:

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(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; 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's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. The medical debts incurred by Applicant and his wife were conditions largely beyond his control, and he has resolved the medical debts alleged in the SOR. His two-month period of unemployment was due to his voluntary decision to move to another state and change jobs. He has not acted responsibly regarding the non-medical debts alleged in the SOR. He took no significant steps to resolve his delinquent debts until his security clearance was in jeopardy.

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

AG ¶ 20(d) is established for the two medical debts alleged in SOR ¶¶ 1.e and 1.f. It is not established for the remaining debts in the SOR. Although Applicant made a payment agreement for the debt alleged in SOR ¶ 1.d, he submitted no evidence of payments beyond the first payment. He has explored the possibility of a rehabilitation program for the student loan alleged in SOR ¶ 1.b, but he submitted no evidence that he had begun such a program.

AG ¶ 20(e) is not established. Applicant denied owing the debt alleged in SOR ¶ 1.j, but he submitted no evidence that he had disputed it or 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).³

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable service in the Marine Corps, which included deployment to Afghanistan. I have considered the financial and emotional impact of his wife's mental and physical problems. 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.d, 1.g-1.k:	Against Applicant
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Subparagraphs 1.e-1.f:	For Applicant
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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

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.