



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01384
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2018

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 17, 2016. On June 11, 2018, 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 June 26, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 26, 2018, and the case was assigned to me on September 11, 2018. On September 14, 2018, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 11, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through K, which were admitted without objection. I kept the record open until October 25, 2018, to enable him to submit additional documentary evidence. He timely submitted AX L through U, which were admitted without objection. DOHA received the transcript (Tr.) on October 19, 2018.

Findings of Fact¹

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

Applicant is a 45-year-old help-desk technician employed by defense contractors from June 2011 until May 2018. He received a security clearance in April 2009 and worked in public trust positions from August 2013 to August 2017.

In a personal subject interview in September 2017, Applicant told an investigator that he worked for about three weeks in August 2017 on a contract and quit because of stress-induced health problems. (GX 4 at 6.) At the hearing, he testified that he quit because he could not afford the cost of public transportation to and from work. (Tr. 50-51.) He did not disclose this employment in his SCA.

Applicant was suspended by his most recent employer in April 2018 and then terminated for inability to maintain a security clearance. (Tr. 35.) In July 2018, he received a job offer for an overseas position paying \$62,083 per year, which he has accepted. The offer is contingent on his ability to obtain and maintain a security clearance. (AX F; AX J; AX K.)

Applicant graduated from high school in June 1990. Between January 1993 and May 2011, he attended various universities and community colleges but did not receive a degree. He received information-technology (IT) certifications in 2001 and 2011. He has student loans totaling about \$72,000 that are in forbearance until December 2018. (Tr. 31-32.)

Applicant married in November 1998 and divorced in April 2005. He married his current spouse in November 2013. He has an 18-year-old daughter from his first marriage, for whom he was required to pay child support until recently.

Applicant worked in an IT position for a non-federal employer from June 2000 to May 2006, was unemployed from May to November 2006, and worked for a non-federal

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

employer from November 2006 to January 2007. He was unemployed from January to May 2007, worked for a non-federal employer for one month, and was unemployed from June 2007 to May 2008. He was employed by a federal contractor from May 2008 to April 2009. From April 2009 to June 2011, he did not have a permanent job, but he was intermittently employed on short-term contracts lasting no longer than 90 days. (Tr. 18.) .

Applicant filed a Chapter 13 bankruptcy petition in November 2008 after accumulating debts due to his unemployment. It was converted to a Chapter 7 bankruptcy, and he received a discharge in July 2010. (GX 4 at 4-5.) Applicant testified that about \$20,000 was discharged, and it consisted mostly of medical debts. (Tr. 58.) The bankruptcy is alleged in SOR ¶ 1.g.

In addition to the bankruptcy discharge, the SOR alleges seven consumer debts and a child-support arrearage, which are reflected in credit reports from March 2017 (GX 3) and April 2018 (GX 2). The evidence concerning these debts is summarized below.

SOR ¶ 1.a: unsecured loan charged off for \$25,000. Applicant obtained this loan in April 2016 and used it to pay off credit-card debts. (Tr. 41.) Working through a debt-relief company, he settled the debt for \$10,625 in February 2017. (AX M, N, and O.)

SOR ¶ 1.b: unsecured loan charged off for \$17,254. In March 2017, Applicant obtained this loan at a lower interest rate than the loan alleged in SOR ¶ 1.a, and used it to pay off the loan in SOR ¶ 1.a plus some additional credit-card debt. The debt was charged off in April 2017. (GX 2 at 2.) It is not resolved.

SOR ¶ 1.c: credit-card debt charged off for \$6,122. This credit-card account became delinquent in August 2017. Applicant testified that he contacted the creditor, who agreed to waive monthly payments for a short time but terminated the waiver when he quit his job. The debt is not resolved.

SOR ¶ 1.d: delinquent credit-card debt \$820. This credit-card account became delinquent in August 2017. Applicant contacted the creditor, who offered a forbearance, but he could not accept the offer because it required an initial fee of \$50 or \$60. (Tr. 53.) The debt was charged off in November 2017. (GX 2 at 2.) It is not resolved.

SOR ¶ 1.e: delinquent credit-card debt for \$338. Applicant's last payment on this account was in October 2017. He has not contacted the creditor about a payment plan or other resolution of the debt. (GX 2 at 2; Tr. 54.) It is not resolved.

SOR ¶ 1.f: credit-card debt charged off for \$299. This debt was incurred to buy a work uniform for the job that he quit after three weeks. (Tr. 54.) It was charged off in August 2017 and is not resolved.

SOR ¶ 1.h: child-support arrearage of \$22,764. After Applicant divorced in 2005, he was ordered to pay child support of about \$544 per month until his daughter reached age 18. (GX 4 at 4.) Shortly after receiving the overseas job offer in July 2018, he gave

his first wife a promissory note to repay the child-support arrearage. The note provides for 40 monthly payments of \$750 if he obtains the overseas job and 60 monthly payments of \$500 if he is unable to accept the overseas job. (AX A.) Applicant has not made any payments since executing the promissory note.

SOR ¶ 1.i: time-share debt placed for collection of \$953. Applicant and his wife purchased this time-share property in 2015 or 2016 but could not afford the maintenance fees. He testified that they also had sold another time-share property and were trying to sell this one as well. (GX 3 at 19; Tr. 59-60.) The debt is not resolved.

While Applicant was employed, he was earning about \$72,000 per year. (Tr. 35.) He currently drives for a ride-sharing company and earns about \$350 per week after paying for gas and maintenance. (Tr. 34.) His wife is a federal employee and holds a public trust position. She earns about \$60,000 per year. Her take-home pay is between \$2,800 and \$3,000 per month. (Tr. 79-80.)

Applicant submitted financial statements for the September 2018, reflecting his income, his wife's income, their monthly expenses, and a combined net monthly remainder of about \$86. (AX Q.) If Applicant is hired for the overseas job, his wife intends to accompany him, but she does not know if she will be able to find employment overseas. (Tr. 83-84.)

On October 22, 2018, the day before the record closed, Applicant and his wife signed a contract with another debt-relief company. The contract provides for monthly payments of \$586 by direct debit. The debts included in the debt-relief program include those alleged in SOR ¶¶ 1.c-1.e and 1.i and Applicant's student loans. (AX U.) Payments on the child-support arrearage and to this debt-relief program are not reflected in the September 2018 financial statements. Applicant presented no evidence of payments to this debt-relief company.

Applicant's supervisor from August 2013 to May 2016 regarded his performance as a help-desk technician in a military dental clinic as "above and beyond what was expected of him." She considers him trustworthy, of good moral character, and not a national security risk. (AX H.)

Applicant's supervisor from July 2016 to August 2017 described him as a "high performer" known for his ability to quickly assess and resolve technical issues, his work ethic, attitude, and technical acumen. Applicant was entrusted with personally identifiable information and protected health information, without incident. (AX I.)

Applicant's father submitted a statement attesting to Applicant's honesty, determination, and integrity. He states that Applicant was raised to be a person of integrity, and that the family motto was "We cannot be bought!" He is confident that Applicant will resolve all his delinquent debts within five years if he is granted a security clearance. (AX T.)

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 record establish a consistent pattern of excessive credit-card debt and unwise purchases such as timeshare vacation properties that they could not afford. The following disqualifying conditions under this guideline are established:

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(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The following mitigating conditions are potentially relevant:

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 debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for the bankruptcy alleged in SOR ¶ 1.g, but not for the debts alleged in SOR ¶¶ 1.a-1.f, 1.h, and 1.i. Applicant had several periods of unemployment, and his uninsured medical debts incurred during his unemployment were discharged in 2010. He was intermittently employed from April 2009 to June 2011, which was a condition beyond his control. He testified about a period of unemployment in 2016, which is not reflected in his SCA, but it was not beyond his control, because he quit his job. He has not acted responsibly. He resolved the debt in SOR ¶ 1.a, but he did so by incurring the debt in SOR ¶ 1.b. He incurred unnecessary debt such as the time-share properties. He has been continuously employed since June 2011, but he has made minimal progress in resolving his delinquent debts.

AG ¶ 20(c) is not established. Applicant has hired two debt-relief companies to assist him, but he has not received the financial counseling contemplated by this mitigating condition, and his financial situation is not under control.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.a, but not for the remaining debts. He recently engaged a debt-relief company, but he has not established

a track record of payments, and the debt-relief company is not handling all the debts in the SOR. He has not made any payments on the child-support arrearage. He is counting on the overseas job to resolve his financial problems, but his family income will not increase significantly if his wife gives up her \$60,000-per-year job to accompany 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).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 delinquent debts.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	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