



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03679
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2018

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 February 29, 2016. On November 17, 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 January 16, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 7, 2018, and the case was assigned to me on April 12, 2018. On April 23, 2018, the Defense Office

of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 21, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until June 6, 2018, to enable him to submit documentary evidence. He did not submit anything further. DOHA received the transcript (Tr.) on June 6, 2018.

Findings of Fact¹

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

Applicant is a 31-year-old electrician employed by a defense contractor since February 2015. He stated at the hearing that he has held a clearance in the past, but it was not reflected in his security clearance application. (Tr. 6-7; GX 1 at 29.) He was fired by a defense contractor in February 2013 for repeated tardiness, and he was unemployed until September 2014. He worked for a non-federal employer from September to December 2014 and then was unemployed until he was hired for his current job. (GX 1 at 10-15.)

Applicant earns about \$50,000 per year. His wife is employed and earns about the same pay. (Tr. 28-29.) At the hearing, he estimated that he and his wife jointly have take-home pay of about \$4,000 and a net monthly remainder of about \$150. (Tr. 32-35.) The debts alleged in SOR ¶¶ 1.a-1.h are reflected in the credit report from March 2016. (GX 2.) The unsatisfied judgment alleged in SOR ¶ 1.f, which Applicant denied, is reflected in the March 2016 credit report (GX 2) but not the two more recent credit reports from October 2017 and May 2018 (GX 3 and 4).

Applicant admitted the delinquent student loans alleged in SOR ¶¶ 1.a and 1.c. He has taken no action to resolve them. (Tr. 36-37.) The credit report from May 2018 reflects that all of Applicant's delinquent student loans were assigned to the U.S. Department of Education and are delinquent. (GX 4.)

The \$3,941 medical debt alleged in SOR ¶ 1.b was incurred in 2012. Applicant testified that he thought the debt was paid by his medical insurance, but it has not been resolved. (Tr. 38-39.)

Applicant testified that he had been making payments on the \$525 medical bill alleged in SOR ¶ 1.d and the balance had been cut in half. (Tr. 40-41.) He did not provide any documentation to support his testimony.

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

Applicant testified that the \$446 cellphone bill alleged in SOR ¶ 1.e, the delinquent bridge tolls for \$58 alleged in SOR ¶ 1.g, and the \$25 medical bill alleged in SOR ¶ 1.h. were paid in full. (Tr. 41, 45-48.) He did not provide any documentation to support his testimony.

Applicant denied the unsatisfied judgment for \$725, alleged in SOR ¶ 1.f. He testified that he has never done business with the bank alleged in the SOR. The judgment is reflected in the TransUnion credit report included in the combined credit report from March 2016 (GX 2 at 1), but it is not reflected in the two Equifax reports from October 2017 and May 2018. (GX 3; GX 4.) Applicant testified that he has not disputed this debt because he was unaware of it until Department Counsel sent him a copy of GX 2. (Tr. 54.)

In Applicant's answer to the SOR and at the hearing, he admitted the delinquent federal tax debt for tax years 2014 and 2015, totaling about \$2,785, alleged in SOR ¶ 1.i. This debt is not reflected in any of the credit reports submitted by Department Counsel. Applicant testified that he had a payment plan in place for \$100 per month by automatic debit, but the payments were stopped when he lost his debit card. He submitted no evidence of payments or a payment plan. He testified that he tried to contact the IRS for about a month and then forgot about it because of the demands of his job. (Tr. 48-50.)

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 in his answer to the SOR and at the hearing, corroborated by the documentary evidence submitted at the hearing, establish the allegations in SOR ¶¶ 1.a-1.e, 1.g, and 1.h. Department Counsel submitted no documentary evidence to support the allegation in SOR ¶ 1.i, but it is established by Applicant's admissions in his answer to the SOR and at the hearing.

The allegation in SOR ¶ 1.f is not established. Applicant denied it, and the conflicting credit reports are insufficient to overcome his denial. The judgment was entered in December 2011, and it is too recent to have been deleted from the October 2017 credit report under the Fair Credit Reporting Act,² suggesting that it may have been resolved.

The evidence supporting SOR ¶¶ 1.a-1.e and 1.g-1.i is sufficient to raise the following potentially disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

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 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

² Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 15 U.S.C. § 1681c.

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

AG ¶ 20(b) is not fully established. Applicant's unemployment from February 2013 to September 2014 was not a condition largely beyond his control, because it occurred after he was fired for tardiness. His unemployment from December 2014 to February 2015 was a condition beyond his control, but he submitted no documentary evidence that he acted responsibly. He has not received financial counseling and his financial problems are not under control. Although he claimed that he has been making payments on some of his debts, including his federal tax debt, he has provided no documentary evidence to support his claims, even though he was given additional time after the hearing to provide it. An applicant who claims to have made payments on his debts is expected to provide documentary evidence to support his claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

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). 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.

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 (Financial Considerations): AGAINST APPLICANT

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