



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



In the matter of:)
)
) ISCR Case No. 18-00451
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2018

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 2, 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on April 3, 2018. He requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. On June 21, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing, scheduling the hearing on August 7, 2018. I convened the hearing as scheduled.

Department Counsel offered eight documents into evidence, which I marked as Government Exhibits (GE) 1-8. These exhibits were admitted into evidence without objection. Applicant testified and offered 12 documents, which I marked as Applicant Exhibits (AE) A-L and admitted without objection. DOHA received the transcript on August 23, 2018 (Tr.).

I held the record open after the hearing until September 5, 2018, to allow Applicant the opportunity to submit additional exhibits. Hearing Exhibit 2 On August 28, 2018, he provided Department Counsel with three documents consisting of 38 pages, which I have marked as AE M-O. These exhibits are admitted without objection.

Findings of Fact¹

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a through 1.g and 1.i through 1.q with explanations and two documents. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 38 years old and works for a defense contractor. In 2002, he earned an associate's degree, and in 2011 he was awarded a bachelor's degree. He married in 2002. He and his wife separated in March 2011 and were divorced in 2014 in a contentious proceeding. (Tr. 48.) He and his former wife have two children, ages 17 and 15. Applicant had a third child in October 2012 with another woman.

From 2002 to 2013, Applicant was employed by the same defense contractor. He was granted a security clearance in about 2006. He left the company in 2013 to avoid an anticipated layoff and worked in the commercial sector, which resulted in the loss of his clearance. He rejoined the contractor in April 2017 and earns in excess of \$100,000 per year. (Tr. 45.) On May 15, 2017, he submitted a security clearance application (SCA) so that he would again be eligible to work on classified projects. He has never served in the military.

The SOR alleges 17 debts totaling about \$77,000. Eight of these debts are alleged to be delinquent student loans totaling about \$48,000. Three of the debts are consumer debts for about \$24,000. Five debts are for unpaid medical bills in the total amount of about \$450. The last debt is a child-support obligation with a balance of about \$5,000. Applicant attributes his financial problems to his 2011 separation and subsequent divorce, which forced him to support two households. Due to his separation and divorce proceedings, Applicant could not pay his student loans when they became due after his June 2011 graduation.

SOR ¶¶ 1.b, 1.e, 1.g, 1.i, 1.j, and 1.k: delinquent student loans totaling about \$34,000. Some of Applicant's student loans date back to when he was seeking an

¹ Applicant's personal information is extracted from his security clearance application, dated May 15, 2017 (GE 1), unless otherwise indicated by a parenthetical citation to the record.

associate's degree (2000-2002). He started to pay those loans after receiving his degree. He began taking additional courses to work towards a bachelor's degree in 2009. By the time he received his degree in June 2011, Applicant and his wife had just separated. (Tr. 28; AE N at 15). He deferred paying his student loans as long as he could because he could not afford to pay for two households and his student loans. (Tr. 28-30.) Applicant eventually defaulted on his student loans in 2015. (GE 4 at 4.)

Applicant has been contacted by a collection agency seeking to collect these six student loans. A July 2018 letter from the agency states that Applicant presently owes a total amount of \$78,181 on the six student loans alleged in the SOR in ¶¶ 1.b, 1.e, 1.g, 1.i, 1.j, and 1.k. (AE A at 1.) The agency's letter seeks information from Applicant so that the parties can set up a repayment plan under the Federal Loan Rehabilitation Program. At the time of the hearing, Applicant was just beginning to address these six student loans by seeking to rehabilitate them with nine monthly payments. (Tr. 31.) After the hearing, Applicant accelerated the rehabilitation process and received notification, dated September 4, 2018, that he had successfully established a repayment plan, which provided for monthly payments of \$386 commencing on September 15, 2018. (AE P.) Applicant has resolved the default status of these loans, but as of the close of the record, he has not made a payment.

SOR ¶¶ 1.d and 1.f: delinquent student loans totaling about \$14,680. Applicant also defaulted on two additional student loans in 2015. They are being collected by a different collection agency. (AE H and I.) He successfully rehabilitated the loans by making payments in 2017 and 2018, and the loans are no longer in default status. (SOR answer, attachment 2) As of March 26, 2018, the total amount due on these loans was \$14,256. (AE I.) Applicant's monthly payment on the rehabilitated loans of \$106 began on May 13, 2018. (AE I.) He claims he has been making these payments, but he provided no substantiating documentation. (Tr. 33.)

SOR ¶¶ 1.a and 1.c: two credit-card accounts in collection with a total balance of \$23,156. These debts were accrued during Applicant's marriage. (Tr. 50.) In his response to the SOR, Applicant claimed that he was advised by his divorce attorney not to pay his consumer debts because they were marital debts and must be resolved through the divorce proceedings. Eventually, the debts were allocated to Applicant. Applicant tried to deal with his consumer creditors, but was unsuccessful. (Tr. 52.) He asked his accountant for a referral to a debt-resolution advisor and was referred to a debt-resolution law firm. (Tr. 25-27.) On July 3, 2018, he engaged this firm to verify his debts and to negotiate settlements. (AE M.) He pays the firm \$130 per month for their services. (Tr. 51.) The initial step in the firm's process is to send letters to Applicant's creditors seeking validation of his debts. Applicant provided an example of such a letter. (AE D.) Applicant has begun to address these debts, but he has not yet made any payments to his creditors.

SOR ¶ 1.I: credit-card account in collection with a balance of \$626. This account became delinquent in November 2013. (GE 7 at 2.) Applicant produced evidence of a settlement offer to pay this debt in the amount of \$300 if he paid by July 25, 2018,

shortly before the hearing. (AE K at 2.) He also produced evidence of the payment. (AE K at 4.)

SOR ¶ 1.h: Delinquent child support account with a balance of \$ 4,997 and an arrearage of \$2,634. This debt arose when Applicant gained custody of his son in about August 2016. As a result of this change, his child-support obligation to his former wife was supposed to be reduced. (AE J at 1.) Due to a clerical error, the agency collecting the child-support payments did not make this adjustment and an arrearage developed. Applicant denied this allegation in his response to the SOR because he had disputed the debt. He produced an agency record showing that he actually has a credit of \$1,793 as of July 2018. (AE J.) Applicant has documented that this allegation is incorrect and that he has favorably resolved this disputed allegation. Applicant also testified that his third child, who has a different mother, is supported by him with voluntary monthly payments of \$1,100. (Tr. 37.)

SOR ¶¶ 1.m, 1.n, 1.o, 1.p, and 1.q: medical debts in collection with a total balance of \$447. Applicant identified four of these debts in his SCA after he reviewed his credit report and noted that these debts existed. (GE 1 at 41-42.) In his response to the SOR, Applicant admitted all five medical debts. In his September 2017 background interview, Applicant identified these debts as related to his daughter's treatment in March 2014 at a specific medical clinic. (GE 4 at 5.) At the hearing, he testified that he would like to pay these small debts, but he has been unable to find the party that owns the debts so he could make payments. He provided no testimony or evidence that he had tried to contact the medical clinic to determine if he could resolve these debts with a payment.

Applicant submitted five character references from individuals who have worked with Applicant, in some cases, for many years. They all praise his intelligence, creativity and trustworthiness and hold him in the highest regard. (AE B.)

Applicant candidly admitted at the hearing that he currently owes about \$7,000 in past-due federal income taxes for tax years 2015, 2016, and 2017. He under withheld on his income during those years because he needed the extra funds to pay his family support and personal living expenses. He has a payment arrangement with the IRS to resolve this tax debt. He pays the IRS \$136 per month. He has been paying this debt down for about two years. (Tr. 56-57; AE O.) This debt is not alleged in the SOR.²

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

² Since this debt is not alleged in the SOR, I do not consider this debt as establishing a disqualifying condition. I can consider them, however, in weighing mitigation and under the whole-person concept, as well as in weighing Applicant's credibility. ISCR Case No. 14-01491 at 3 (App. Bd. Mar.30, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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, testimony and the documentary evidence in the record 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 indication 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's debts are not infrequent and they largely are outstanding, even though they arose a long time ago. They occurred under circumstances involving a period of financial distress when he separated from his wife and proceeded to file for divorce. Other causes of financial distress are always possible, and Applicant's failure to handle his recent problems could recur. Furthermore, Applicant's behavior, particularly his untimely response to his circumstances, casts doubt on his current reliability, trustworthiness and judgment.

AG ¶ 20(b) is partially established. Applicant's debts arose out of his separation and divorce and the attendant costs of supporting two households. This was a condition beyond his control. Exacerbating this situation were his student loans, which came due for repayment after his graduation in 2011. The student-loan situation was not within Applicant's control, but it was predictable following the completion of his college education. Applicant did not start acting responsibly to address his delinquent debts until after he received the SOR in March 2018.

AG ¶ 20(c) is not established. Applicant offered no evidence that he has received any formal financial counseling. About one month before the hearing, he engaged the services of a for-profit, debt-resolution firm to help him resolve his non-student loan indebtedness, primarily the two credit-card accounts that are in collection. That is not sufficient to establish counseling under AG ¶ 20(c). At this early stage, I cannot conclude that these debts are being resolved or are under control.

AG ¶ 20(d) is partially established. Applicant has belatedly initiated a plan to resolve his debts. He has an insufficient track record, however, of having both the financial ability and the will to make all of the necessary payments that his substantial indebtedness will require. His limited efforts to try to resolve even the five small medical debts also undermine full application of this mitigating condition.

Applicant has paid the debt alleged in SOR ¶ 1.i, though the payment was made shortly before the hearing. He has also successfully disputed the debt alleged in SOR ¶ 1.h. The remaining debts are unresolved. Also, Applicant's outstanding federal tax debt undercuts his evidence in mitigation. Perhaps in the future, Applicant's payments on his student loans, credit-card debts, and unpaid medical bills will establish a sufficient good-faith effort to mitigate his past actions of letting his debts remain delinquent for years, but at this point in time, it is too soon to conclude that his efforts are sufficient to establish a good-faith effort required of this mitigating condition.

AG ¶ 20(e) is established with respect to the one debt that Applicant disputes, his child-support arrearage. (SOR ¶ 1.h.) Applicant has consistently denied that he owed this back child support, and he produced sufficient evidence to establish that he did not owe this debt.

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 After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, I conclude Applicant has 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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i-1.q:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.q:	Against 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