



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



Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2025

Decision

HALE, Charles C., 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 April 7, 2023. On May 24, 2024, 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; 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).

Applicant answered the SOR on June 12, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on July 30, 2024. A complete copy of the file of relevant material (FORM) was sent

to Applicant on July 31, 2024, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant did not submit a response. The case was assigned to me on December 6, 2024. Based on an ambiguity in the Answer I reopened the record on January 7, 2025, and allowed Applicant until noon on January 21, 2025, to respond with any additional information. A timely response was not received.

The SOR and Answer (Item 1 and Item 2) are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR he admitted the single SOR allegation for a \$48,693 student loan debt.

Applicant is 36 years old. He graduated high school in 2013 and served honorably in the Navy from November 2013 until April 2021. He took college classes while in the Navy from June 2018 until May 2019. Since 2021, he has been taking college classes. He is married. He has no children. He has been employed by his sponsor since August 2021.

Applicant disclosed the SOR debt on his SCA. The debt was so old it did not appear on his credit report. The debt involved a private student loan he took out when he was on active duty back in the 2018-2019 period. In response to Government interrogatories, he admitted the debt and stated his intent to resolve the debt with funds received from the sale of an inherited property. (Item 4.)

Applicant in his Answer cites the letter he submitted in response to Government interrogatories showing that he had negotiated "payoff amount for roughly \$17k." The settlement letter reflects two payoff options. One payoff involves a one-time payment of \$14,608. The second payoff option allows for three monthly payments of \$6,492. (Answer; Item 4 at 11.) In his Answer, he acknowledged he had not proceeded with either settlement option. He explained that he and his wife had started up a new business and were keeping money liquid in the first year in case the business came across any unforeseen expenses. He notes he has raised his credit score up into the 700s, which has allowed him access to credit lines "necessary to purchase a house and again leave opportunities up for our new business." He notes because the debt has dropped off his credit report due to the statute of limitations, that once he acknowledges the debt and makes a payment on the debt, it will reflect on his credit score and bring it down substantially.

The two credit reports in the record reflect Applicant has brought his other student loans into good standing and is current on his other debts. He has built up his savings to over \$83,000. The record evidence shows that he was the one that informed the Government of the debt; what his current financial means were; initiated a settlement with

the creditor; and explained what he had done and how he intended to satisfy the alleged debt given his current financial situation. (Answer; Items 4-6.)

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).

The documentary evidence admitted into evidence establish the following disqualifying conditions under this guideline: 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 under AG ¶ 20 are relevant:

(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;

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not fully applicable. Applicant has a significant debt that is unresolved or in a repayment plan. By his own admission, because the debt is no longer on his credit report, he has chosen to not resolve the debt because the timing of the settlement payment or payments would have potential financial repercussions. He has built up his savings and his current financial situation is stable and he could resolve the debt. The Appeal Board has held that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See, ISCR Case No. 15-01208 (App. Bd. August 26, 2016). Applicant's inaction casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not applicable. The evidence does not support this debt resulted from a financial problem largely beyond Applicant's control or that he acted responsibly under the circumstances. The reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value because debts remain relevant for security clearance purposes even if they are no longer enforceable. See, ISCR Case No. 14-02914 (App. Bd. April 19, 2017).

Mitigating Condition ¶ 20(d) is not fully applicable. Applicant negotiated a settlement but has yet to adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009).

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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). I have considered his honorable military service and the fact he was the one to disclose this debt. 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 financial considerations security concerns.

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**

Conclusion

It is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge