



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



In the matter of:)
)
) ISCR Case No. _____
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2025

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 May 16, 2023. On April 12, 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 July 14, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on August 30, 2024. A complete copy of the file of relevant material (FORM),

including documents identified as Items 1 through 12, was sent to Applicant on August 30, 2024, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant submitted a character letter as a Response. The case was assigned to me on December 6, 2024.

The SOR and Answer (Item 1) are the pleadings in the case. FORM Items 2 through 12 are admitted into evidence without objection. The character letter is admitted into evidence without objection and marked as Applicant Exhibit (AE) A.

Findings of Fact

In Applicant's answer to the SOR he admitted all eleven SOR allegations, without explanation. The SOR debts, totaling over \$100,000, involve child support, consumer debts, and unpaid court costs and fees.

Applicant is 41 years old. He served honorably in the Air Force from May 2002 to April 2011. He has been married and divorced two times. His second divorce occurred in June 2016. He has two minor age children from his second marriage. He has lived with his girlfriend since July 2020. He took college classes in 2022 and, from November 2019 to March 2021, he attended a technical school for barbering.

Applicant experienced a period of unemployment from May 2015 until February 2016. He worked as a metrologist from March 2016 until March 2019. He listed on his SCA that he was unemployed from April 2019 until February 2023. He has worked for his sponsor since February 2023.

Applicant, in his response to Government interrogatories, blamed life altering events. Specifically, unemployment, divorce, moving from another state, and the death of his sister. He states, with his current employment and enrollment in school, he is working to get his accounts "back in good standing." (Item 3 at 7-9.)

Applicant's current Director wrote a strong and detailed character letter. He noted Applicant had faced challenges in his past, particularly following the passing of his sister. He explained that Applicant moved to his current state to honor her memory and salvage her businesses and that Applicant had invested his entire life savings to try and turn them around. He stated, "[u]nfortunately, despite [Applicant's] best efforts, the businesses were already struggling, and this resulted in financial setbacks for him." He noted Applicant did not allow "these challenges to define him" and that Applicant has "remarkable resilience and determination in rebuilding his financial standing. He noted Applicant "is actively working to pay off his current debt and has demonstrated steadfast commitment to improving his circumstances." He noted Applicant "has proven himself to be a trustworthy, reliable, and diligent individual who would be an asset to any role requiring such clearance." He is confident that Applicant will continue to demonstrate the highest levels of integrity and dedication in his service, and therefore, he strongly recommends Applicant be granted his clearance. (AE A.)

The credit bureau reports reflect the debts listed in on SOR. (Item 5; Item 6, Item 7.) Applicant offered no evidence to support his efforts to get the accounts “back into good standing.” (Item 3.) He offered no financial details surrounding his 2016 divorce. He did not provide information about his current finances to corroborate the observations of his Director.

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* 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* 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 establishes the following 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 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) and 20(b) are not applicable. Applicant's financial difficulties may have been incurred, in part, because of his marital difficulties and the death of his sister, which are circumstances beyond his control. However, there is no documentary evidence to corroborate his statements or the statements of his Director to show that he acted responsibly under the circumstances. In order to establish mitigating condition 20(d), an applicant must initiate and 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). He did not establish that he has acted responsibly and made a good-faith effort to pay or resolve his debts.

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 exceptional character letter submitted by his Director. 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 did not mitigate 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

Subparagraphs 1.a-1.k: 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