



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-01542
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2020

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 January 16, 2018. On June 13, 2019, 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).

Applicant answered the SOR on September 6, 2019, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on October 9, 2019. On October 24, 2019, a complete copy of the file of

relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on November 6, 2019, and submitted Applicant's Exhibit (AX) A, which was admitted in evidence without objection. The case was assigned to me on January 29, 2020.

Evidentiary Issue

The FORM included a summary of an interview with Applicant conducted by a security investigator on December 31, 2018. (FORM Item 3.) The interview summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the interview summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant submitted a response to the FORM but did not comment on the accuracy or completeness of the interview summary, nor did he object to it. I conclude that he waived any objections to FORM Item 3. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old technician employed by a defense contractor since October 2016. He was employed as an enrollment advisor at a university from April 2015 to October 2016, and he left this job voluntarily to accept his current employment. (FORM Item 2 at 13-14.) He also has been self-employed since August 2005 as a process server. He served on active duty in the U.S. Navy from February 1996 to April 2005 and received an honorable discharge. His security clearance application reflects that he has never held a security clearance. (FORM Item 2 at 36.)

Applicant married in July 1996 and divorced in May 2005. He has three children, ages 25, 22, and 9. He received a bachelor's degree in May 2011.

The SOR alleges seven delinquent debts totaling about \$29,852, which are reflected in credit reports from May 30, 2019; April 19, 2019; and February 10, 2018 (FORM Items 4-6.). The debts consist of collection accounts for \$14,250 (SOR ¶ 1.a) and \$1,544 (SOR ¶ 1.d); a delinquent charge account for \$3,492 (SOR ¶ 1.c); and four

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

delinquent credit-card accounts for \$4,280 (SOR ¶ 1.b); \$2,921 (SOR ¶ 1.d); \$2,349 (SOR ¶ 1.e); and \$1.016 (SOR ¶ 1.g).

In June 2019, Applicant entered into an agreement to settle the debt alleged in SOR ¶ 1.b for \$1,800, to be paid at the rate of \$150 per month beginning in July 2019 and ending in June 2020. (AX A.) He submitted AX A in his December 2019 response to the FORM, but he submitted no evidence that he had made any of the required monthly payments from July through December 2019. He also submitted no evidence of payments, payment agreements, or other resolution of the other debts alleged in the SOR.

When Applicant was interviewed by a security investigator, he attributed his debts to a slowdown in his process-server business. (FORM Item 3 at 4.) In his SOR answer, he stated that he used credit cards to pay living expenses due to having a change in careers. He provided no evidence explaining how a change in careers affected his ability to pay his debts. He stated he has cut down on his spending, but he submitted no evidence of a budget or plan to gain control of his finances. He submitted no evidence of financial counseling and no evidence of negotiations or other actions to resolve the debts in SOR ¶¶ 1.a and 1.c-1.g.

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 two 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 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; and

AG ¶ 20(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 established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur

AG ¶ 20(b) is not established. The downturn in Applicant's business as a process server was a condition largely beyond his control, but he has not provided evidence of responsible conduct. He submitted no evidence that he has complied with the settlement agreement for the debt alleged in SOR ¶ 1.b and no evidence of efforts to resolve the debts alleged in SOR ¶¶ 1.a and 1.c-1.g.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments under the settlement agreement for the debt in SOR ¶ 1.b. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008). He submitted no efforts of payments or other resolution of the other debts alleged in the SOR.

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). 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

Subparagraphs 1.a-1.g:

Against Applicant

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