



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04847

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

08/10/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On February 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Based on a review of Applicant's e-QIP and the ensuing investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on February 11, 2015, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

On March 5, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On May 13, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On June 1, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. Applicant timely submitted a response to the FORM. The case was assigned to me on July 31, 2015.

Findings of Fact

The SOR alleged that Applicant had six delinquent debts totaling \$17,236 (SOR ¶¶ 1.a-1.f). In his Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.a (\$5,959) and 1.f (\$4,987). He indicated that he was not denying the debts in SOR ¶¶ 1.b, 1.c, and 1.e, but did not have knowledge of those debts. He believed he paid the debt in SOR ¶ 1.d, but provided no proof of payment. His responses to SOR ¶¶ 1.b through 1.e are interpreted as denials. His admissions are incorporated as findings of fact.¹

Applicant is a 62-year-old senior official who has been working for a federal contractor since June 2009. He has earned multiple law degrees. He worked as a civilian employee of the U.S. Army in a number of civil service positions from May 1974 to June 2009 and progressed from a WG-8 to an acting GS-15. Divorced twice, he married his current wife in 2009. He has four children and three stepchildren. He has held a security clearance for many years.²

Applicant attributed his financial problems to his divorce in 2005 and medical problems. As part of the divorce, he agreed to be responsible for the debts his ex-wife incurred. He initially thought those debts were about \$8,000, but later learned they were about \$25,000. He also agreed to pay \$1,200 per month in child support. Furthermore, he experienced a number of significant medical problems during this period. His medical problems resulted in high out-of-pocket copays for prescription medications. He acknowledged that he made some financial mistakes, but stated his “mind was very cloudy” due to his medical problems. In addition, he supported his eldest son who also had significant medical problems. Applicant worked a second job to recover financially, but found it difficult to do so.³

Credit reports in the record contain substantial evidence of each alleged debt. The dates of last activity for the debts range from October 2007 to January 2014. In his Response to the FORM, Applicant indicated that the credit reports demonstrate the debts became delinquent two or three years after the divorce because he was trying to pay them. After consulting with a bankruptcy attorney, he was advised that he did not

¹ Items 1, 2.

² Items 2, 3; Applicant’s Response to the FORM.

³ Item 2; Applicant’s Response to the FORM.

qualify for Chapter 7 bankruptcy and decided against filing Chapter 13 bankruptcy. He stated that he paid his mortgage, student loans, taxes, and other debts.⁴

Applicant provided no proof that he made payments toward the alleged debts. No documents were presented to show that he has taken any other action to resolve them.⁵

The record does not reflect Applicant's net monthly income, his total monthly expenses, or his total monthly debt payments. The amount of his net monthly remainder (discretionary income) is unknown. In his Response to the FORM, he indicated that he refinanced his home in 2014 and that his child support payments ended in July 2015. He also stated that his current wife has significant health problems, but did not elaborate. Additionally, he noted that his company recently cut his pay by 20% and he is being threatened with a furlough.⁶

In his Response to the FORM, Applicant stated, "[I]n policing its Security Policy, it is not the Government's role to be the moral Police of the American Public, nor is it the Government's job to assure that Private Individuals make good on their debts to other Private individuals." He essentially contends that an individual's indebtedness is a private matter and not the Government's business. "The only question for Government, should be does this individual pose a threat to National Security, a real threat of divulging Secret information, and nothing more."⁷

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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, *Safeguarding Classified Information Within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of

⁴ Items 4, 5; Applicant's Response to the FORM.

⁵ Item 2; Applicant's Response to the FORM.

⁶ Response to the FORM.

⁷ Response to the FORM.

law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence established two disqualifying conditions in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Security clearance adjudications are not debt-collection procedures, but proceedings to evaluate an individual's judgment, reliability, and trustworthiness. ISCR

Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. ISCR Case No. 98-0810 (App. Bd. Jun. 8, 2000). The security eligibility of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties. ISCR Case No. 99-0296 at 5 (App. Bd. Apr. 18, 2000). As a general rule, an applicant is not required to be debt-free or develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011). Contrary to Applicant’s contention, the Government has a valid interest in examining his finances to determine whether he presents a security risk.

Applicant divorced in 2005, suffered a number of significant health problems, and has been supporting his eldest son who also has health problems. Each of these events was a condition beyond his control that contributed to his financial problems. However, Applicant merits only partial credit under AG ¶ 20(b) because he failed to provide sufficient evidence to conclude he acted responsibly under the circumstances. Little is known about his financial situation. The amount of his monthly income, expenses, and debt payments are unknown. It is not known whether he has any discretionary income to make payments on the delinquent debts.

Applicant failed to establish that any of the mitigating conditions fully applied to his financial problems. His delinquent debts are ongoing. No documentary evidence was presented to show that he has taken any action to resolve those debts, including the \$9 debt in SOR ¶ 1.e. Insufficient evidence was presented to conclude his financial problems are unlikely to recur. He provided no documents showing he has a legitimate basis for disputing any debts. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁸ I gave due consideration to the information about Applicant in the

⁸ The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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

record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant's handling of his financial problems leaves me with doubts as to his current eligibility to access classified information. Following the *Egan* decision and the "clearly consistent with the national interest" standard, doubts about granting Applicant's eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: Against Applicant

Subparagraphs 1.a – 1.f: Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.