



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-05196
)	
Applicant for Security Clearance)	

Appearances

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

09/30/2015

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 February 14, 2014. On March 25, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on April 27, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 30, 2015, and the case was assigned to me on July 13, 2015. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 25, 2015. I convened the hearing as scheduled. Government

Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until September 9, 2015, to enable him to submit additional documentary evidence. He timely submitted AX E, which was admitted without objection. DOHA received the transcript (Tr.) on August 31, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old employee of a defense contractor. He has worked for his current employer since November 2013. He previously worked in several private-sector jobs, frequently holding more than one job at a time. (GX 1 at 10-19; Tr. 26.) He has never married and has no children. He has never held a security clearance.

Applicant attended a university in 1999-2000 and incurred student-loan debts. The SOR alleges five delinquent student loans opened in 1999 and 2000, with balances of about \$2,771 (SOR ¶ 1.a); \$2,310 (SOR ¶ 1.b); \$1,776 (SOR ¶ 1.c); \$1,384 (SOR ¶ 1.d); and \$1,597 (SOR ¶ 1.g). The SOR is based on his credit bureau reports (CBRs) from February 2014 (GX 3), September 2014 (GX 4), and March 2015 (GX 5).

On August 12, 2015, Applicant entered into a rehabilitation agreement for the student loans in SOR ¶¶ 1.a-1.d, providing for nine consecutive \$5 monthly payments. (AX A.) The loan in SOR ¶ 1.g is not included in the rehabilitation agreement. Applicant tried to locate and resolve the loan in SOR ¶ 1.g by contacting the Department of Education, checking the National Student Loan Database, and contacting a private lender, but he could not find a record of the account. (AX E.)

SOR ¶ 1.e alleges a delinquent medical bill for \$381, reflected in Applicant's September 2014 CBR. This account was referred for collection in July 2012. (GX 4.) It is not reflected in Applicant's March 2015 CBR. (GX 5.) Applicant admitted this debt in his response to the SOR, and he made a \$100 payment on this bill on August 24, 2015. (AX D.)

SOR ¶ 1.f alleges an unsatisfied judgment filed against Applicant in March 2008 and reflected in his February 2014 and September 2014 CBRs. It is not reflected in his March 2015 CBR. Applicant attributed this judgment to an emergency room visit that was not covered by insurance. (GX 2 at 5.) He has taken no action to satisfy or otherwise resolve this judgment.

The SOR alleges that Applicant failed to file his federal income tax returns for tax years 2010 through 2013 (SOR ¶¶ 1.h and 1.i). At the hearing, Applicant testified that he filed his federal income tax returns for 2011 and 2012 in mid-August 2015. However, he did not submit any documentary evidence to corroborate his testimony. (Tr. 24-25.)

Applicant testified that his tax problems began because an employer did not withhold any taxes from his pay. (Tr. 27.) He could not afford to pay the taxes due and so he “pushed it off” and “put it on the back burner.” The Internal Revenue Service (IRS) collected the taxes due for 2010 by garnishing his pay. (GX 2 at 4; Tr. 41-42.) He testified that he contacted the IRS and was informed not to worry about the 2010 return but to file his returns for 2011 and 2012. He testified that, as of the date of the hearing, he had filed his returns for 2011-2014, owes about \$1,080, and plans to negotiate a payment plan for the amount owed (Tr. 44-45.) He did not submit documentary evidence to corroborate his testimony.

Applicant testified that he usually works 50-55 hours per week, and his combined take-home pay from two jobs is about \$1,200 per month. He has health insurance to cover any future medical expenses. After he pays all his living expenses, he usually has about \$200 left. (Tr. 45-46.)

Applicant’s supervisor for the past two years, who has known him for five years, submitted a letter describing him as dependable, honest, and reliable. He believes that Applicant has worked hard and “exhibited great character and trustworthy attributes” during their interactions. (AX B.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The 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, corroborated by his CBRs, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG 19(g) ("failure to file annual Federal, state, or local income tax returns as required . . .").

The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue 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 delinquent debts and failures to timely file his income tax returns are numerous, recent, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established for the medical debts alleged in SOR ¶¶ 1.e and 1.f. Applicant's injuries requiring emergency medical care were circumstances beyond his control. However, he has not acted responsibly since incurring the debts. He has made only one payment on the debt in SOR ¶ 1.e, after he received the SOR. He has not taken any actions to resolve the debt in SOR ¶ 1.f. The remaining debts in the SOR were not incurred under circumstances beyond his control.

AG ¶ 20(d) is not established. Applicant's single \$100 payment on the medical debt alleged in SOR ¶ 1.e, tendered after he received the SOR, is not sufficient to show a good-faith effort to resolve the debt. He receives some credit for entering into a

rehabilitation plan for the student loans alleged in SOR ¶¶ 1.a-1.d and for his unsuccessful attempts to locate the creditor for the student loan in SOR ¶ 1.g. However, he did not make any efforts to resolve his student loans until after he received the SOR and his hearing was imminent. Past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Furthermore, as of the date the record closed, he had not yet made any payments under the rehabilitation plan. He testified that he had filed his federal income tax returns for 2010-2014, but he submitted no documentary evidence to support his testimony, even though he was given additional time after the hearing to submit evidence.

AG ¶¶ 20(c) and 20(e) are not established. Applicant has not sought or received financial counseling, and he has not disputed any of the 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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked multiple jobs, usually holding more than one job at a time, to support himself. He incurred the student loans in an effort to improve his job qualifications. He was candid and sincere at the hearing. However, he has a long track record of ignoring his debts and failing to timely file his income tax returns. 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 and repeated failures to timely file his federal income tax returns. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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.i:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge