



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 14-06918
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on April 16, 2014, seeking to continue a security clearance he has held since approximately 1982. Applicant's security worthiness was previously adjudicated in June 2010, because the Government was concerned about his financial status. In granting Applicant's clearance, the administrative judge found that: Applicant experienced a period of financial hardship between 2006 and 2009; the circumstances that led to the financial hardship were largely beyond his control and he acted reasonably under the circumstances; and, he made a good-faith effort to repay his creditors. The prior decision was admitted into the record as GX 7.

On October 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 November 4, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 30, 2015, and the case was assigned to me on February 25, 2016. On March 22, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 7, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 3 through 7 were admitted in evidence without objection. Applicant objected to GX 2 and I sustained his objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until April 22, 2016, to enable him to submit additional documentary evidence. He timely submitted AX J¹ through M, which I have admitted without objection. DOHA received the transcript (Tr.) on April 19, 2016.

Findings of Fact

The SOR alleges three delinquent debts: A foreclosure deficiency balance of \$100,683; a delinquent mortgage of \$8,010; and a credit card balance of \$13,176. These debts total approximately \$121,869. (SOR.) In his Answer, Applicant denied each of the debts.

Applicant is a 55-year-old electronics engineer employed by a defense contractor in his current job since 2010. He received an associate's degree in science in 1982. On May 19, 2015, he was granted a patent for an invention with applications in the aerospace industry. (AX C.)

Applicant married in 1985 and divorced in 2005. He remarried in September 2006. He has three children from previous relationships and one child with his current spouse, born in March 2006. He voluntarily pays his ex-wife about \$1,800 alimony monthly. (Tr. 59.) Applicant owes approximately \$3,000 on his 2013 federal taxes due to a settlement with a credit card company for which he received an IRS Form 1099 C. He is making monthly payments to the IRS. (Tr. 63.) He lives within his means and has not incurred any other delinquent debt since 2009. (Tr. 32; GX 3-6.)

Between 2005 and 2009, Applicant experienced a divorce, unemployment, the premature birth of his son, his wife's unemployment, and a cross-country move. (GX 7; Tr. 66.) These circumstances caused his previous financial troubles that gave rise to the 2010 adjudication. Only the credit card debt alleged in SOR ¶ 1.c remains unresolved since the 2010 security clearance adjudication.

¹ AX I is an electronic mail exchange between Applicant and Department Counsel that includes an explanation of each of the additional exhibits submitted by Applicant.

The delinquent debts are reflected in Applicant's credit bureau reports dated May 2015, November 2014, April 2014, and April 2009. The evidence concerning the status of these debts is set out below.

The deficiency balance for the foreclosed mortgage alleged in SOR ¶ 1.a is owed for a house that Applicant co-owned with his ex-wife. Applicant quitclaimed the deed to his ex-wife in June 2006 and she refinanced the home in her name only. Subsequently, she defaulted on the loan and the home went into foreclosure. She has since been involved in litigation with the current loan holder. In March 2016, the foreclosure claim against the home was dismissed without prejudice. Applicant stated that the current mortgage owner cannot find the deed to the house and that his ex-wife will likely maintain ownership of the home. (Tr. 30; Tr. 41) Applicant's ex-wife confirms that he is not liable for this loan. (AX F; AX M.)

The delinquent mortgage loan alleged in SOR ¶ 1.b is for a home Applicant owned with his ex-wife. They initially lived in the home, then listed it for sale when they moved. The home did not sell, so they maintained it as a rental property. They quitclaimed the deed to each other several times and, ultimately, his ex-wife became the sole owner of the property. (Tr. 51-55; AX E.) She defaulted on the loan, the bank foreclosed, and the home was sold at auction. She included the deficiency balance in her 2012 bankruptcy, and the debt was discharged. (AX L.)

In denying his responsibility for the credit card debt alleged in SOR ¶ 1.c in his Answer, Applicant mistakenly identified it as a debt that had been canceled by the lender, for which he received an IRS Form 1099 C. (Answer; Tr. 27; Tr. 56; Tr. 65.) However, at the hearing, he stated that he realized his mistake, and recognized the debt as originating from a home improvement company credit card. (Tr. 13.) The debt was at issue in Applicant's 2010 security clearance adjudication. At the 2010 hearing, he testified that he had "negotiated a payment agreement" with the creditor. (GX 7.) Clearly, he did not follow through with this payment agreement, as the debt remained unpaid at the time of his April 7, 2016, hearing. At the 2016 hearing, Applicant stated that he did not repay this debt because the creditor would not work with him. (Tr. 31.) Applicant was not contacted about this account for some time, then began receiving correspondence from the current collection agency in about May 2014. (Tr. 13; Tr. 56.) In February 2016, he received an offer letter to settle the account in full by March 25, 2016, for \$1,349. (AX G.) He testified that he would contact the creditor and pay the debt off. (Tr. 57.) He settled the debt in full on April 15, 2016. (AX K.)

Applicant's high school friend testified that they have worked together for various defense contractors off and on since the 1980's. He has been Applicant's supervisor for the last five years, and states that Applicant is a good friend and colleague and a trustworthy individual. (Tr. 71-75.) A coworker of Applicant's, a senior engineer, considers him to be a diligent, dependable employee and an asset to the company. (AX D.)

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’s 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 testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). 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 established. Applicant's debts are not recent and they were incurred under circumstances that are unlikely to recur.

AG ¶ 20(b) is established. Applicant previously experienced a period of financial instability and incurred delinquent debts due to conditions largely beyond his control. He acted responsibly by resolving the majority of those debts while not incurring additional debt. He has since resolved the only remaining debt.

AG ¶ 20(c) is established. Applicant has not received financial counseling, however, he has resolved his debts, and there is a "clear indication" that his financial problems are under control.

AG ¶ 20(d) is established. Applicant acted in good faith by settling in full his remaining debt. He is current on all his ongoing financial obligations.

AG ¶ 20(e) is established. Applicant disputes that he is responsible for the debts alleged in SOR ¶¶ 1.a and 1.b. He provided documentation that establishes that his ex-wife is solely responsible for these two mortgage 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(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 and I have considered the factors in AG ¶ 2(a). 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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a – 1.c:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge