



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



In the matter of:)
)
) ISCR Case No. 15-01113
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant refuted the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On August 25, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order (Exec. Or.) 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 by DOD on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On September 18, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on November 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on

November 19, 2015, and the hearing was convened as scheduled on December 9, 2015.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4. Applicant testified and submitted Applicant's Exhibits (AE) A and B. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 18, 2015.

Findings of Fact

Applicant is a 70-year-old employee of a defense contractor. He began working in his current job in 2016 after having worked for another defense contractor from 1997 to 2016. He graduated from high school in 1964 and completed two years of college. He served in the U.S. Air Force for 30 years and retired honorably in the grade of chief master sergeant (E-9) in 1994. He has been married for almost 50 years and has two adult children. He has held a security clearance for about 50 years.¹

The SOR alleged that Applicant had 20 delinquent debts totaling \$20,711. In his Answer to the SOR, Applicant denied each debt, claiming they were not his debts. His credit reports (GE 2 and 3) contain entries that reflect the alleged debts.²

Applicant contended that each of the alleged debts was the result of the theft of his identity. He claimed that a number of people stole his identity, including one of his sons. He indicated that he did not report the identity theft to the police because he did not want his son arrested. He highlighted that he has been living at the same address for the past 35 years, but his credit reports incorrectly reflect that he lived at six other addresses during the past seven years. He stated that he never received any bills in the mail for the delinquent debts. One credit report reflected four variations of his name (*i.e.*, without middle initial, with middle initial, with middle name spelled out, and with middle name spelled out plus "Sr.") and each had a different "name identification number." One credit report reflected that Applicant had three telephone numbers. He indicated that one of those telephone numbers was his cell number, and he did not recognize the other two numbers. The credit report further listed that Applicant's "former or current employer" was a company where he never worked. Another credit report indicated his birthday was in February 1976, which was 30 years after his actual birthday.³

¹ Tr. 6-7, 36-39; GE 1.

² Applicant's Answer to the SOR.

³ Tr. 5, 16, 21-36; GE 1-4; AE A. A name identification number and address identification number are means by which the reporting bureau identifies variations of an individual's name and address in the credit report.

Applicant hired an attorney to assist him in disputing and resolving the alleged debts. His most recent credit report lists only six delinquent debts that he contends are not his debts. I found Applicant was a credible witness.⁴

Applicant provided documentation showing that his adjusted gross income was \$138,132 for 2011, \$149,798 for 2012, \$172,354 for 2013, and \$169,260 for 2014. He also provided documentation showing that he pays the debts for which he is responsible.⁵

While in the Air Force, Applicant received two Meritorious Service Medals, two Air Force Commendation Medals, as well as other personal and unit awards. He served in support of Operations Desert Shield and Desert Storm from August 1990 to December 1993.⁶

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 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

⁴ Tr. 21-23, 25-27. Applicant testified that the attorney was no longer assisting him.

⁵ Applicant's Answer to the SOR; AE A.

⁶ Tr. 36-38; AE B.

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* Exec. Or. 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 for this guideline is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant's credits reports contain information pertaining to other individuals. He provided sufficient evidence to establish that the alleged debts are not his responsibility. I find that none of the disqualifying conditions are established.

Recognizing that the Appeal Board has held that entries in credit reports are sufficient to establish substantial evidence of alleged debts, I also considered 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*) and find that it also mitigates any security concerns arising from the alleged debts.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative 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.

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 conducting the whole-person analysis, I have considered Applicant's military and work history and other information about him in the record.

Overall, the record evidence still leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I find that Applicant refuted the security concerns under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.t:

For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

James F. Duffy
Administrative Judge