



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



In the matter of:)	
)	
)	ISCR Case No. 17-04107
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2019

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 21, 2016. On April 6, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR through counsel on June 8, 2018, and requested a hearing before an administrative judge. On August 15, 2018, Applicant's counsel withdrew his representation, noted in Hearing Exhibit (HE) 2, and Applicant proceeded

pro se. The case was assigned to me on November 14, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on December 20, 2018, and the hearing was convened on January 22, 2019. Government Exhibits (GE) 1 through 7 were admitted into evidence without objection and an exhibit list marked as HE 1 was attached to the record. Applicant testified at the hearing, and Applicant Exhibit (AE) A was admitted without objection. DOHA received the hearing transcript on January 31, 2019.

Findings of Fact

Applicant is a 41-year-old supply engineer for a defense contractor, employed since 2007. Applicant received a bachelor's degree in 2007. He is single but has lived with a cohabitant for one year, who contributes to household expenses. He served in the U.S. Marine Corps from 2002 to 2007, and in the Marine Corps Reserve from 2008 to 2009. He was honorably discharged. He currently has a security clearance.

At hearing, the Government moved to amend the SOR to withdraw SOR ¶¶ 1.f and 1.m as duplicates of SOR ¶¶ 1.a and 1.b. The motion was granted without objection. The SOR alleges under Guideline F that Applicant has 10 delinquent debts totaling over \$49,000 and a Chapter 13 bankruptcy filed in 2016 that was dismissed in 2017. Under Guideline E, the SOR alleges Applicant was charged with Assault by Offensive Contact in 2017, has an outstanding arrest warrant, and failed to disclose the arrest to his employer.

Applicant had a dispute with his girlfriend in his car while he was driving. His girlfriend had been drinking, and became belligerent. Her brother was following behind. Applicant stopped the car, ordered her out, and when she refused, he pulled her out of the car. His girlfriend punched and kicked him, and was picked up by her brother. He returned home and was later mailed a misdemeanor citation and summons. Applicant confused the date of the summons, and appeared a day late to court. When he was told a warrant was issued for his arrest because he did not appear the day before, he paid bail and the court date was reassigned. His interview with a Government investigator was scheduled and pending when he received the citation (but not the warrant), and he voluntarily disclosed the incident and citation to the investigator. He believed that his notification to the investigator was sufficient to satisfy the requirement that the government be notified of conditions that could affect a security clearance. Additionally, he believed that since it was a contested misdemeanor, his employer did not need to be informed as it could have a negative effect on his employment. Later, the charge was dismissed for lack of prosecution, and Applicant was refunded his bail payment. He eventually reported the matter to his employer.

Applicant filed a Chapter 13 bankruptcy in April 2016 after he fell behind on his mortgage and other debts. He blamed his own irresponsibility and poor financial decisions for his delinquencies. The Chapter 13 plan was confirmed in September 2016, and the case was dismissed in January 2017 for Applicant's failure to file his 2016 tax return with the court. During the bankruptcy, Applicant failed to make required mortgage payments to stay a foreclosure, and the home was foreclosed. In testimony, he admitted that he lied

on his home mortgage application in order to qualify for the loan. His credit report shows an outstanding balance on the mortgage, and Applicant has not contacted the lender to determine whether he owes a deficiency balance since the foreclosure. SOR ¶ 1.a is not resolved.

SOR ¶ 1.b is a bank debt that has been past due since 2016, and not discharged in the bankruptcy. Applicant has not inquired about the debt, and has not taken steps to resolve it. SOR ¶¶ 1.d-1.e and 1.g-1.i are additional debts that Applicant has not inquired about and has not resolved.

While in the Marine Corps, Applicant served in Iraq and was awarded two Navy and Marine Corps Achievement Medals and a Good Conduct Medal. He was also selected as his command's Marine of the Quarter and Marine of the Year, in 2004. He completed his employer's leadership development program, serves as an officer and volunteer in his local veteran's organization, and volunteers during hurricane relief operations.

Applicant earns about \$80,000 per year, and stated that he lives paycheck-to-paycheck. He has a "few hundred" dollars in his checking account, and no savings. He has a § 401k retirement account, but he owes about \$30,000 for a previous loan from the account. He had credit counseling prior to filing the Chapter 13 bankruptcy, and claims he is able to pay his current expenses monthly. He noted in his closing remarks that he is able to take care of responsibilities at work, but has had difficulty taking care of his finances.

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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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 ¶ 1(d).

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 18 (a), (b), and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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.

Applicant's finances have been neglected for many years, resulting in a failed Chapter 13 bankruptcy and several unpaid debts. Applicant has not submitted sufficient evidence that he is willing or able to address his debts, and his dismissed bankruptcy for failure to file required tax returns shows questionable judgment and an unwillingness to address financial concerns.

Applicant admitted his own lack of financial control, and his continued failure to address debts is troubling. Overall, his behavior raises significant doubts about his financial management decisions and personal financial responsibility. He has not provided sufficient evidence of his current financial status and ability to meet past-due and future financial obligations. I am not convinced Applicant is financially responsible or makes good financial decisions. No mitigation fully applies.

Guideline E; Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(2) any disruptive, violent, or other inappropriate behavior.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. There is insufficient evidence that Applicant had a duty to report the altercation or citation to his employer, rather he had a duty to report it to the government in conjunction with his security clearance eligibility, which is often done through an employer. In this case, he reported the conduct directly to the government during his interview. Even if he had such an obligation to report the incident to his employer, the failure to do so is mitigated. The personal conduct described in SOR ¶ 2.a is sufficient to implicate AG ¶ 16 (d)(2). SOR ¶ 2.b is unfounded.

Guideline E includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant was cited for assault by offensive contact, and missed a court date by one day. When he appeared on the wrong day, he discovered that the court had issued a warrant for his arrest. He immediately paid the bail and was not arrested. The charge was eventually dismissed for want of prosecution. Applicant disclosed the incident to a government investigator. He was not aware that he was required to report it to his employer too, and was more concerned with informing the government investigator during the interview that was scheduled and pending before the incident. Applicant acknowledged that he now understands the importance of promptly reporting any criminal involvement to his employer as the typical method of ensuring that the government is properly notified. The incident was eventually resolved in Applicant's favor with no conviction, and there is no evidence of a continuing pattern of criminal activity. AG ¶¶ 17 (a), (c), and (d) apply.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E, in my whole-person analysis. I also considered Applicant's military service, and work and volunteer accomplishments. I find that the incident cited under Guideline E is mitigated, and the failure to report it to his employer is unfounded. I remain unconvinced of his financial responsibility and ability and willingness to meet his financial obligations.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e; 1.g - 1.l:	Against Applicant
Subparagraphs 1.f and 1.m:	Withdrawn
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

Gregg A. Cervi
Administrative Judge