



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-00222
)
 Applicant for Security Clearance)

Appearances

For Government: Dan O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2019

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 3, 2016. On February 12, 2018, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant submitted his Answer to the SOR on February 28, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 26, 2018, and the case was assigned to me on August 3, 2018. On February 26,

2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 3, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through D were admitted without objection. I left the record open until April 17, 2019, to enable Applicant to submit additional documentary evidence. He timely submitted AX E through H, which I have admitted without objection. DOHA received the transcript (Tr.) on April 15, 2019.

Findings of Fact

Applicant is a 47-year-old lab manager currently employed by a defense contractor since October 2010. He has worked as a defense contractor and held a security clearance since 1996. He has worked as a first responder since 1998 and is now a sergeant in the county rescue squad. He has been awarded numerous commendations for his volunteer service, including two citations from the state General assembly. (AX G.) Applicant and his wife married in 1995. (GX 1.)

Under Guideline F, the SOR alleges eight past-due accounts totaling \$29,492. Applicant admits seven of the accounts and denies the \$1,243 debt alleged in SOR ¶ 1.h. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from April 2018, December 2017, and February 2017. (GX 2; GX 3; GX 4.)

Applicant and his wife historically struggled financially due to low-paying jobs. Applicant worked for his previous employer from 1996 until 2010. He started as an hourly employee earning \$5.90 per hour. By 2010, Applicant had worked his way up to the position of lab manager where he earned \$27 per hour, grossing approximately \$56,000 annually. Applicant's wife previously worked for the same employer, at a lower hourly rate, until she was laid off in 2010. She was unemployed for approximately six months, until beginning part-time work for the contractor who employs Applicant. This period of unemployment and underemployment created financial strains for Applicant's household prompting Applicant to sell his vehicle to help make ends meet. (Tr. 64-65.) Applicant's wife has since gained full-time employment. Applicant and his wife earn a combined gross salary of approximately \$130,000, of which Applicant earns approximately \$86,000. (Tr. 38-40; Tr. 42-43.)

Applicant's most recent financial issues arose from unanticipated financial demands. Applicant's mother, who lived in Florida, died in 2014. The obligation of wrapping up his mother's affairs fell to Applicant. He had to make multiple trips to Florida, and incurred travel-related expenses. Because he was frequently away from home, Applicant's wife took over the responsibility of managing the household finances. She was inexperienced at handling the accounting and was delinquent in paying several accounts. (Tr. 21.)

Following Applicant's mother's death, his father became overwhelmed. Applicant provided financial as well as emotional support to his father. Within months of his mother's death, Applicant's mother-in-law was stricken with cancer. She was no longer able to

perform her job. Applicant's father-in-law's income was unreliable. Applicant and his wife provided financial support for her mother. (Tr. 22-23.) Applicant and his wife are no longer financially supporting any family members. (Tr. 56-58; Tr. 70-72.)

Applicant and his wife incurred significant medical expenses between 2008 and 2009. During this period, it was also discovered that Applicant's wife had cancer that subsequently required extensive surgery and treatments. They primarily used a dedicated credit card to pay the medical expenses. (Tr. 44-46.) The account first became delinquent in 2013 and has since been charged off in the amount of \$11,065. (SOR ¶ 1.a). Applicant also took two personal loans through this same creditor which have since been charged off in the amounts of \$2,091 and \$1,901 as alleged in SOR ¶¶ 1.f and 1.g. Since 2016, Applicant made sporadic payments to this creditor, usually in increments of \$50. Applicant entered a repayment agreement with this creditor in March 2019 which addresses the three delinquent accounts. The creditor automatically withdraws \$250 a month from Applicant's checking account. (Tr. 45-46; AX C; AX D.) These debts are being resolved.

In 2012, Applicant returned to college. In order to finance his tuition and other expenses, Applicant took out several student loans. These loans became delinquent and Applicant was past-due \$304 (SOR ¶ 1.b), \$386 (SOR ¶ 1.c), and \$153 (SOR ¶ 1.d). The creditor consolidated loans and Applicant has made sporadic payments since 2014 and increasingly since 2016. His current balance is approximately \$36,000. Applicant has been in discussions with the creditor in an effort to negotiate a monthly payment that is financially manageable for Applicant. The creditor is currently requiring a \$2,000 lump-sum payment, which will be followed by monthly payments of \$226. In the interim, Applicant has continued making payments whenever he is able. (Tr. 26-28.) These debts are being resolved.

The \$3,362 debt alleged in SOR ¶ 1.e was for a credit account with a computer company where Applicant purchased a computer in about 2015. Applicant did not realize that this account was delinquent. The original creditor sold the account to a collection agency that Applicant did not recognize as one of his creditors. However, he made a \$50 payment to a collection agency. (AX C.) In March 2019, Applicant entered a repayment agreement with the monthly payment of \$44 that is debited directly from Applicant's checking account by the creditor. (AX A.) This debt is being resolved.

Applicant denies the \$1,243 debt alleged in SOR ¶ 1.h. The debt was owed for tuition for a college course that Applicant dropped. The debt was resolved in 2014 when the state withheld Applicant's tax refund. The debt has not appeared on Applicant's CBRs since February 2017. (GX 4.) This debt is resolved.

Applicant and his wife purchased the land on which their house stands in 1996 and built their house in 2006. Their mortgage-loan payment is \$1,244 a month and is current. Their second mortgage-loan payment is \$942 month, which is also current. Applicant recently made his final \$810 payment for his vehicle and now has title. Applicant's wife's car is paid off. Applicant lives within his means, to include the expenses for two dogs with chronic health issues. Applicant's second mortgage loan will be paid off in 2021 and his

primary mortgage loan will be paid off in 2025. Applicant purchased a recreational vehicle for \$18,000 in approximately 2016 using a 401(k) loan. He is current with his loan payments of \$40 per pay period. Applicant has approximately \$3,000 in his checking account and approximately \$60,000 in his 401(k). (Tr. 62; Tr. 59.) Applicant intends to use the \$810 a month that was previously allotted for his truck payment to make payments on his other outstanding accounts. (Tr. 72-73.)

Applicant did not understand the potential security significance of financial delinquencies until his 2017 personal subject interview (PSI). Upon realizing the importance of resolving any and all the delinquent accounts, Applicant contacted his creditors and began making sporadic payments on his accounts when he was able. (AX B; Tr. 70-71.) Applicant now maintains a spreadsheet with the tickler system to alert him to when bills are due for payment. (Tr. 70-72; Tr. 62.) In the event that Applicant changes employers, he is eligible to cash out his unused leave which totals more than 360 hours. He would use this money to pay down any remaining debts. (AX D.) Applicant has not incurred any recent delinquent debts. He was sincere and credible while testifying.

Applicant's current direct supervisor of more than four years states that Applicant has an amazing work ethic and that he is loyal, trustworthy, and an asset to the team. She further states that he demonstrates integrity and that he should be granted access to classified information. Another of Applicant's supervisors, who frequently travels officially with Applicant, states that Applicant should be granted a clearance and that he demonstrates loyalty, trustworthiness, and integrity. (AX H.) Applicant received outstanding performance appraisals in 2017 and 2018. (AX E; AX F.)

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).

The following disqualifying conditions apply:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The relevant mitigating conditions in this case are:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): individual initiated and is adhering to 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.

Applicant's financial difficulties arose due to conditions largely beyond his control. Specifically, he worked at a low-paying job for 15 years, during which time his wife required expensive medical treatment and care. Applicant's wife was laid off from her job in 2010 and was unemployed for approximately six months then underemployed. Applicant acted responsibly by selling his vehicle. In 2014, Applicant's mother died and Applicant incurred extensive costs traveling to take care of her affairs and by providing his father with financial assistance. Applicant and his wife's finances were also negatively affected after her mother was stricken with cancer in 2014, compelling them to provide financial assistance to her. Each time an unforeseeable financial crisis arose, Applicant acted responsibly. He sold his vehicle in 2010 to help cover expenses during his wife's unemployment and underemployment. He contacted his creditors and since 2016, has been making sporadic payments to each of his creditors whenever he was financially able

to do so. He recently re-contacted all of the SOR creditors and entered repayment agreements with two of the three creditors. He is actively negotiating with the third creditor to enter a repayment plan for his outstanding student loans. Applicant no longer provides financial support to family members. He successfully disputed the tuition debt alleged in SOR ¶ 1.h. Applicant currently lives within his means and has substantial savings in his 401(k). He has not incurred any recent delinquent debt. Applicant has resolved or is resolving the SOR debts and it is unlikely that he will be unable to maintain his finances in the future. Applicant's past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior. Although Applicant's finances are not perfect, he has made a good-faith effort to repay or successfully dispute his debts and has established a plan to resolve his financial issues within his means and to avoid future financial issues. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply.

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 in light of the nine adjudicative process factors listed at AG ¶ 2(d).

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but I have also considered the following:

Applicant has held a security clearance since 1996. He has worked as a first responder since 1998. Applicant is trusted and respected by his supervisors and received outstanding performance reviews in 2017 and 2018. He was sincere and credible during his testimony.

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

Subparagraphs 1.a – 1.i: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge