



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-01027
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*
07/18/2019

Decision

HESS, Stephanie C., Administrative Judge:

Due to lengthy periods of underemployment and unemployment, Applicant incurred delinquent debt that ultimately led to three bankruptcy filings. However, he mitigated the financial concern by demonstrating that he acted responsibly under the circumstances and by resolving the majority of the delinquent debt. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on July 16, 2017. On May 4, 2018, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 implemented by DOD on June 8, 2017.

Applicant initially answered the SOR on May 22, 2018, wherein he failed to admit or deny one of the allegations, and requested a hearing before an administrative judge.

In response to a request from the DOD, Applicant filed a supplemental answer to the SOR on June 1, 2018. Department Counsel was ready to proceed on July 3, 2018, and the case was assigned to me on January 30, 2019. On April 3, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 23, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted into evidence without objection. Applicant testified and I left the record open until May 7, 2019, to enable Applicant to submit documentary evidence. DOHA received the transcript (Tr.) on May 2, 2019.

Procedural Issue

At the hearing, Department Counsel moved to amend the SOR by striking SOR ¶ 1.i as a duplicate of the debt alleged in SOR ¶ 1.e. I allowed the amendment without objection.

Findings of Fact

The SOR alleges that Applicant filed Chapter 7 bankruptcy in September 2005 which was discharged in December 2005; Chapter 13 bankruptcy in June 2016 which was dismissed in September 2016; and, Chapter 13 bankruptcy in 2016 which was dismissed in January 2017. The SOR further alleges that Applicant was \$18,695 in arrears on his past-due mortgage loan, and had seven delinquent consumer accounts totaling \$6,387. Applicant admits each of the SOR allegations. The bankruptcies and debts are reflected in records from the bankruptcy court and Applicant's credit bureau reports (CBR) from April 2019, March 2018, and August 2017. (GX 2 – GX 7.) His admissions in his Answer are incorporated in my findings of fact.

Applicant is a 52-year-old creative writer currently employed by a defense contractor since July 2017, and periodically employed in the defense industry since 2005. He served honorably on active duty in the U.S. Navy from October 1985 to June 2000 and in the Reserve from June 2000 until October 2005. He was briefly recalled to active duty in 2001. Applicant received his bachelor's degree in 1995. He and his current wife married in 2010. Applicant was previously married from 1988 until 1999. He has three children ages 28, 21, and 18. The 21-year-old and 18-year-old reside with Applicant and his wife. Applicant received his first security clearance in 1985 while on active duty. His security clearance was revoked for financial issues following his Chapter 7 bankruptcy in approximately 2005. This is his first re-application for a security clearance. (GX 1; Tr. 28-33; Tr. 35.)

Applicant left active duty in 2000 and joined the Reserve. He was activated from December 2001 until June 2002. He was unemployed from June 2002 until July 2003. This period of unemployment ultimately led to Applicant's filing Chapter 7 bankruptcy in September 2005. After filing, Applicant voluntarily participated in financial counseling and regained his financial footing until 2012 when he was laid off from his federal contracting position. (Tr. 51.) He was unemployed between March 2012 and July 2012. Applicant was underemployed as a pizza delivery driver earning approximately \$18,000 a year from

July 2012 until July 2017, when he started his current job. Initially, he worked both jobs, but the schedule was too demanding for him to maintain it. (Tr. 27.) Applicant's wife is unable to work outside the home due to a medical condition. She sells handcrafted items which sporadically produces less than \$100 a month. (Tr. 39.)

Applicant purchased a house in February 2011. Following his layoff in 2012 and the subsequent extended period of underemployment, Applicant was unable to sustain his financial obligations. He defaulted on his mortgage loan in May 2015 and foreclosure proceedings were subsequently started by the lender. After consulting with an attorney, Applicant filed Chapter 13 bankruptcy in June 2016 to prevent losing his house in foreclosure. He was unable to maintain the payments and his case was dismissed in September 2016. He re-filed the bankruptcy in September 2016, but was again unable to sustain the payments and the case was dismissed in January 2017. At some point in 2016, Applicant and the mortgage-loan lender reached a mortgage-loan reorganization agreement. Applicant has been paying down his mortgage-loan arrearage (SOR ¶ 1.d) and the current balance is approximately \$2,000. He has made timely mortgage-loan payments since reaching the agreement. (GX 7.) All of the other SOR debts became delinquent between May 2012 and January 2017. (GX 5; GX 6; GX 8; GX 3; GX 4; Tr. 36-37; Tr. 41-46.)

Applicant disputed in person and by telephone the \$200 cable television debt alleged in SOR ¶ 1.i. and it is not listed on his April 2019 CBR. He has not been contacted recently by any of the SOR creditors. Of the remaining SOR debts totaling \$6,187, only SOR ¶¶ 1.e and 1.h, totaling \$1,728 are listed on his April 2019 CBR. (GX 7.)

All of Applicant's SOR debts were incurred prior to Applicant's current employment, which began in July 2017. (GX 4.) Applicant lives within his means, has not incurred any recent delinquent debts, and is able to maintain his ongoing financial obligations. He and his wife maintain a monthly budget and timely file their tax returns. Applicant intends to continue to maintain control of his finances. (Tr. 51-53; Tr. 57.) He was sincere and credible while testifying.

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 record evidence establishes that disqualifying conditions AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations apply.

The following mitigating conditions are potentially applicable:

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): the 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 past financial problems were attributable to matters largely beyond his control. Specifically, he experienced a sustained period of five years of underemployment and two periods of unemployment that resulted in his inability to maintain his financial obligations. Initially, Applicant acted responsibly by discharging his debts in 2005 through Chapter 7 bankruptcy, completing financial counseling, and not incurring any new delinquent debts. Between 2005 and 2012, Applicant was in control of his finances and did not incur any delinquent debt. He purchased his home in 2011 and maintained his

mortgage-loan payments and otherwise lived within his means. However, when he was laid off in 2012 and began working as a pizza deliverer, he was unable to maintain control of his finances. All of the SOR debts, including his mortgage-loan arrearages, arose during his period of underemployment.

Despite still being underemployed In 2016, Applicant successfully reached an agreement with the lender of his mortgage loan and has made timely payments, reducing the arrearage from \$18,695 (SOR ¶ 1.d) to approximately \$2,000. He successfully disputed the \$200 debt alleged in SOR ¶ 1.i. The remaining SOR debts total less than \$6,200. Applicant has not incurred any delinquent debts since gaining his current employment in July 2017.

“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 an individual’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 an individual 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).

Although Applicant experienced past financial issues, he established and instituted a plan to pay his mortgage-loan arrearages, and successfully disputed one of his SOR debts. Applicant’s financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior. He lives within his means and he and his wife maintain a budget and timely file their tax returns. 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. AG ¶¶ 20(b), 20(d), and 20(e) apply.

Whole-Person Concept

Under AG ¶ 2, 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. I have incorporated my comments under Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2, but have also considered the following:

Applicant served honorably on active duty for 15 years and in the Reserve for nearly 5 years. His past financial difficulties arose primarily from circumstances outside his control. He was candid and sincere in 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 financial circumstances. 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.h: For Applicant

Subparagraph 1.i: Stricken

Subparagraphs 1.j – 1.l: 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