



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-01105
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*
03/14/2019

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the security concerns raised by his significant delinquent debts. (Financial Considerations.) Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 5, 2017. On April 26, 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 (AG) implemented by DOD on June 8, 2017.

Applicant answered the SOR on May 22 2018, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on July 30, 2018. On July 31, 2018, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 6, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate,

or mitigate the Government's evidence. He received the FORM on August 14, 2018, and did not file a Response.¹ The case was assigned to me on December 14, 2018.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant filed Chapter 13 Bankruptcy in April 2015 and was dismissed in August 2016 for failure to make payments, and has 14 delinquent accounts totaling \$179,408 including a Federal tax debt of \$26,376. In his Answer, Applicant admits each of the allegations and offers explanations for his debts. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from April 2018 and May 2017, disclosed on his e-QIP, and discussed during his personal subject interview (PSI). (GX 5; GX 4; GX 3; GX 3.) Details concerning the Chapter 13 Bankruptcy are reflected in bankruptcy court records. (GX 6.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 57-year-old program manager currently working for a defense contractor since 1984. He received his bachelor's degree in 1984. He married in 1979 and divorced in 2015. He was first granted a security clearance in 2006. (GX 2; GX 3.)

Applicant states that he filed Chapter 13 Bankruptcy in April 2015 due to the costs of a contested divorce, including legal expenses, and the impact that the loss of his spouse's income had on his ability to maintain his monthly financial obligations. (GX 3.) Applicant began making bankruptcy plan payments in May 2015, but later fell behind on his payments. In July 2016, the trustee filed a motion for dismissal for noncompliance with the payments and, despite Applicant's objection, the judge dismissed the bankruptcy. Applicant filed a motion to reconsider the order of dismissal, the motion was denied, and the order dismissing the bankruptcy for noncompliance with the agreed payment plan became final in August 2016. (GX 6.)

However, in his PSI, Applicant stated that he withdrew his bankruptcy in August 2016 to obtain a mortgage-loan modification. Applicant stated in his Answer, "I voluntarily suspended the Chapter 13 Bankruptcy plan on the advice of my lawyer until I could get a first mortgage loan modification plan approved."

In his Answer, Applicant asserts that he is on an approved IRS payment plan for his \$26,376 delinquent tax debt. (SOR ¶ 1.b.) Applicant also states that he settled the \$1,593 judgment (SOR ¶ 1.c). He did not submit any documentation in support of these assertions.

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated June 1, 2018, and Applicant's receipt is dated June 14, 2018. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

Applicant was granted the mortgage-loan modification in August 2016, and his monthly payments are approximately \$3,300. However, his April 2018 CBR shows a past-due balance of \$3,335 (SOR ¶ 1.d). (GX 3.)

During his PSI, Applicant stated his intention of refiling Chapter 13 Bankruptcy to resolve all his outstanding delinquent accounts no later than June 2018. In his May 2018 Answer, Applicant admitted SOR ¶¶ 1.e through 1.o, stating that the debts would be resolved through refiling Chapter 13 Bankruptcy at the direction of his attorney. Applicant did not submit any evidence of refiling Chapter 13 Bankruptcy or any other evidence of efforts to resolve his debts.

Applicant stated during his PSI that he has not participated in any financial counseling, nor has he been advised to do so. However, he was required to complete an online financial-counseling course as a condition of participating in a Chapter 13 Bankruptcy. He categorized his financial situation as “poor.”

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 or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable 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 establishes the following disqualifying conditions:

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

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

AG ¶ 19(f): failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's financial issues are recent, ongoing, and unresolved. Applicant is legally obligated to pay his \$179,408 in tax and other debts and failure to do so raises concerns about his willingness to abide by rules and regulations, and about his reliability, trustworthiness, and good judgment. Applicant did not provide any evidence of any resolution of or recent actions he has taken to resolve his ongoing delinquent accounts. Although Applicant was required to complete an online financial-counseling course in conjunction with his bankruptcy, he does not recall having done so. None of the mitigating conditions 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guideline F in my whole-person analysis. 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 not mitigated the security concerns raised by his significant delinquent debt. Accordingly, I conclude he has not 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): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.o:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge