



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-01142
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2019

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the security concerns raised under Guideline F (Financial Considerations). Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 10, 2017. On April 25, 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 8, 2018, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on June 1, 2018. On that same day, 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 June 14, 2018, and did not file a Response.¹ The case was assigned to me on October 11, 2018.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant has 16 delinquent accounts totaling \$64,265. Applicant denies SOR ¶ 1.a, a \$12,765 debt for a car loan, and SOR ¶ 1.p, a \$1,136 credit-card account. He admits the remaining 14 debts, all of which are delinquent student loans totaling \$50,364. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from May 2018 and December 2017, and discussed on his e-QIP and during his personal subject interview (PSI). (GX 6; GX 5; GX 3; GX 4.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 33-year-old service desk administrator currently working for a defense contractor since September 2017. He served honorably in the U.S. Air Force from June 2006 until March 2012, and was granted a security clearance in November 2006. He received his associate's degree in 2013 and his bachelor's degree in 2015. He and his wife married in 2009. (GX 2.)

Applicant denies that he owes the \$12,765 debt for a car loan alleged in SOR ¶ 1.a. According to Applicant, during the process of purchasing a new car from a dealership, the dealership paid off the loan on the car that Applicant was trading in, but then would not accept the actual trade in. Applicant went to a second dealership, where he was informed that the original dealership had paid off the trade-in car. When the original dealership discovered that it had paid for a trade-in that it did not receive, it changed its records to reflect that Applicant was liable for the amount the original dealership paid for the trade in. (GX 3; GX 2.) With his Answer, Applicant provided a letter from the lender from November 2014 that stated the loan for the trade in had been paid in full. Applicant further stated that he discussed the loan with another dealership and was told that he was not responsible for the debt. However, Applicant's CBRs show that the account was charged off by the original dealership in April 2015. Applicant's May 2018 CBR also shows that he disputed the debt after it was charged off. Applicant did not provide any information about what actually happened to the trade-in car. This debt remains unresolved.

Applicant provided a letter from March 2018 from the creditor of the \$1,136 credit-card debt alleged in SOR ¶ 1.p, which stated that the account was paid. This debt has been resolved.

Applicant admitted each of the 14 delinquent student loan accounts. He attributes his inability to pay his student loans to underemployment. Applicant asserted that he was trying to consolidate his student loans and that he was seeking better paying employment

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.

in order to resolve these debts. (GX 3.) However, there is no record evidence of resolution of these debts.

Applicant was unemployed for five months after leaving the military in 2012. However, he has been consistently employed since August 2012.

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 evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

Applicant's financial issues are recent, ongoing, and unresolved. Applicant is legally obligated to pay his student loans and his 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 he provide any evidence of any actions he has taken to resolve his delinquent accounts. 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):

- (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.

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

Applicant served honorably in the military from 2006 until 2012. His underemployment has adversely affected his ability to meet his financial obligations. However, Applicant's failure to satisfy his legal obligations raises concerns about his security worthiness.

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 delinquent debts. 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**

Subparagraph 1.a – 1.o: **Against Applicant**

Subparagraph 1.p: **For 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