



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



In the matter of:)
)
) ISCR Case No. 18-01592
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2019

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 15, 2017. On June 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on July 6, 2018, and requested a hearing before an administrative judge. The hearing was delayed because Applicant was at sea for much of 2018 to 2019. The Defense Office of Hearings and Appeals issued a notice of hearing

on August 19, 2019, for a scheduled hearing on September 10, 2019. The hearing was convened as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant offered Applicant Exhibits (AE) A through D into evidence. All exhibits were admitted without objection. Department Counsel's discovery letter and summary of exhibits were marked as hearing exhibits (HE) 1 and 2, and appended to the record. Applicant testified at the hearing. The record was held open for Applicant to submit any documentary evidence in mitigation. He submitted a statement, marked as AE E, which was admitted into evidence without objection. DOHA received the hearing transcript on September 18, 2019.

Findings of Fact

Applicant is a 36-year-old able seaman, most recently employed by a defense contractor since October 2016. He was previously employed in the oil industry until he was laid off in 2015, and worked as a truck driver trainee in 2016, making significantly less income than he does now. Applicant attended high school through the ninth grade, and did not earn a diploma. He married in 2010 and has three children (7, 11, and 14 years old). He has never held a security clearance.

The SOR alleges Applicant has three delinquent debts totaling about \$44,650. The debts include a past-due mortgage account, a credit card account, and a collection account from a truck driving school training program. Applicant admitted the SOR allegations, with explanations.

Applicant was laid off from an oil industry job in 2015, and was unable to pay his mortgage. He explained his circumstances to the creditor, who agreed to stop foreclosure proceedings and work out a resolution, but the creditor reneged on the agreement because they thought there was a lien on the property. The creditor claimed Applicant's spouse had a lien against her, but it turned out to be a different person unrelated to her or the Applicant. Applicant retained an attorney in February 2017. Based on the advice of his attorney, Applicant filed a Chapter 13 bankruptcy petition in March 2017, to freeze the foreclosure process. Applicant terminated the bankruptcy in September 2017 after the creditor agreed to renegotiate the mortgage. A new mortgage that charges a lower interest rate was substituted, and Applicant has made regular payments under the new agreement since October 2018. The mortgage is current and the delinquency is resolved. (SOR ¶ 1.a)

Applicant used a credit card to pay family expenses while he was laid off and underemployed. The account became delinquent in November 2017, and was referred to a collection agent. On the advice of his attorney, Applicant directed his attention and resources to solve his mortgage problem, before addressing the delinquent credit card. He eventually contacted the collection agent in September 2019, and negotiated a settlement to pay a reduced amount. He testified that he paid the full debt as agreed and the account is closed. (SOR ¶ 1.b)

Applicant began training for an upgraded commercial driver's license with a trucking company in 2016. He already held a class "B" license, and was hoping to upgrade it to a class "A" license. However, the trucking company charged Applicant full tuition for both licenses, totaling \$7,092, despite Applicant's possession of the class B license. Applicant disputed the charges, but the company was unwilling to reduce the debt. He paid \$150 toward the debt, but refused to pay full tuition. Also, the salary he earned working for the company was not sufficient to meet his household expenses. He left the job and began working for his current employer at a significantly greater salary. After the hearing, Applicant contacted the creditor to attempt to negotiate a payment plan, but they insisted on full payment. Applicant does not have the money to pay the full amount, but he intends to return to sea to earn enough voluntary overtime pay to satisfy the debt.

Applicant had about \$9,300 in savings and a 401(k) plan valued at about \$7,000 at the time of the hearing. He now earns about \$80,000 per year because of his increased voluntary deployments. This income is sufficient to pay his household expenses and to soon pay off his debt to the trucking company. Applicant participated in financial counseling prior to filing bankruptcy. I found Applicant's testimony to be honest, sincere, and forthcoming.

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; 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 ¶¶ 19 (a) 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 incurred debts that were beyond his control due to a job loss and underemployment. He has addressed his debts in a responsible manner. He resolved the mortgage and credit card debts, and despite disputing the truck driver training debt, he vowed to earn sufficient money to pay it. He sought and received advice from an attorney and participated in financial counseling. There are clear indications that his financial problems are resolved or being resolved, and his financial status is under control. I find that additional financial delinquencies are unlikely to recur and his financial status does not cast doubt on his current reliability, trustworthiness, or good judgment. Mitigating conditions in AG ¶¶ 20(a) through (e) 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 Guideline F in my whole-person analysis. I believe Applicant adequately explained his financial situation, and despite the debts incurred as a result of job loss and underemployment, his financial decision-making is sound and responsible. He has not incurred additional debts since working as a seaman, and he is able to meet all financial needs of his family on his current salary.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial consideration security concerns. Accordingly, I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge