



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



In the matter of:)
)
) ISCR Case No. 18-02373
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Shirin Asgari, Esq.

06/17/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant has a history of financial difficulties. He testified and presented a substantial amount of documentary evidence in mitigation of the security concerns raised by his past actions. Eligibility for access to classified information is granted.

Statement of the Case

On October 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on October 22, 2018, admitting with explanations each of the six allegations in the SOR. He requested an administrative determination and waived a hearing before an administrative judge. On November 14, 2018, Department Counsel requested a hearing and notified Applicant. Applicant then retained counsel, who entered her appearance on November 19, 2018. The case was assigned to another administrative judge and then reassigned to me on December 12, 2018. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing on January 9, 2019, via video teleconference.

I convened the hearing as scheduled. Department Counsel offered five documents, which were pre-marked as Government Exhibits (GE) 1-5. Applicant offered 14 exhibits, which were pre-marked as Applicant Exhibits (AE) A through N. All exhibits were admitted without objection. I left the record open until January 23, 2019, to give Applicant the opportunity to submit additional evidence. On January 15, 2019, Applicant's counsel sent an email to me and Department Counsel with three additional exhibits attached. I marked the exhibits as AE O, P, and Q. Department Counsel had no objection to the admissibility of these supplemental exhibits, and I admitted them into the record. I also marked the email thread regarding Applicant's post-hearing submission as Hearing Exhibit I. DOHA received the transcript of the hearing on January 25, 2019. (Tr.)

Findings of Fact

Applicant admitted, with explanations, all six allegations in the SOR. I have incorporated his admissions into the findings of fact. Applicant's personal information is extracted from GE 1, his security clearance application, dated July 24, 2017, unless otherwise indicated by a parenthetical citation to the record. After a thorough and complete review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 41 years old and has worked as a supervisor for a defense contractor since June 2017. He served in the U.S. Marine Corps for 21 years and was honorably discharged in 2017 with the rank of gunnery sergeant (E-7). Applicant has held a security clearance since 1995, which was renewed in 2007. He has been married for 20 years and has three children and a stepchild. In 2009, he earned a bachelor's degree in information-technology management. (Tr. 11-12.)

On July 24, 2017, Applicant submitted a security clearance application (SCA) in connection with his new employment with a defense contractor. He disclosed in his SCA that in 2013, while he was assigned to duties in Japan and his wife was unable to work, they sought financial guidance from a legitimate, professional counseling company (the Counselor) to help them budget their expenses and to pay off their debts in an orderly manner. They set up a three-plus year payment plan, which he reported would end in October 2017. The plan provided for the resolution of about 12 debts that totaled about \$13,000. He actually made the last payment in April or May of 2018. In April 2017, Applicant also hired a credit repair firm to help him remove debts from his credit report

that were lingering after the debts were resolved. (GE 1 at 37-38; Tr. 36, 40, 45, and 48-49; AE K.)

The SOR alleges a 2005 Chapter 7 bankruptcy (SOR ¶ 1.a) and five delinquent debts, consisting of a \$30,000 debt owed to a solar energy company (SOR ¶ 1.e), a charged-off personal loan in the amount of \$2,809 (SOR ¶ 1.b,), a balance due on a car loan in the amount of \$812 (SOR ¶ 1.c), a credit-card debt in the amount of \$143 (SOR ¶ 1.d), and a bill related to the adoption of a dog in the amount of \$67 (SOR ¶ 1.f). Applicant's most significant delinquent debts arose in 2014 when his posting in Japan, caused him some significant financial distress.

In January 2013, Applicant received accompanied-overseas orders for a permanent station change to Japan. Prior to his transfer in May 2013, Applicant and his family lived in a home that he owned in the United States. After his relocation, he rented the house for a period, but lost the tenant in late 2013. From his duty station in Japan, he was unable to find a reliable tenant. He was forced to pay \$2,100 per month without the benefit of his basic housing allowance since he and his family lived on base in Japan. He incurred a number of debts and hired the Counselor to help resolve them. The two largest SOR debts discussed below (SOR ¶¶ 1.b and 1.e) arose during this period and could not be resolved by ICDS's debt consolidation process. In October 2015, he managed to sell his U.S. home in a short sale that resolved his mortgage delinquency, and to pay off most of his debts with the help of the Counselor. The five SOR debts are the exceptions. (Tr. 21-25, 46; SOR Response at 1; AE B; GE 2 at 6.)

Applicant's financial condition worsened in May 2015 when his daughter was diagnosed with a serious, long-term illness that required that she return to the United States for treatment. She was hospitalized for four months. His wife and daughter immediately moved to Hawaii, and Applicant followed later after receiving a hardship transfer. The sudden relocation as well as his daughter's medical care caused significant family expenses and further aggravated his financial distress. (Tr. 31-33, 46.)

SOR ¶ 1.a: 2005 Chapter 7 bankruptcy. Applicant was confronted with financial difficulties during a ten-month deployment in a war zone in 2004 to early 2005. He sought financial assistance to prepare a family budget at the beginning of his deployment, which worked well until December 2004, when his wife become seriously ill and was incapacitated. Their children were put in day care, which was expensive, and his wife got behind in their bills. He sought financial assistance from a debt-consolidation company that recommended that he file a Chapter 7 bankruptcy. He did so, and his debts, which totaled \$39,410, were discharged in May 2005. He kept his two cars out of the bankruptcy and continued making payments on them. (SOR Response at 1 and 9; GE 3 at 3; Tr. 17-20 and 42.)

SOR ¶ 1.e: Financing debt for solar energy panels charged off in the amount of \$30,338. Applicant opened this account in October 2011 in the approximate amount of \$26,000 to pay for the installation of solar-energy panels on the roof of his house. He defaulted on this account in or about August 2014, at a time when he was prioritizing the payment of the mortgage on the property. The creditor refused to work out a payment

arrangement with the Counselor, which Applicant had engaged in August 2014 to help him. The creditor repossessed the solar panels and charged off the entire account. In an email from the creditor, dated November 21, 2018, three years after the repossession of the equipment, Applicant was advised that the creditor retained the solar system in full satisfaction for the amount owed under his contract and reported a zero balance on the account. This debt was dropped from the Government's credit report, dated September 17, 2018. This debt is resolved. (Tr. 29-32, 51-53; AE C, E; GE 5.)

SOR ¶ 1.b: loan account charged off in the amount of \$2,809. In December 2012, Applicant took out this personal loan in the approximate amount of \$3,800 to pay for household goods and expenses. He defaulted on the loan in or about September 2014 when he was stationed overseas and his daughter became ill. In November 2018, he entered into a settlement and payment plan with the creditor under which they reduced the debt to \$1,824 and agreed to accept payments of \$180 for a ten-month period, ending in August 2019. This debt is being resolved. (Tr. 20-24, 42-43; AE I and Q.)

SOR ¶ 1.c: car-loan account referred to collection in the amount \$812. Applicant purchased a car in November 2010 and was obligated to pay \$546 a month for five years. He traded the car in when he purchased his current car. He believed that the car dealership that took his old car as a trade was responsible for paying off the balance of the loan so that the dealership could obtain a clean title to the car. In September 2016, he received a letter from the creditor claiming he owed this additional amount. He tried to work with dealership that sold him the original car and the dealership that accepted that car as a trade for his new car, but neither would accept responsibility. To clear the debt off his credit report, he paid it in August 2018, which was prior to the issuance of the SOR. He attached to his SOR Response a letter from the creditor, dated August 29, 2018, which advised Applicant that his account has been paid in full and closed. This debt has been resolved. (Tr. 24-26; SOR Response at 10; GE 4.)

SOR ¶ 1.d: delinquent credit card account debt in the amount of \$143. Applicant opened this credit card account in August 2011. He defaulted on paying this account in 2014. He made payments on the original debt of about \$640 through the Counselor. He understood the debt was fully paid, but he was told by the background investigator that he still owed the bank a small amount and that the debt had been charged off. He then contacted the bank and the collection agency that owned the debt. The collection agency offered a settlement of \$104, and Applicant paid it. Applicant submitted an exhibit which reflects that this account has a \$0 balance. This debt has been resolved. (Tr. 26-29; AE P.)

SOR ¶ 1.f: account referred to collection in the amount of \$67. This debt was incurred when he and his family adopted a dog in 2012. He thought he paid this charge at the time of the adoption and believes the debt is a mistake. He learned about the debt at the time of his background interview. It had not appeared on the credit reports he had previously reviewed. On November 20, 2018, he paid the collection agency to have the debt removed from his credit report. This debt has been resolved. (Tr. 34-36; AE H.)

Applicant submitted three reference letters, two from fellow members of the Marine Corps and one from a co-worker. They all describe Applicant as a highly trusted, professional, and dedicated Marine, now retired. One reference commented that Applicant always took responsibility for his mistakes. He did exactly that during his background interview and during his testimony at the hearing. His co-worker wrote that Applicant has excellent judgment and is highly trustworthy. (AE A.)

Applicant has been awarded six Navy Achievement Medals and three Navy Commendation Medals. He has been assigned to eight overseas tours away from his family, three of which were combat tours in war zones. He provided copies of these awards along with copies of many others he has received from the Navy over his 20 years of service. He also provided a detailed budget that shows a net monthly remainder of \$3,325. He follows the budget carefully and pays all of his expenses. He has no new debts at this time (AE L and N; Tr. 37.)

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.

Eligibility for a security clearance 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 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.” 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant’s admissions, testimony and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially applicable:

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(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 indication that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts.

All of the above mitigating conditions have been established. Applicant's debts arose a number of years ago, and for the most part, were resolved well before the SOR. Applicant has shown that his financial difficulties are unlikely to recur and that his history of financial problems does not cast doubt on his current reliability, trustworthiness or good judgment. Many factors contributing to his difficulties were due to circumstances beyond his control, specifically, his assignment to Japan, which caused him to have to rent his home to tenants who proved to be unreliable, his loss of his basic housing allowance while in Japan, and his daughter's serious illness. When faced with these problems, Applicant took a proactive approach by seeking counseling and debt-consolidation services from a legitimate and credible source, which were helpful for the most part.

Those debts Applicant could not restructure were resolved by the repossession of the solar equipment from his home followed by the short sale of the residence. He arranged for and has adhered to a payment plan that is resolving his only other significant debt. He paid the others off. He has received professional help to teach him family budgeting, and he now has his expenses under control, making it unlikely that he will find himself with delinquent debts again. With his one remaining debt, he is adhering a to a good-faith plan to repay this debt in a few months.

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 and applying the adjudicative factors in AG ¶ 2(d). The factors are:

- (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 and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial history.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Conclusion

In light of all the circumstances presented, I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant continued eligibility for access to classified information. Clearance is granted.

John Bayard Glendon
Administrative Judge