



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



In the matter of:)
)
)
) ISCR Case No. 18-02377
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

05/21/2019

Decision

LYNCH, Noreen 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 on August 3, 2016. On October 17, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on February 6, 2019. Applicant received the FORM on February 20, 2019. The Government's evidence, included in the FORM and identified as

Items 1 through 6, is admitted without objection. Applicant responded to the FORM with a packet of documents, which was marked as Applicant Exhibit A, and admitted into the record without objection. The case was assigned to me on April 4, 2019. Based on my review of the documentary evidence, I find that Applicant has mitigated the financial concerns.

Findings of Fact¹

Applicant is a 59-year-old employee of a federal contractor. He is married, and he has three adult children. (Item 3) He served in the U.S. Air Force on active duty, receiving an honorable discharge. He obtained an undergraduate degree in 2012, along with various certifications during his career. He has held a security clearance. Applicant has been employed with his current employer since June 2015. (Item 3, 10)

Financial

SOR alleges 10 delinquent accounts (1.a-1.j) totaling about \$67,000, including seven student loans, totaling \$31,000, a 2013 judgment in the amount of \$4,031, and a 2017 state tax lien in the amount of \$5,427.73. (Items 1, 8) Applicant admitted the debts listed on the SOR. (Item 2) His credit reports confirm the delinquent debts. (Items 5, 6, 7)

Applicant attributes his delinquent debts to medical issues, unemployment on three occasions over the past two years, his mother's illness and death, four family member deaths, and a knee surgery in 2012. (AX A) In addition, Applicant's unexpected heart attack in 2014, while being the power of attorney for his ailing mother who passed in 2016, exacerbated his expenses. Applicant's older brother died one year before his mother. His cousin died in 2017. Funeral trips and expenses decreased his ability to pay all bills in a timely fashion.

Applicant explained during his August 2017 investigative interview that after several bad years financially due to the myriad issues listed above, his financial situation is improving. (Item 10) He is working with all creditors. He understands that his credit took a downturn the last few years due to caring for his mother emotionally and financially. His financial situation is getting back on track. (Item 10)

SOR 1.a is a loan now owed by another company. Applicant established contact with the company. He has had to track down to whom the debt is owed. He has a payment plan in place. (AX A)

As to SOR allegations 1.b to 1.h, Applicant stated that he had some student loans that he fell behind with payments. His Facility Security Officer (FSO) stated in a letter that Applicant worked diligently to get caught up. AX A) The loans changed to various

¹ Applicant's personal information is extracted from his security clearance application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

collection agencies and he wrote a letter of hardship to explain his circumstances. Also, he submitted as a response to FORM, documentation that he completed the forbearance and rehabilitation process. The student loan in 1.b, was settled and Applicant has satisfied the debt. Applicant showed two payments of \$453 were made. He also made some payments in 2017. (AX A) As to the remaining student loans, Applicant has a payment plan of to pay \$766 monthly for 36 months. This will total \$27,600. The six student loans are now rehabilitated; and he is not past due on any balance. He submitted receipts. (AE A)

As to SOR 1 i., Applicant provided documentation that he paid the judgment and disputes that he owes this amount. He contacted the attorney in the proper county and has not heard back. This was the result of a loan that his wife obtained prior to Applicant's period of unemployment. (Item 10) However in his packet to the response to the FORM, he submitted a form from the court that stated the judgment is satisfied. (AX A)

As to SOR 1.j, Applicant candidly addressed the issue of the tax lien (\$5,457) as a result of personal taxes being mistakenly sent to the wrong state. He hired an accountant to correct a tax refund. He submitted his pay stub as proof that state one was listed as his residence and a 2016 letter for request of nonresident tax refund in the amount of \$2,569. Applicant also submitted a turbo tax report that confirmed \$5,071 was tax taken from his wages and given to state one. Applicant submitted a 2016 letter to the Comptroller of state two to process an amended income tax form. This documentation shows that state taxes were properly paid to state two and Applicant was due refunds. (AX A) Nonpayment of state taxes, although, discussed in the FORM, are not evident in the record or the investigative interview in 2017.

Applicant provided documentation that he has paid non-SOR debts that were mentioned in the FORM, but not the allegations. He is current with his mortgage and has paid a large water bill in the total amount of \$3,252 with monthly payments of at least \$250. Applicant submitted the payment history as proof of payments. (AX A) His credit bureau report from 2016 reveals many accounts that are paid as agreed. He provided documentation to prove his claim. (AX A)

Applicant received financial counseling and did not shirk from any delinquent accounts or student loan. He contacted all creditors and arranged payment plans when he resumed employment. His wife also works and they utilize a budget.

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. 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.

Analysis

Guideline F (Financial Considerations)

The 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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, corroborated by his credit reports, and failure to pay his delinquent debts or set up any payment plans raises two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 indications that the problem

is being resolved or is under control;

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 debt.

Applicant had extraordinary events that occurred in the past few years that were beyond his control. He cared for his mother until her death. He was unemployed several times. Other family members died and he attempted to carry on responsibly. He did not shirk from his creditors. He provided documentation that his student loans are consolidated and he is making timely payments. His other delinquent debts have been satisfied or disputed. He suffered his own medical issues. He submitted sufficient information in response to the FORM to mitigate financial considerations security concerns. Applicant has furnished sufficient information to meet his burden. The five listed 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(d):

(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.

Applicant is married and has three children. He has worked in the contracting field for many years. A string of extraordinary events occurred in his life within a short span of time. He acted responsibly. He has addressed his student loans and the other delinquent debts. Some are satisfied or were mistakes. His unemployment exacerbated his tragedies. Circumstances beyond his control adversely affected his finances, and he acted reasonably and responsibly to address his delinquent debts. He has carried his burden of proof.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.j:

For Applicant:

Conclusion

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

Noreen A. Lynch
Administrative Judge