



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



In the matter of:)	
)	
)	ISCR Case No. 18-02919
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Appellant: *Pro se*

10/29/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has significant unpaid debts. Based upon the record as a whole, eligibility for access to classified information is denied.

Statement of the Case

On December 19, 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* (Feb. 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on January 25, 2019, admitting two of the three SOR allegations and providing a lengthy statement in mitigation about each allegation. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On July 17, 2019, the case was assigned to me. DOHA issued a notice of hearing on September 6, 2019, scheduling the hearing on September 26, 2019.

I convened the hearing as scheduled. Department Counsel offered five documents, which I marked as Government Exhibits (GE) 1 through 5. The Government's exhibits were admitted into the record without objection. I marked Department Counsel's Exhibit List as Hearing Exhibit 1. Applicant offered no documents at the hearing. I left the record open until October 10, 2019, to allow Applicant the opportunity to submit documentary evidence in support of his case. On September 29, 2019, he submitted one document, which I have marked and admitted without objection as Applicant Exhibit (AE) A. On October 2 and 4, 2019, Applicant wrote two emails, which I have marked as Hearing Exhibit 2. I have included the information in his emails regarding the debt alleged in SOR ¶ 1.c as evidence to be included in the record. DOHA received the transcript (Tr.) on October 11, 2019.

Findings of Fact

I have incorporated Applicant's admissions in his SOR response in the findings of fact. Applicant's personal information is extracted from GE 1, his security clearance application (SCA), dated April 20, 2017, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant, 49, has worked for a U.S. Government contractor as an engineer since 2013. He served in the U.S. Air Force from 1992 to 2000 and deployed on two occasions, once to the United Kingdom and once to Saudi Arabia. He held a top secret clearance throughout his military service and was granted eligibility for access to sensitive compartmented information (SCI) in 1999 as part of his duties during Operation Desert Shield. (GE 5 at 2.)

Applicant has been married since 1993. He and his wife have three children, ages 22 to 24. In 1992, he earned a high school diploma. He reports no unemployment during the last 15 years.

In 2004, Applicant and his family moved to State 1 where they presently reside. In November 2005, he and his wife purchased House 1 for \$360,000 with a \$100,000 cash down payment and the balanced financed with a first mortgage. In 2007, they purchased House 2 for \$620,000, all of which was financed with a first mortgage, and moved into that house while renting House 1. Shortly thereafter, their oldest child became seriously ill. She was treated in their local city for about 18 months at which time she became even sicker. After much research, Applicant and his wife determined that their daughter's best chances for survival was to be treated at a hospital in State 2. Applicant relocated his family to State 2 so that his child could be treated there. They put both houses on the

market to sell, but the housing market crash made that difficult. In 2008, they successfully sold House 2 in a short sale for \$425,000. They rented House 1 for a period. (Tr. 17-22, 27.)

In about November 2009, the treatment of Applicant's daughter was completed, and he moved his family back to State 1. They lived in House 1 until November 2010. At that time, he and his wife bought House 3, paying \$245,000. They rented House 1 again, but the tenants vacated sometime thereafter. (Tr. 23-35.)

In October 2006, Applicant had also taken out a Home Equity Line of Credit or HELOC secured by House 1 with a debt of about \$145,000. He primarily used the proceeds of that loan to make improvements to House 1. In 2011, the mortgage on the house 1 was about \$218,000 and it was worth about \$200,000. He had a significant negative equity in the property. He was advised by a friend who was a realtor to let the house go to foreclosure. Applicant agreed and stopped paying his mortgage and the HELOC. In 2012, the mortgage holder foreclosed due to the defaulted loan. Following the foreclosure, the first mortgage bank accepted the proceeds of the sale, and the HELOC lender received nothing. Under the terms of the HELOC, the lender converted the HELOC into a personal loan on which Applicant remained liable in the full amount of the debt. This debt is the subject of SOR ¶ 1.a. (Tr. 23-35.)

After the foreclosure, Applicant began to again pay the former HELOC debt until 2015. His realtor friend advised him that the lender would not negotiate a settlement with him as long as he continued to pay the loan every month, so Applicant stopped paying the monthly charge of \$288. He choose to do this even though he had the financial ability to continue to pay the loan. He made attempts to negotiate a settlement with the lender with discussions over the phone for another two years. At one point, he offered to pay \$24,000. He also testified that he offered to pay \$60,000 in 2017, but the lender never responded. Instead, the lender issued a FORM 1099-C at the end of the year cancelling the entire debt in the amount of 147,982, which included \$2,200 of unpaid interest. Due to a tax exclusion, he was not obligated to pay taxes on the cancelled debt. Applicant has no plans to take any further steps to pay this debt, notwithstanding his current annual income of \$150,000 to \$170,000. (Tr. 36-40, 45-46, 51.)

SOR ¶ 1.b alleges a charged-off account held by a retail-store, credit-card bank in the amount of \$3,237. In his SOR response, Applicant admitted this debt. This debt arose out of Applicant's purchase of a TV for \$1,800 in 2009. The purchase was made on credit. Both of the Government's credit reports for Applicant in the record reflect that the debt is in collection. Applicant claims that he set up online an automatic payment of \$75 per month to be paid out of his debit card. His payments stopped at some point, which Applicant blamed on his debit card expiring in about 2011. The debt was turned over to a collection agency, and it demanded payment in the amount of \$2,800. Applicant believed he had paid the debt down to about \$600. He disputed the debt with the collection agency and demanded documentation from the collection agency to establish the amount of the debt, which he testified was never provided. He has had no further contact with anyone about the debt, and it remains unpaid. (Tr. 46-48, 55-56; GE 3 at 2; GE 4 at 1.)

SOR 1.c alleges an account owed to a collection agency in the amount of \$108. Applicant denied this debt in his SOR response. The debt arose after Applicant cancelled his Internet service in December 2014 and did not return the modem to the service provider. In his background interview, he told the investigator that the collection agency offered to call the service provider to ask if it would accept the return of the modem in lieu of a payment. He said that he never heard further about the matter and plans to do nothing but wait until the collection agency calls or writes him. At the hearing, he testified simply that the matter was resolved, though he said he had no proof of the resolution. He believes the matter is resolved because the debt does not appear on his credit report. He did not offer the credit report into evidence. The debt does not appear in either of the two more recent credit reports introduced by the Government. It is the subject of a discussion in Applicant's background interview, which indicates that the debt appeared in the credit report in the possession of the government interviewer at the time. In an email dated October 4, 2019, Applicant advised that he just paid the Internet service provider \$111 to resolve this debt. (Tr. 48-49; GE 2 at 4-5; Hearing Ex 2 at 1-2.)

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 as follows:

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.

Applicant’s admissions in his SOR response and 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 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 creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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.

The mitigating conditions set forth in AG ¶ 20(a) have been partially established. The foreclosure on House 1 occurred a number of years ago. His non-payment of his debt arising from the foreclosure of the HELOC occurred in 2015, which is not that long ago. Applicant's choice not to pay this debt was a strategic decision he made in the hopes of negotiating a better deal than paying the balance of the loan at the rate of \$288 per month or whatever larger amount he decided. With his substantial income, the loan could have easily been paid off in due course. The fact that his lender eventually cancelled the debt undercuts any argument that this sort of behavior is unlikely to recur in the future. His inactions on addressing the TV purchase credit debt and the Internet modem debt support this conclusion. Moreover, his behavior casts doubt on his current reliability, trustworthiness and good judgment.

AG ¶ 20(b) has not been established for the reasons set forth above in the discussion regarding AG ¶ 20(a). The conditions that resulted in the financial problem were within Applicant's control. Also, he failed to act responsibly under the circumstances. On three occasions, he ignored his indebtedness in the hopes that the creditors would not pursue him. His approach proved to be in his best financial interests, but they do not

reflect that he is someone who keeps his promises when he is extended credit. Applicant's established pattern of behavior raises questions about his trustworthiness, reliability and good judgment.

Applicant presented no evidence that he has received financial counseling of any kind, other than from a friendly realtor, who advised him to enter into a strategic default on all of his debts relating to House 1. Such advice does not qualify under this mitigating condition. There are no indications in the record that either of Applicant's two largest debts are being resolved. The fact that the former HELOC debt has been canceled by the creditor is not evidence of successful mitigation efforts by Applicant.

The only debt that Applicant has paid is a small debt paid after the hearing in this case. There is insufficient evidence to establish mitigation under AG ¶ 20(d)

Applicant disputes the debt alleged in SOR ¶ 1.b. He has not provided a reasonable basis to dispute this debt, which arose in 2012 when he stopped paying the debt because, he claims, his debit card had expired. He has provided no documentation to substantiate the basis of the dispute. He merely claims that the debt no longer appears on his credit report, which he failed to introduce into the record. Even if the debt dropped off his credit report, as it has in GE 3 and GE 4, that is not evidence of actions taken to resolve the dispute. AG ¶ 20(e) has not been established.

Whole-Person Analysis

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). These 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.

My analysis of the Guideline F mitigating conditions addresses many of the above factors. I have weighed the importance of Applicant's military service in the Air Force with a top secret and SCI security clearances during Operation Desert Shield and his work since 2013 as a defense contractor. I have also considered the seriousness of Applicant's

situation dealing with his daughter's illness, but I conclude that his relocation for her care did not significantly contribute to his debts or his mishandling of his debts.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial considerations.

Formal Findings

Guideline F, Financial Considerations

AGAINST APPLICANT

Subparagraphs 1.a - 1.c:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge