



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-02963
)
 Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*
09/12/2019

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 6, 2016. On December 31, 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 (EO) 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 the DOD on June 8, 2017.

Applicant answered the SOR on February 4, 2019, and requested a decision on the record without a hearing. On June 14, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on June 27, 2019,

and did not respond. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on August 29, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), his SCA (Item 3), and a summary of his security clearance interview (SI) (Item 4). Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case. Applicant received the FORM, which included a copy of Item 4. He did not respond to the FORM or otherwise object to Item 4.

Findings of Fact

Applicant, age 49, divorced his wife of 24 years in 2015. He has three children, ages 17, 22, and 26. He has resided with a cohabitant since 2016. He honorably served on active duty in the U.S. Navy from 1991 through 2011. He deployed to a combat zone in 2008 for six months. He has been taking college courses on and off since 2002, and has not yet earned a degree. He has been steadily employed full time since he separated from the Navy, including as a web developer on a defense contract since 2016. He reported no prior security clearances.

Applicant admitted each of the 11 debts alleged in the SOR, which totaled \$60,232. He attributed his financial indebtedness to the divorce. The marital debts (which included all of SOR debts) were equally divided between the parties in the divorce decree. Applicant has been paying alimony in an amount and for a duration not specified in the record. The record did not address the issue of child support. As of February 2019, Applicant had not resolved any of the SOR debts. Instead, he asserted that he was "working out the details" to get them resolved and planned to contact his ex-wife to "get more information as to what it [sic] happening." (Item 2; Item 4 at 5)

Each of the SOR debts were incurred during Applicant's marriage. He has not accrued any new debts since the divorce. The SOR did not allege the amounts charged off in SOR ¶¶ 1.f through 1.h. They were, however, reported in the credit reports as \$876, \$664, and \$3,674, respectively. The debts alleged in SOR ¶¶ 1.f and 1.g are the same as those alleged in SOR ¶¶ 1.d and 1.e. (Item 5; Item 6)

Applicant admitted that he and his wife had difficulty living within their means, which he attributed to his military lifestyle and moving frequently. They used credit cards to pay for everyday living expenses. After the divorce, his ex-wife filed for bankruptcy, which Applicant stated did not include most of his debts. However, he did not specifically address whether any of the SOR debts were included in the bankruptcy. The

credit reports listed only one of the SOR debts as a joint account (SOR ¶ 1.a). The others were listed as individual accounts. (Item 4 at 4; Item 5 at 3; Item 6 at 7)

During his 2017 security clearance interview, Applicant acknowledged the delinquent debts that were later alleged in the SOR, and promised to contact his creditors to resolve them. He asserted that his salary allowed him to better manage his finances and anticipated that he would have the debts resolved by the end of 2018. (Item 4 at 5.) He did not address, in his SOR Answer or otherwise, the reason that he has not yet resolved his delinquent debts, nor has he demonstrated any progress in resolving them.

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.” (*Egan* 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.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant 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.” (EO 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. (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. (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; AG ¶ 2(b)).

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)).

Because they duplicate other alleged debts, I have found SOR ¶¶ 1.f and 1.g in Applicant’s favor. As to the remaining unresolved debts, Applicant’s admissions and his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are established:

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; and

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

Applicant has substantial delinquent debts that remain unresolved, despite his gainful employment since at least 2017. He failed to demonstrate that he acted responsibly to address them. He has neither paid nor established a plan to resolve his debts. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered Applicant's military service, including his combat tour. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated security concerns raised by his financial indebtedness. Accordingly, Applicant 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

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraphs 1.f – 1.g:	For Applicant
Subparagraphs 1.h – 1k:	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge