



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



In the matter of:)
)
) ISCR Case No. 19-00025
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline F (financial considerations). He made significant progress and demonstrated good faith in resolving his delinquent debts. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 2018, Applicant submitted a security clearance application (SCA). On January 24, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F. The action was taken 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) effective within the DOD on June 8, 2017.

On February 15, 2019, Applicant responded to the SOR, and he requested a hearing. On June 5, 2019, the case was assigned to me, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 25, 2019. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits, Government Exhibit (GE) 1-5, and Applicant offered three exhibits, Applicant Exhibit (AE) A-C. There were no objections, and all proffered exhibits were admitted into evidence. Applicant testified, and one witness testified on his behalf. The record was held open for 30 days in the event either party wanted to submit additional documentation. On July 8, 2019, DOHA received the hearing transcript. No documents were submitted, and the record closed on July 25, 2019.

Preliminary Matters

Department Counsel made a motion to change the date on the SOR to reflect January 24, 2019, rather than the typo of January 24, 2018. I granted the motion.

Findings of Fact

In Applicant's SOR response, he admitted that he owed all of the debts alleged in SOR ¶¶ 1.a-1.m. He also provided mitigating information showing that the debt in SOR ¶ 1.a was being paid by monthly installments. Applicant's admissions are accepted as findings of fact.

Applicant is a 26-year-old security site supervisor for a government contractor. He has never married and does not have any children. He attended four years of college, but he does not possess a college degree. He intends to return to college once his student loans are rehabilitated. In May 2015, Applicant left college and began full-time employment as a security guard, but his income was insufficient to pay all of his monthly expenses. In November 2016, he was hired by his current employer and his income essentially doubled. Applicant currently resides with his mother, and his monthly net income is approximately \$3,500. (Tr. 19-21, 23, 25-31; GE 1)

Financial Considerations

The SOR alleges 13 delinquent debts, 11 of which are defaulted student loans. The total amount of debt is \$48,306, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a delinquent loan account for \$524. This debt resulted from Applicant's purchase of a motorcycle after he left college in May 2015. He stated that he was underemployed in 2015, and he considered this as an irresponsible purchase. He could not pay the monthly loan payments with his limited income. His mother was held responsible as a co-signer on the loan. In 2016, she filed for Chapter 13 bankruptcy. Applicant could have allowed the motorcycle to be repossessed, but he decided he wanted to be responsible for his purchase. The bankruptcy trustee had the full motorcycle loan payment of approximately \$300 be deducted from his mother's pay each month. Since 2016, Applicant has consistently repaid his mother every month for the motorcycle loan payments. He provided documentation showing the loan account balance is \$1,640, which will be paid in less than one year. The March 2019 credit report showed this account as "current – pays account as agreed." (Tr. 16-19; GE 2; AE C; SOR Response)

SOR ¶¶ 1.b-1.k allege ten defaulted student loans with the U.S. Department of Education for \$45,090. Applicant received a student loan for every semester he was enrolled in college. He was underemployed and unable to make the student loan payments after he left college in 2015. In December 2018, Applicant entered into a student loan rehabilitation program. He has paid seven out of the required nine monthly payments to have his student loans rehabilitated. Applicant provided documentation to show he is current with the \$513 monthly payments, which are automatically deducted from his bank account. The delinquent student loans are being resolved. (Tr. 12-16, 22-24, 31-33; AE A, AE B)

SOR ¶ 1.l alleges a collection account owed to Applicant's college for \$2,410. Applicant contacted a lawyer two weeks prior to the hearing to have this student loan account consolidated with his other student loans in the rehabilitation program. The student loan account will be added to his rehabilitation program in the near future. (Tr. 22-23; SOR Response)

SOR ¶ 1.m alleges a collection account owed for an unpaid credit card in the amount of \$282. Applicant did not recognize this account, but stated it was his intention to pay this account in full by the end of the day. No supporting documentation was provided during the 30-day period the record was held open. This debt is not resolved. (Tr. 33-34)

Applicant has a monthly budget in place and lives within his means. He has managed to save about \$3,000 in the event of an emergency. A co-worker and a former supervisor of Applicant testified that he is a responsible employee. Applicant has been promoted over the last three years due to his outstanding work ethic. The co-worker was aware of Applicant's financial difficulties with student loans, and believed Applicant was diligently working to resolve the issue. He recommended Applicant be granted a DOD security clearance. (Tr. 34-35, 38-39, 44-46)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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.

The SOR alleges 13 delinquent debts totaling \$48,306, 11 of which are defaulted student loans. Applicant's student loan debt resulted from underemployment. This was a circumstance largely beyond his control. In December 2018, before the SOR was issued, Applicant began a student loan rehabilitation program. He has made seven consecutive monthly payments and only needs to make the next two monthly payments to have his student loans taken out of default status. He is currently in the process of adding another student loan to the rehabilitation program.

Applicant is current on his motorcycle loan and will soon have it paid in full. The only remaining SOR debt alleged in ¶ 1.n is a credit card debt in the amount of \$282. Applicant did not recognize the account, but claimed he was willing to pay it in full by the end of the day of the hearing just to have it off of his credit report.

At the hearing, Applicant was very candid about his financial issues. He made significant progress and has demonstrated good faith in resolving his delinquent debts. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(a), 20(c) and 20(d) are established, and financial considerations security concerns are mitigated.

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 the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant has taken positive steps to correct his outstanding financial obligations. He has two repayment plans in place with a long history of documented payments. He has not developed any new delinquent debt. He has shown financial maturity with the

establishment of a savings account for unexpected emergencies. As a government contractor employee, Applicant has quickly risen in the ranks due to his excellent work ethic. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are mitigated.

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 through 1.m:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge