



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-00234
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*
10/21/2019

Decision

HESS, Stephanie C., Administrative Judge:

Due to relocating for his employment, Applicant experienced a brief period of financial instability. However, he mitigated the financial concern by acting responsibly under the circumstances and by reaching resolutions for all of the SOR debts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on July 21, 2016. On February 1, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 implemented by DOD on June 8, 2017.

Applicant answered the SOR on March 1, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 3, 2019, and the case was assigned to me on April 11, 2019. On June 7, 2019, the Defense Office

of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 27, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted into evidence without objection. Applicant testified, and I admitted Applicant's Exhibits (AX) A through D. I left the record open until July 11, 2019, to enable Applicant to submit documentary evidence. He timely submitted AX E through AX G. On October 2, 2019, I reopened the record, without objection, and Applicant submitted AX H and AX I. DOHA received the transcript (Tr.) on July 11, 2019.

Findings of Fact

The SOR alleges that Applicant had four delinquent consumer accounts totaling \$26,521. Applicant admits SOR ¶ 1.b, a \$3,062 credit-card debt, but denies the other three allegations. The debts are reflected in Applicant's credit bureau reports (CBR) from May 2019, December 2018, and October 2016. (GX 6; GX 5; GX 4.)

Applicant is a 53-year-old staff engineer currently employed by a defense contractor since December 1999, and periodically employed by the same defense contractor from 1989 until 1996. Applicant received his bachelor's degree in 1988. He and his current wife married in 2012. He was previously married from 1991 until 2010. He has three children and three step-children, none of whom reside with Applicant and his wife. He received his first security clearance in 1989. (GX 1; Tr. 38.)

In 2015, Applicant's employer offered him a lateral transfer to a facility in another state. Applicant thought the transfer would offer him greater opportunities within his employment, as well as afford him a better cost-of-living. In March 2015, Applicant listed his house for sale. He accepted the offer in April 2015 and moved to another state, where he rented a house. Although his daughter resided in his house in his previous state of residence, Applicant retained responsibility for paying the mortgage loan and the utilities while the house was on the market. The house sold in November 2015. (AX A; Tr. 20-22.)

After relocating, Applicant was required to purchase household furnishings for his new home. Due to the outlay of paying rent, furnishing his new home, and maintaining a mortgage and utilities on his previous home for a period of eight months, Applicant amassed significant credit-card debt which became delinquent. Applicant purchased the home he had been renting in November 2015 after the sale of his prior home. The assets from the sale were used for the purchase of the new home, and did not go toward reducing Applicant's credit-card debt. (Tr. 22-23.) Applicant has not had any delinquencies on either of his mortgage loans. (GX 4; GX 5.)

Concerned about his delinquent accounts, Applicant responded to an advertisement for a debt-consolidation company (DCC) and entered an agreement with the DCC in June 2016. The DCC instructed Applicant not to make any payments to or have any contact with any of his creditors. Applicant was required to pay \$600 into an escrow account at a specific bank which charged transactional fees. The DCC was

authorized to withdraw Applicant's escrowed funds to cover fees and pay settlements on Applicant's behalf. (Tr. 44-47.)

The four SOR debts and one additional debt were the outstanding accounts that Applicant contracted with the DCC to resolve. The DCC settled the non-SOR debt. Based on information that Applicant received from the DCC, he also thought that the DCC had settled the \$3,062 credit-card debt alleged in SOR ¶ 1b in September 2017, and was working to resolve the other three SOR debts. (AX G; Tr. 23-25.) The four SOR debts went to collection between July and November 2016. (GX 5.)

In January 2018, Applicant learned that despite his \$600 monthly payments into the escrow account, the DCC had resolved only the one non-SOR account, and his remaining balance in escrow was \$300. Applicant terminated his relationship with the DCC and awaited contact by the remaining creditors. (AX A; Tr. 24-25.) Applicant accepts responsibility for the debts that he incurred and states that it is his obligation to repay or otherwise resolve these accounts. (Tr. 32-33.)

In January 2019, Applicant received an IRS Form 1099-C cancellation of debt for the \$4,821 credit-card debt alleged in SOR ¶ 1.d. He properly filed the document and made the appropriate adjustments when filing his 2018 tax return. (AX A.) This debt is resolved.

In March 2019, Applicant was contacted by the creditor of the \$1,770 credit-card debt alleged in SOR ¶ 1.c and offered a settlement agreement. Applicant settled this debt in full on March 31, 2019. (AX A.) Applicant was also contacted in March 2019 by the creditor of the \$3,062 credit-card debt alleged in SOR ¶ 1.b. He entered a six-month settlement agreement which was settled in full in September 2019. (AX A; AX B; Tr. 27.) These two debts are resolved.

In January 2019, Applicant was served with a subpoena by the collection creditor for the \$16,868 credit-card debt alleged in SOR ¶ 1.a. Applicant retained an attorney who began settlement negotiations with the creditor. The parties signed a final stipulation for settlement on October 2, 2019. Applicant agreed to pay \$1,200 at \$100 a month with the final payment being due on October 1, 2020. (AX I.) This debt is being resolved.

Applicant's four coworkers, one of whom has also managed Applicant over the past four years, and another who was mentored by Applicant, who are aware of the SOR allegations, collectively highly recommend Applicant for security clearance stating that he is honest, trustworthy, and professional. (AX F.)

Applicant's credit history dating back to 1989 shows consistent repayment of credit cards, vehicle loans, and mortgages. The only delinquent accounts are those that arose as a result of Applicant's relocation and the associated expenses. (AX 4; AX 6.) Applicant lives within his means, has not incurred any recent delinquent debts, and is able to maintain his ongoing financial obligations. He maintains a budget on a spreadsheet, and he and his wife sit down weekly to manage their accounts. (Tr. 35.) He has approximately

\$9,000 in his combined checking and savings accounts and is entitled to a pension from his employer. He has a monthly remainder of approximately \$1,000. (Tr. 31.) Applicant was candid, sincere, and credible during his testimony.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

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

The record evidence establishes that disqualifying condition AG ¶ 19(c): a history of not meeting financial obligations applies.

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; and

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

Applicant's past financial problems arose under unique circumstances that were largely beyond his control. Specifically, Applicant incurred unanticipated expenses after relocating for his employment due to being unable to sell his home for eight months. During that period, Applicant was responsible for the expenses of two households, one of which required new furnishings. Applicant overspent on his credit cards and the accounts became delinquent. Applicant acted responsibly by contracting with the DCC in an effort to repay or otherwise resolve the delinquent accounts. Upon learning that the DCC was not acting in good faith, Applicant terminated its services and waited for contact from his creditors. Immediately upon contact, Applicant fully settled one SOR debt and entered into a repayment agreement for another, which has since been fully resolved. He properly filed and adjusted his tax returns to reflect the cancellation of another SOR debt. Upon receiving a subpoena from the remaining SOR creditor, Applicant hired an attorney who successfully settled the account on Applicant's behalf. Applicant entered a settlement agreement for this account for \$100 a month for one year, which is well within Applicant's financial capacity to repay.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a strong credit history dating back to 1989, and this brief, past period of delinquencies is not reflective of Applicant's overall ability to effectively manage his finances. Applicant accepts responsibility for his past financial difficulties and has reached resolution for all of the SOR debts. Applicant's financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior. He lives within his means, and he and his wife maintain a budget. Applicant's past financial difficulties do not cast doubt on his current reliability, trustworthiness, or good judgment. He has made a good-faith effort to resolve his delinquent accounts and has established a plan to resolve the remaining SOR debt within his means. AG ¶¶ 20 (a), 20(b), and 20(d) apply.

Whole-Person Concept

Under AG ¶ 2, 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. I have incorporated my comments under Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial circumstances. Accordingly, I conclude he has 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.d:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge