



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



In the matter of:)
)
) ISCR Case No. 19-00482
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence to support his assertions that he is resolving the debts alleged in the Statement of Reasons (SOR). He did not take responsible action to address his financial responsibilities until two months before his hearing, despite being fully employed for approximately three years. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 3, 2015, Applicant signed a security clearance application (SCA). (Government Exhibit (GE) 1) On March 14, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

On April 16, 2019, Applicant provided a response to the SOR and requested a hearing. On June 5, 2019, the case was assigned to me, and on that day, 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; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. I held the record open for 30 days in the event either party wanted to submit additional documentation. On July 8, 2019, DOHA received the hearing transcript. Applicant timely provided two exhibits, which were admitted without objections. (Applicant Exhibit (AE) A-B) The record closed on July 25, 2019. (Tr.10-13)

Findings of Fact

In Applicant's SOR response, he admitted he incurred the debts in SOR ¶¶ 1.a-1.i, 1.k-1.m, and 1.o. His admissions are accepted as findings of fact. He did not provide any mitigating documentation relevant to any debts

Applicant is 30 years old, and he has been employed as a customer service representative for a government contractor since September 2016. In 2007, he enlisted in the U.S. Navy and remained on active duty until June 2013, when he received an honorable discharge. In 2014, Applicant received a welding certification. Between 2011 and 2016, he was married and divorced twice with the same woman. He has two minor children. (Tr. 14-17, 22-23; GE 1)

Financial Considerations

Applicant's income dropped after he left the U.S. Navy in June 2013. During his enlistment, he suffered a traumatic brain injury (TBI). He was an E-4 at the time of his discharge, and was permanently decertified for duty due to poor attitude, lack of motivation and loss of confidence. He currently suffers memory issues from this injury. Applicant was going through a divorce, working part-time for about a year, and was unemployed for about a year while he attended school. He was overwhelmed and stressed, and eventually voluntarily admitted himself into a hospital. During this time period, Applicant acknowledged that he overlooked his financial obligations. (Tr. 12, 18-20, 38-44, 47-50; AE A)

Applicant has worked for his employer for about three years, and his monthly net income is approximately \$2,000. He also receives \$800 monthly from the Veterans Administration for his service disability. His live-in girlfriend baby-sits and receives about \$100 a week. Applicant provided a budget after the hearing that did not include his girlfriend's income. His monthly net income of \$2,800 pays all of their monthly expenses, to include a \$250 monthly payment for medical bills, with a zero remainder. (Tr. 12, 18-20, 38-44, 47-50; AE A)

The SOR alleges fifteen delinquent debts totaling approximately \$24,000. The record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a repossessed car account with a deficit balance of \$5,973. After Applicant got out of the military, he soon realized that he could no longer afford his monthly car payments. In late 2013, he called the creditor and asked that they pick up the car. He called the creditor in 2016 about the debt, but since that time, he has not made any attempt to pay or resolve this outstanding account. The January 2019 credit report showed the account as delinquent. This debt is unresolved. (Tr. 24-27; GE 2)

SOR ¶¶ 1.b, 1.d, and 1.f allege three defaulted student loans with the U.S. Department of Education in the total amount of \$8,947. Applicant borrowed these funds for his education in 2013. Applicant stated that after he left school, he was obligated to make payments on his student loans. He claimed to have made some payments, but his 2018 income tax refund of about \$3,000 was involuntarily intercepted to pay toward his delinquent child support and unpaid student loans. Since then, Applicant has not made any effort to contact the creditor or establish a payment plan for his delinquent student loans. The January 2019 credit report showed the account as delinquent. These debts are not resolved. (Tr. 27-29, 47, 51-52; GE 2)

SOR ¶¶ 1.c, and 1.e allege two delinquent accounts with a credit union that were referred for collection in the amount of \$5,775. He had opened these accounts as a co-signer for his girlfriend in 2016 or 2017. One account was for a vehicle loan, and the other account was for a credit card. His girlfriend recently quit her job to start another business venture that did not succeed. She currently baby-sits to make money, but the income is insufficient to make payments on these delinquent accounts. Applicant has limited funds and cannot make payments. The January 2019 credit report showed the account as delinquent. These accounts are unresolved. (Tr. 29-32; GE 2)

SOR ¶¶ 1.g-1.i, 1.k-1.m, and 1.o allege medical accounts placed for collection in the amount of \$3,151. Applicant admitted these debts were for medical services provided to him from a hospital covering different time periods. He is paying the collection agency \$200 a month over a 12-month period to resolve these accounts. At the time of the hearing, he had made two \$200 payments. He claimed he paid the hospital about \$50 each month for his medical services. He was not sure of the remaining balance owed for the outstanding medical bills. He stated that he would provide documentation during the 30-day period the record was held open. Applicant failed to provide this documentation, and these debts are unresolved. (Tr. 32-35, 49; GE 2)

SOR ¶ 1.j alleges a delinquent account with a jeweler that was referred for collection in the amount of \$287. Applicant denied this debt in his SOR response. He stated that this account stemmed from an engagement ring purchased for his ex-wife. He disputed the account with the creditor because he believed he paid this account in full. The January 2019 credit report showed the account as delinquent. He stated that he would provide documentation during the 30-day period the record was held open. Applicant failed to provide this documentation, and this debt is unresolved. (Tr. 35-36; GE 2)

SOR ¶ 1.n alleges a delinquent account with a cellular company referred for collection in the amount of \$150. Applicant denied this debt in his SOR response because

he said he paid it and disputed this debt with the creditor. The January 2019 credit report showed the account as delinquent. Applicant failed to provide supporting documentation, and this debt is unresolved. (Tr. 36-38; GE 2)

Applicant has not sought the assistance of a financial counseling program to resolve his indebtedness. His intention is to pay off his outstanding medical debts first, and then start paying the delinquent credit union accounts. He provided a letter of recommendation from his manager stating that Applicant is an exceptional employee, who gives maximum effort to support his customers. (Tr. 45; AE B)

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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Applicant admitted owing debts and the 2019 Credit report documents his responsibility for the debts he denied. 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.

Applicant presented some mitigating evidence. He was underemployed or unemployed for a two-year period after his 2013 discharge from the military while attending school. His medical expenses related to his TBI and mental health issues contributed to his financial problems. He cosigned a credit card account and a car loan with his girlfriend, and she failed to comply with the terms of the contract. These are circumstances beyond his control that adversely affected his finances. However, to receive full credit for this mitigating condition, Applicant must show that he acted

responsibly under the circumstances. Applicant failed to demonstrate that he acted responsibly since he did not take any responsible action to resolve his delinquent debts until two months before his security clearance hearing. He has only made two payments for his outstanding medical accounts on a one-year repayment plan, despite being fully employed for three years.

Applicant failed to provide documentation that he has a legitimate basis to dispute any of his outstanding accounts, and he failed to provide copies of cancelled checks, or a current statement, to show that he is paying his medical debt as claimed. He did not participate in financial counseling and there is no evidence that he is making good-faith efforts to resolve his delinquent debts. There is insufficient assurance that his debts are under control. The only payment Applicant has made toward his delinquent student loans was an involuntary interception of his income tax refund that was applied to this debt. Under all of these circumstances, Applicant failed to establish that 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 is 30 years old, and has been employed as a customer service representative since September 2016 for a government contractor. He currently lives with his girlfriend, and he provides the majority of financial support for their living arrangements. His manager finds Applicant to be an exceptional employee providing outstanding customer service.

Applicant did not provide any evidence of payments, payment plans, copies of dispute correspondence with creditors, or other actions to resolve the debts in the SOR. He did not start taking responsible action to address his financial obligations until two

months before his hearing. There is no track record of steady, systematic payments over an extended period of time. His actions demonstrate a lack of financial responsibility and good judgment, and raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of his past-due debt, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 consideration concerns are not 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: AGAINST APPLICANT

Subparagraphs 1.a through 1.o: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge