



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-00880
)
 Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*
11/06/2019

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 two security clearance applications, a Standard Form (SF) 85P on May 22, 2017, and a SF86 on October 29, 2017. On May 9, 2019, 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 June 27, 2019, and requested a decision on the written record without a hearing. On July 24, 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 11. 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 August 6, 2019

and timely submitted his response on September 4, 2019, to which the Government did not object. Items 1 through 3 contain the pleadings in the case. Items 4 through 11 are admitted into evidence. Applicant's SOR answer included documents that were marked and admitted into evidence as Applicant Exhibits (AE) A and B. His FORM response included documents that were marked and admitted into evidence as AE C and D. The case was assigned to me on October 3, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 3), his SF85P (Item 4), his SF86 (Item 5), and the summaries of his security clearance interviews (SI) in June 2017 (Item 6) and in November 2018 (Item 7). Items 6 and 7 were not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Items 6 and 7. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Items 6 and 7 on the ground that they were not authenticated. Applicant was also notified that if he did not raise any objection to Items 6 or 7 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 Items 6 and 7 could be considered as evidence in his case. Applicant responded to the FORM, but raised no objections.

Findings of Fact

Applicant, age 43, is married with three minor children. His youngest child, age 10, has special needs. He earned a Bachelor of Science degree in 2015. He has maintained steady full-time employment since at least September 2006. He also had a part-time job for an unspecified period of time in 2009. He has been employed as an aircraft mechanic by a defense contractor since December 2010. He served honorably in the Air Force, from 1999 through 2005, and in the Air National Guard, from 2005 through 2011. He was previously granted a security clearance in 1999. His last background investigation occurred in about 2011 or 2012. (Item 4 at 18; Item 6 at 3; Item 7 at 1-2)

Applicant accrued 30 delinquent debts after a 2010 chapter 7 bankruptcy discharge (SOR ¶ 1.a), including a \$14,782 car loan account (SOR ¶ 1.b), 15 federal student loan accounts totaling \$52,405 (SOR ¶¶ 1.c – 1.q), a \$296 credit-card account (SOR ¶ 1.r), a \$256 satellite-television account (SOR ¶ 1.x), and 12 medical accounts totaling \$2,819. (SOR ¶¶ 1.s – 1.w and 1.y – 1.ee). (AE D; Items 8 and 9)

Applicant resolved the delinquent status of all 15 student-loan accounts by consolidating them in February 2019. As of June 2019, he was current with his monthly payment of \$67, and had a remaining balance of \$48,815. In June 2017, Applicant claimed to have arranged to pay \$50 per month to resolve the debt alleged in SOR ¶ 1.b, but he never submitted either evidence of actual payments made or a plan to otherwise resolve the debt. In his SOR answer, Applicant articulated a reasonable basis to dispute the debt alleged in SOR ¶ 1.x, but did not provide substantiating documents. In his FORM response, he acknowledged that debt and proffered a plan to repay it

along with the debt alleged in SOR ¶ 1.r and the 12 medical debts. He did not proffer a reasonable basis for the dispute noted on his August 2019 credit report of the \$123 medical debt alleged in SOR ¶ 1.d. His unresolved SOR debts total \$18,153. (FORM response; SOR answer; AE A; AE D at 70; Item 6 at 6; Item 10 at 2-4, 6-8)

Applicant attributed the 2010 bankruptcy to his and his wife's unemployment. He filed the petition in October 2009, claiming liabilities of \$200,637, including student-loan accounts totaling \$90,381. He received the credit counseling required by the court in 2009. Except for the student-loan accounts, his debts were discharged in January 2010. (Item 6 at 3 and 5; Item 7 at 3; Item 11)

Applicant asserted that his inability to resolve the student-loan debts and the accumulation of new debts after the bankruptcy discharge were caused by his wife's voluntarily unemployment to care for their special-needs child full time, their complete financial support of his wife's parents, and the extraordinary medical expenses associated with their child's special needs. He also acknowledged that he prioritized saving funds for a 20% down payment on a home that was purchased in May 2017. The details of that purchase were not specified in the record. (AE B; Item 6 at 3 and 5; Item 7 at 3)

During his November 2018 SI, Applicant admitted that he was still struggling financially. However, the record did not otherwise specify a timeline for the circumstances to which he attributed his financial problems or any details associated with his relevant income and expense history. The Government enumerated various deficiencies in Applicant's mitigation evidence and advised him of the opportunity to address those deficiencies and submit supporting documentation in his FORM response. However, Applicant did not fully avail himself of that opportunity.

In his FORM response, Applicant stated the following in support of mitigation: 1) he lives within his means and does not spend frivolously; 2) his current debts include one credit card (\$22/month payment, \$750 balance), an almost paid-off car loan for a 13-year-old car with 200,000 miles (\$191/month payment, \$695 balance), and one personal loan he used to repair that car to keep it running (\$325/month payment, \$2,015 balance); 3) his wife assumed their home-mortgage debt following their "recent separation;" 4) he attended financial planning classes at his church and developed a "Dave Ramsey" repayment plan to resolve his delinquent debts in "baby steps" by paying them off from smallest to largest; and 5) he established a budget with a timeline to repay certain creditors. (AE D at 4-6)

Applicant's credit report dated August 2019 revealed a \$64 utility debt (which appeared on a January 2018 credit report, but was not alleged in the SOR) and six new medical debts totaling \$1,883. In his FORM response, Applicant proffered a plan to repay the utility debt, but did not specifically address the new medical debts. The Government also did not allege two medical debts totaling \$514 from a July 2019 credit report. I will consider any debts not alleged in the SOR only to evaluate mitigation and the whole-person concept. (AE D at 63, 66-69, 71-72; Item 8 at 20; Item 10 at 2)

Applicant's pastor, a retired military officer who commanded at the battalion level, has known him for over 10 years. He corroborated that Applicant does not live above his financial means or spend frivolously. He is certain that Applicant is loyal to his country and his employer. (AE C)

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. 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. (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

The security concern under Guideline F (Financial Considerations) 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. 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)).

Applicant's bankruptcy and his subsequent delinquent debts, which were corroborated by his admissions and 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 fully 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;

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; and

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

Applicant is credited with resolving the delinquent status of his student loans. Because bankruptcy is an acceptable form of debt resolution, the concern is not with the bankruptcy itself, but with the underlying history of financial indebtedness that has persisted. Accordingly, I find the allegations concerning the bankruptcy and student loans in Applicant's favor.

Applicant's efforts to begin tackling his other delinquent debts are commendable, but fell short of establishing mitigation sufficient to overcome his extended history of financial problems. The special needs of Applicant's child are compelling circumstances and have undoubtedly had both a monetary and nonmonetary impact on the family. However, the record evidence lacks important details about the specific financial impact those needs and his various other circumstances had on the accrual of Applicant's post-bankruptcy debts and his ability to repay them.

While Applicant is not required to be debt-free in order to qualify for a security clearance, he failed to provide sufficient evidence to demonstrate that he acted responsibly to address his non-student loan debts, particularly since he prioritized saving for a home over obligations to his creditors. He is on the right track by taking financial education classes, creating a budget, and developing a repayment plan. However, there is no evidence that he is following through with the plan or that his finances are otherwise under control. He has not resolved one single non-student loan debt, including the smallest \$64 account. Moreover, he has continued to accrue new delinquent debts. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Analysis

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). 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c – 1.q:	For Applicant
Subparagraphs 1.r – 1.ee:	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