



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-00881
)
 Applicant for Security Clearance)

Appearances

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

10/25/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on July 25, 2018. On May 1, 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 (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 31, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11, 2019, and the case was assigned to me on July 23, 2019. On August 7, 2019, the Defense Office of

Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 29, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 14 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until September 30, 2019, to enable him to submit additional documentary evidence. He timely submitted AX F through P, which were admitted without objection. DOHA received the transcript (Tr.) on September 9, 2019.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.d. He denied the allegations in SOR ¶¶ 1.b, 1.c, and 1.e-1.h. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old linguist employed by a defense contractor since June 2018. He was born in Afghanistan. After his father was killed, his family fled from Afghanistan in 1997 to escape from the Taliban. They lived in Pakistan for about three years and then came to the United States in July 2001. Applicant attended high school in the United States from August 2003 to June 2006, and became a U.S. citizen in December 2007.

Applicant has never married and has no children. He has three brothers, ages 29, 26, and 23. (Tr. 44.) When he is not deployed overseas, he lives in a rental home with his mother and his youngest brother. (Tr. 32.)

Applicant attended a university in the United States from August 2006 to May 2010, but did not receive a degree. He worked as a linguist for a defense contractor and was deployed to Afghanistan from September 2010 to January 2012, and his gross income was about \$11,400 per month during this deployment. (Tr. 42.) He used his income to support his mother and his three brothers, who were all in college at the time. (Tr. 43-44.) After Applicant returned from Afghanistan, he and a friend (a Marine Corps veteran) started a business, but it failed after about six months. (Tr. 43.) He worked for a non-government employer for one month as a cultural role player. He was unemployed from March 2012 to March 2013. He worked for a U.S. Government agency as a seasonal employee from April to July 2013. He was unemployed from August 2013 to March 2014. He was self-employed part time as a driver for a ride-sharing company from April 2014 to July 2016, while he was in college. He worked for a defense contractor as a cultural role player for one month in the spring of 2016.

Applicant completed college and received a bachelor's degree in May 2016 and was unemployed until he found part-time and intermittent work in the non-federal sector from November 2016 to June 2018. His annual income during this period was less than \$30,000. (Tr. 36.) He has worked for defense contractors since June 2018. He has never held a security clearance.

At the time of the hearing, Applicant had been deployed to Afghanistan since March 2019. He came to the United States for his hearing and then returned to Afghanistan. (Tr. 30-31.) While in Afghanistan, he frequently deploys to remote areas for long periods, without access to email, and documents sent by postal service take 10-15 days to reach him. The limited email and postal service make it difficult for him to communicate with creditors. (Tr. 10-11.) He intends to enlist the assistance of his brothers in communicating with creditors. His current contract expires in March 2020, and he expects it to be renewed as long as there is a continuing need for linguists. (Tr. 64-65.)

The SOR alleges eight delinquent debts totaling about \$25,000. The evidence concerning the debts in the SOR is summarized below.

SOR ¶ 1.a: credit-card account referred for collection of \$7,957. Applicant fell behind on his payments in 2016 because of his limited income. When he reduced the amounts of his payments, the interest increased. He contacted the creditor but was unable to reach an agreement. (Tr. 48.) The creditor sued him in December 2018. In Applicant's SOR answer, he stated that he was contesting the amount of this debt and that a court hearing was set for June 24, 2019. Applicant's attorney failed to appear, apparently due to miscommunication about the dates of Applicant's deployment, and a default judgment was entered. Applicant contacted the court clerk and obtained the forms to request that the case be reopened for a hearing. However, he has not filed the motion to reopen the case, because the hearing would be within 60 days after the motion is filed and Applicant will still be in Afghanistan. He intends to file the motion upon his return to the United States. (AX F; AX J.) If the debt is not otherwise resolved, he intends to negotiate a payment plan. (Tr. 50.)

SOR ¶ 1.b: student loan referred for collection of \$6,013. Applicant began a rehabilitation program in September 2018 and made \$5 payments by automatic debit from his account from October 2018 through June 2019. He has completed the rehabilitation program for this loan. His new payments have not yet been determined. (AX A; AX H.)

SOR ¶ 1.c: credit-card account referred for collection of \$890. After obtaining this credit card, Applicant disputed the annual fees, to which he had not agreed, and the issuer removed the annual fees. After Applicant closed the account, the fees were reinstated. When Applicant learned that a default judgment had been entered against him, he requested a hearing and appeared in court. (GX 14 at 21.) On June 8, 2018, the collection agency's lawsuit was non-suited. (AX K.)

SOR ¶ 1.d: credit-card account charged off for \$823. In Applicant's SOR answer, he stated that he believed the account had been paid off and closed and that he would contact the creditor and resolve it. As of the date the record closed, it was not yet resolved.

SOR ¶¶ 1.e and 1.h: medical bills referred for collection of \$631 and \$649. These debts arose when Applicant thought he had food poisoning and went to the emergency room. He did not have health insurance. (GX 14 at 22; Tr. 58.) He made

payment agreements for these bills and made the final payment on one of them in May 2019 and the other in June 2019. The debts are resolved. (AX C through E and AX G.)

SOR ¶¶ 1.f and 1.g: student loans referred for collection of \$5,587 and \$2,235.

Applicant began a rehabilitation program for these loans on September 25, 2019, and has made the first payment. (AX I; AX H.)

In Applicant's post-hearing submission, he provided a list of his current revolving credit accounts. His documents reflect that all his credit-card accounts are current and in good standing. (AX F; AX L through O.) His current gross income is about \$74,000 per year. Now that his siblings have completed their education, they provide most of their mother's financial support. His net monthly remainder is about \$4,000, which he believes is sufficient to enable him to enter into payment agreements for his unresolved debts. (Tr. 59-62.) He has never sought or obtained financial counseling. (GX 14 at 22.)

Applicant's team commander in Afghanistan, an Army major, submitted a letter recommending that his application for a security clearance be granted. (AX P.) His comments include the following:

[Applicant] is an incredible linguist and has provided direct positive impacts to our mission in a very forward, and often dangerous environment. He has proven to be one of the most effective linguists I have worked with in my three deployments to Afghanistan. His cultural understanding of both American and Afghan culture makes him an invaluable asset. Because of the close interaction and demonstrated commitment to our mission, I am writing you to strongly support [Applicant] and recommend him for a secret clearance.

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 § 2.

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, 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.” 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. 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. 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.

Analysis

Guideline F, Financial Considerations

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

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

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;

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

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's periods of unemployment and underemployment, his failed business venture, and his deployment to remote locations where he could not communicate with creditors were conditions largely beyond his control. He has acted responsibly by remaining in contact with his creditors to the best of his ability, negotiating payment plans, and paying most of his debts.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.b, 1.e, 1.h, 1.f, and 1.g. Applicant has either paid or is making payments on each of these debts. He has not resolved the debts in SOR ¶¶ 1.a and 1.d. However, the adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant incurred the credit-card debts in SOR ¶¶ 1.a and 1.d for basic living expenses during his periods of unemployment and underemployment and not for extravagant luxuries. He has lived frugally and has methodically addressed each of his debts. He has only two unresolved debts, which he is addressing to the best of his ability while deployed. Now that he has found full-time employment, he has the financial ability to resolve the remaining two debts.

AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.c. Applicant successfully contested an annual fee to which he had not agreed. It is not established for the debt in SOR ¶ 1.a. Applicant has disputed the amount of the debt, but he has not provided a documented basis for his dispute. He recognizes that he may not prevail, and he is prepared to negotiate a payment plan if necessary.

Whole-Person Concept

Under AG ¶ 2(c), 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(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 applied the adjudicative factors in AG ¶ 2(d). Applicant is well-regarded by his military supervisor in Afghanistan. He was candid, sincere, and credible at the hearing. 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 delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.g:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge