



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



In the matter of:)
)
) ISCR Case No. 19-01008
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 24, 2017. On April 17, 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 1) Department Counsel submitted the Government’s file of relevant material (FORM) on July 30, 2019. Applicant received the FORM on August 5, 2019. The Government’s evidence, included in the FORM and

identified as Items 1 through 6, is admitted without objection. Applicant provided a response to the FORM, which is marked as AX A. The case was assigned to me on September 24, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial considerations security concerns.

Findings of Fact

Applicant is a 34-year-old who is being sponsored for employment with a federal contractor. He reported no military service. In 2013, he married and has one child, born in 2015. Applicant has not held an industrial security clearance and is sponsored by the defense contractor with whom he has been employed since August 2017. (Item 3) Applicant earned an associate's degree in April 2008. He disclosed his financial issues on his SCA. (Item 3)

Financial

The SOR alleges six delinquent debts in ¶¶ 1.a-f. that amount to approximately \$33,862. Applicant admitted the allegations listed in the SOR, and noted that two accounts have been resolved. (Item 2)

Applicant's financial issues began in September 2015, when his company unexpectedly did not receive a contract extension, and he had no employment. His first child was born in April 2015, which exacerbated his financial issues. He was unemployed from 2015 until 2017, and he stayed home to take care of his son while his wife worked. (Item 4) He used his savings to pay bills and expenses. When Applicant found employment in 2017, the pay was significantly lower. He was able to pay his current bills but he began to fall behind in his mortgage and other accounts. (Response to FORM) However, he has not incurred any new debt.

In his SCA, Applicant explained that another contributing factor to his financial problems was significant storm damage to his property for which he paid a large deductible to have the repairs handled by insurance. His wife also had unanticipated medical issues that required large out-of-pocket expenses. (Item 3) The unforeseen expenses continued to deplete his savings. In that same SCA, Applicant explained that he reached out to a company for assistance but it did not work out. His first idea was to obtain a consolidation loan, but he was not approved. He revealed that he was prioritizing his debts to have them paid one at a time. (Item 3) He also reported that he reached out to creditors. All of these efforts were reported in his SCA and before the SOR was issued.

During Applicant's August 2018 interview, he clarified that he worked in Afghanistan and Iraq as a civilian contractor during the years of 2010 through 2014. (Item 4) He also mentioned his foreign travel to other places which were the result of traveling to or from his work abroad. He mentioned that he made a trip to Mexico in 2018 for a day or two when he was in San Diego. He explained that other trips were paid for by his family working abroad or were stop-overs coming from his work abroad. (Item 4) He also listed

the travel on his SCA. He had no financial issues and his earlier credit report confirms that many accounts paid as agreed. (Items 5, 6)

As to SOR allegation ¶ 1.a, Applicant made his past-due mortgage account his priority. He was approximately \$33,429 past due. He submitted documentation that he has resolved this major issue. He began making timely payment in November 2018. He provided a statement from his bank that confirms the account is in a current status. (Attachment to Answer) One of the documents shows that as of May 2019, he had paid year to date \$13,476 (his regular monthly payment is \$1,807.)

SOR allegation ¶ 1.b is a collection account with a bank. The delinquent amount is \$10,844. Applicant made an agreement and had a plan in place in September 2018. He provided documentation to the investigator; however, in his response to the FORM, he realized that there was a payment error and the company refused to honor the previous agreement. He could not find the statement, but he is now disputing the amount that the bank is citing as being accurate. He has requested more information and is awaiting a response. The agreed upon settlement amount was \$4,900, noted in a letter dated September 2018. (Attachment to Answer) (Response to FORM)

As to SOR allegation ¶ 1.c, a charged-off account in the amount of \$8,303, and as noted in SOR ¶ 1.d this is the same bank that he is working with. Since there are two bank accounts, the Applicant and creditor are working toward a “staggered repayment plan.” They are cooperatively negotiating a manageable payment amount to resolve the debt. SOR allegation ¶1.d is a charged-off account in the amount of \$7,654. Applicant has been working with the creditor to reconcile the account. There will be a settlement, but he has not received the paperwork.

As to SOR allegation ¶ 1.e, a charged-off credit account in the amount of \$7,061, Applicant set a repayment agreement and provided a copy. The settlement amount was \$4,237 and noted a payment of \$176. He completed the auto-draft documentation, but he disclosed in his Response to the FORM that when he received the SOR, he learned that the payments had not gone through correctly. He contacted the company and sent another payment. The repayment plan is scheduled to end in April, 2021. SOR allegation ¶1.f, a collection account for \$352, has been resolved. (Item 2)

Applicant has a plan in place and accepts full responsibility for the debts. The Government acknowledged that Applicant’s financial situation appears to have been significantly impacted by his loss of employment just months before the birth of his child. (FORM) Applicant was candid in that he believes he made some mistakes but believes this is unlikely to recur. He has a financial history that reflects good employment and accounts that were current. He supported his family while unemployed, used his savings and took a job with a significantly lower salary. He has incurred no new debts. He made a plan to prioritize the delinquent debts beginning with his mortgage. He resolved a significant amount. He is current with his home mortgage. He contacted creditors and made payment plans. He paid another small debt. He noted that he had to work the plans in with his budget so that he had sufficient money to make a monthly payment. Applicant

has had some snags with two payment agreements and explained the situation. He is disputing another account and noted it on his SCA in 2017. He did not shirk from his delinquent bills. He had taken actions before the SOR was issued. He made an early attempt with a debt consolidator, but it was not successful. He also reached out to a credit company, but found them to be of no help. He was trying to be proactive after returning to the United States.

When he worked abroad as a civilian contractor, he lived in military housing. He had a NACI but no security clearance. As to trips he made while abroad, some of those places were stop overs on his way home. (Item 3) He also responded to the inquiry about trips and travels made overseas. He explained that he also has family who work and live abroad and his family paid for the trips. (Response to FORM)

Applicant's wife also works outside their home and has received a promotion. Applicant now has steady employment. He did not provide evidence of financial counseling. He provided no references.

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. 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.

Analysis

Guideline F (Financial Considerations)

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

Applicant's admissions and other documentation in the record reflect his delinquent debts. Two disqualifying conditions under this guideline are established: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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's unexpected unemployment coinciding with the birth of his first child and transition back to the United States after working as a civilian contractor abroad were events beyond his control and caused him to fall behind on his mortgage and some accounts. From 2015 until 2017, Applicant was unemployed. His wife had medical issues and Applicant incurred more unforeseen debt. He began addressing the situation and prioritized his debts. His first concern was his home mortgage which has been brought to a current status. The mortgage was about \$33,000 past due. As of May 2019, Applicant paid \$13,476. His regular monthly payment is \$1,809. He reached out to creditors and tried debt consolidation. He arranged payment plans and paid another small debt. Applicant's delinquent debts can be considered recent, but are unlikely to recur. His financial problems were due to circumstances beyond his control. The Government agreed with this. His actions to resolve the debts are timely and reasonable in this case, if not fully efficacious under the circumstances. He has settled one debt and has a payment plan for others. He has had some snags with two plans. He is addressing those issues. He has shown good faith. Applicant meets the mitigating factors for financial considerations.

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.

Applicant has never held a security clearance. He has worked for a number of years as a contractor, but he was unexpectedly unemployed in 2015 for two years. Applicant provided for his family and paid household expenses. He acquired no new debt after obtaining employment. He made good-faith efforts to resolve his delinquent debts. His priority was his home mortgage, the largest debt, and he has shown that he brought the account to a current status. He also sought a consolidation loan, but did not succeed. He paid another small debt. His past financial history as reflected in his credit bureau reports is good.

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant action to resolve his debts, and he has documented significant action to resolve his debts. The fact that he is in the middle of his negotiations with two payment plans, does not constitute a security concern given his lengthy incident-free history. I conclude Guideline F for Applicant.

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.f

For Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge