



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-01061
)
 Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, 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 a security clearance application (SCA) on September 7, 2017. On April 10, 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 July 17, 2019, and requested a decision on the written record without a hearing. On August 5, 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 6. 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 12, 2019,

and did not respond. Item 1 contains the pleadings in the case. Items 2 through 6 are admitted into evidence. The case was assigned to me on October 18, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 1), his SCA (Item 2), and a summary of his security clearance interview (SI) (Item 3). Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 3. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 3 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 3 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 Item 3 could be considered as evidence in his case. Applicant received the FORM, including a copy of Item 3, but did not either respond to the FORM or otherwise object to Item 3.

SOR Amendment

Pursuant to Directive ¶ E3.1.13, the Government amended the SOR to withdraw the allegation in subparagraph 1.l in its entirety.

Findings of Fact

Applicant, age 55, is unmarried without children. He has resided with a cohabitant since 2010. He earned a high school diploma in 1983. He has been employed as a material coordinator by a defense contractor since August 2017. This is his first application for a DOD security clearance.

Applicant has 11 unresolved delinquent debts totaling \$23,786, including 10 consumer accounts (SOR ¶¶ 1.a – 1.e and 1.g – 1.k) and a \$2,140 federal student-loan account (SOR ¶ 1.f). Applicant claimed that he is making monthly payments for the debts alleged in SOR ¶¶ 1.a – 1.e and 1.g – 1.j. However, he did not specify any details about how much or when he has made such payments. Applicant denied the debt alleged in SOR ¶ 1.f, claiming it had been paid in full, and the debt alleged in SOR ¶ 1.k, without explanation. He did not provide any documents to corroborate his claims. (Item 1 at 4 – 5; Items 4, 5, and 6).

Applicant attributed the accumulation of the alleged debts (except SOR ¶¶ 1.a – 1.c) to his unemployment, although he did not specify which period. He stated that he forgot to pay the debts alleged in SOR ¶ 1.b and 1.c and had no excuse for not paying the debt alleged in SOR ¶ 1.a. He was unemployed most recently between July 2016 and September 2016, after being fired. However, the credit reports reveal that Applicant fell behind on the most of his debts (SOR ¶¶ 1.a – 1.h and 1.j – 1.k) between February 2015 and May 2016, and one debt (SOR ¶ 1.i) in October 2018. His prior periods of unemployment included: 1) October 2013 through March 2014, after a layoff; 2) January 2012 through January 2013, after a layoff; and 3) July 2008 through September 2008, after a layoff. (Item 2 at 9 – 19 and 34; Item 3 at 2, and 4 – 6; Items 4, 5, and 6).

During his August 2018 SI, Applicant asserted that his finances had improved since his most recent employment in August 2017 and that he was working towards resolving his delinquent debts. He stated that he was willing and able to repay all of his debts and would never experience financial difficulties again. Between February 2018 and an unspecified date, Applicant paid 15% of his unspecified salary to resolve a \$7,545 delinquent federal student-loan account (formerly SOR ¶ 1.I, which was withdrawn by the Government). However, the record did not otherwise specify any details about his relevant income and expense history. Applicant never utilized a debt consolidation service, and there is no evidence in the record that he received financial counseling. Applicant expressly chose to resolve his debts directly with his creditors rather than file for bankruptcy. (Item 1 at 5; Item 3 at 5)

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 11 unresolved delinquent debts totaling \$23,786, 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; and

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

Applicant did not provide proof that he either paid or is making monthly payments to resolve any of the debts alleged in the SOR. While his periods of unemployment following layoffs could be considered circumstances beyond his control, the record evidence lacks important details about the specific financial impact any such periods had on the accrual of Applicant's delinquent debts and his ability to repay them. Applicant also failed to provide sufficient evidence to demonstrate that he has acted responsibly to address his debts. While he is credited with paying in full a \$7,545 federal student loan, he has substantial debts that remain unresolved. 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 delinquent debts. 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 amended SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	Against Applicant
Subparagraph 1.l:	Withdrawn

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