



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-01388
)
 Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*
11/27/2019

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 on June 29, 2017. On May 24, 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 25, 2019, and requested a decision on the written record without a hearing. On August 20, 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 26, 2019,

and did not respond. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on November 5, 2019.

Procedural Matters

The Government included a summary of Applicant's security clearance interview (Item 4) among the evidentiary items in the FORM. It also included a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated as required by Directive ¶ E3.1.20. The Government did not, however, advise Applicant of the consequences of his failure to raise an objection to Item 4 in his responses to the FORM: specifically, that he could be considered to have waived any such objection; and that Item 4 could be considered as evidence in his case. Applicant did not raise an objection to Item 4 in a FORM response or otherwise. However, because he was not advised that Item 4 could be considered as evidence absent his objection, Item 4 is admitted only for the limited purpose of considering any mitigating or exculpatory information therein. I will not consider any disqualifying or derogatory information contained in Item 4 that is not corroborated by admissible evidence.

The Government included highlighted and bolded language in the first full paragraph of page 3 of the FORM, which contains facts that do not relate to this case. It appears to be an inadvertent typographical error. I conclude that it is harmless error given that the facts related to argument and did not affect either the relative positions of the parties or my decision. Nevertheless, I mention it to avoid any confusion in the record.

Findings of Fact

Applicant, age 46, is married with three minor children and one adult child. He earned his high school diploma in 1991. He took online-college courses between 2010 and 2011, without earning a degree. He served honorably in the U.S. Marine Corps, from 1992 until he retired in July 2012. He has been employed as a software testing engineer by the same defense contractor since then. He has maintained his security clearance since 1992. (Item 2 at 4; Items 3 and 4)

Without specifying details about his relevant income and expense history, Applicant asserted that his income decreased with his civilian job and did not suffice to meet his family's expenses. He had not accounted for how much higher the cost of living would be once he transitioned out of base housing, in which he had lived during the prior 15 years. Between 2013 and 2014, he fell behind with payments to his creditors and then chose to pay living expenses over his other debts. Eventually, he opted to allow those other debts to be sent to collections and charged off rather than resolve them. He received financial counseling and was advised not to file bankruptcy. In June 2018, Applicant declared that his finances were stable and that he was living within his means. He reaffirmed the same in June 2019. (Item 2 at 4; Item 3 at 29-33; Item 4 at 4)

The SOR alleged 24 delinquent accounts, the balances of which totaled \$106,868, and two delinquent accounts, with no specified balance, consisting primarily of credit-card and loan debts in either charged-off or collection status. Applicant admitted to all but one \$37 medical account, of which he claimed to have no knowledge. That debt is confirmed by his 2017 credit report. He does not plan to resolve any of his admitted SOR debts based on his belief that they are no longer in delinquent status since they were all reported as charged off and closed on his recent credit report. (Item 2 at 4; Items 5 and 6)

Applicant's credit reports reveal a long-standing history of reliance on consumer debt, including the following seven new accounts he opened between 2014 and 2018, which are currently active and in good standing:

| Type | Date Opened | High Credit | Monthly Payment | Dec. 2018 Balance |
|-----------------|-------------|-------------|-----------------|-------------------|
| Auto loan | Nov. 2014 | \$33,878 | \$746 | \$18,377 |
| Charge acct. | Feb. 2017 | \$3,584 | \$15 | \$3,510 |
| Auto loan | May 2017 | \$40,000 | \$1,046 | \$35,302 |
| Fixed-rate loan | May 2017 | \$1,956 | \$144 | \$882 |
| Credit card | Aug. 2017 | \$391 | \$36 | \$709 |
| Charge acct. | Nov. 2017 | unknown | \$27 | \$250 |
| Auto loan | May 2018 | \$42,879 | \$789 | \$39,756 |

During that same period, he opened approximately 10 other accounts that have since been either closed or paid, with no outstanding balance. (Item 5 at 4-6; Item 6 at 9-10, 12, 16-17)

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 unresolved debts totaling \$106,868, and his decision not to repay or otherwise resolve them, establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so); and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are 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 has not mitigated the Guideline F concerns. He has substantial delinquent debts that remain unresolved, despite being financially stable since at least June 2018. He failed to demonstrate that he acted responsibly to address them, particularly as he continued to open new consumer-debt accounts. The fact that the debts he incurred are in collection or charged-off status does not mean they are no longer delinquent and does not relieve him of the obligation to repay them. Applicant's decision not to pay or otherwise resolve his delinquent debts demonstrates a willingness to place his own self-interest above his obligations. I am, therefore, left with doubt as to whether he may also act similarly in the context of his security obligations.

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 unresolved delinquent debts totaling \$106,868. 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

Subparagraphs 1.a – 1.z: 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