



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



In the matter of:)	
)	
)	ISCR Case No. 19-01538
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2019

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 19, 2017. On June 21, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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) effective on June 8, 2017.

Applicant responded to the SOR on July 5, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on August 20, 2019, for a scheduled hearing on September 13, 2019. Applicant

failed to appear at the scheduled hearing, claiming that he did not receive the notice of hearing despite discussion of the hearing with Department Counsel, and that he had to travel to another state to visit his ill grandmother. After submitting information explaining his failure to appear, a new notice of hearing was sent on October 9, 2019, scheduling a hearing by video teleconference on October 23, 2019. The hearing was convened as scheduled.

Applicant claimed at the hearing that he did not receive the Government's exhibits that Department Counsel stated that he mailed to Applicant, and discussed with him during a pre-hearing telephone conference. The hearing was paused while Department Counsel emailed the Government's exhibits to Applicant, and he was provided an opportunity to review them prior to continuing with the hearing. Despite a delay in receiving the SCA via email, Applicant agreed to proceed with the hearing. Applicant objected to the authenticity of an interview summary prepared by a government investigator, and Department Counsel did not present authenticating evidence. The objection was sustained and the interview summary was not admitted into evidence. Government Exhibits (GE) 1 through 3, including Applicant's signed SCA and two credit reports were admitted into evidence without objection. Department Counsel's discovery letter and summary of exhibits were marked as hearing exhibits (HE) 1 and 2, and appended to the record. Applicant testified at the hearing. The record was held open for Applicant to submit any documentary evidence in mitigation. He submitted an e-mail (without attachments) from a credit repair company. This exhibit was marked as Applicant Exhibit (AE) A, and admitted into evidence without objection. DOHA received the hearing transcript on October 31, 2019.

Findings of Fact

Applicant is a 33-year-old alarm monitor for a defense contractor, employed since 2017. He was previously employed by defense contractors and held security clearances in 2012 and 2014. Applicant graduated from high school in 2006 and completed some college credits. He was married in 2009, but they separated and Applicant moved out of the home in 2015. Applicant is in the process of obtaining a divorce and self-started child support payments once he left the home. Applicant filed for divorce, but his spouse would not cooperate and the process is currently pending. He has one eight-year-old child and one deceased child. He does not currently hold a security clearance.

The SOR alleges under Guideline F, that Applicant has nine delinquent debts totaling about \$19,742. The debts include a vehicle loan, two credit cards, medical debts, and a small collection account. Additionally, the SOR alleges, under Guideline E, that Applicant failed to report his delinquent financial accounts when he completed his SCA on July 19, 2017. Applicant admitted the auto loan and a credit card debt, but denied the remaining debts and the Guideline E falsification allegation. He provided documentary evidence with his Answer (Ans.) to the SOR of several accounts removed from his credit report.

SOR ¶ 1.a is a delinquent joint auto loan by Applicant and his spouse, incurred in 2015 to provide his spouse with a vehicle. After they separated, she was to continue with the loan payments, but she defaulted on the loan in 2017 and the vehicle was repossessed. Applicant was unaware of the defaulted loan until he spoke to a government investigator after completing his SCA. As a result, he discussed the loan with the creditor in 2018, but was advised by his financial counselor to refrain from paying this and other debts because of the potential negative impact on his pending divorce settlement. The creditor has charged off the debt.

SOR ¶¶ 1.b and 1.f are credit card accounts opened in early 2015 by Applicant's spouse without his knowledge. They became delinquent in December 2015 and January 2016. Applicant contacted the credit union holding the largest debt (\$4,238) and notified them that the account was fraudulently opened by his spouse without his knowledge, but he was incorrectly told that he remains responsible because they were married. The account was charged off by the creditor and is no longer in a collection status. The second debt, for \$718, was charged off by the creditor, and referred to a collection agent. Applicant was unaware of the debts when he completed his SCA, and he disputed them, but they remain on his credit report.

SOR ¶¶ 1.c, 1.d, 1.e, 1.g, and 1.i are past-due medical accounts totaling \$3,646. Applicant was in a car accident and incurred various medical debts that he contends should have been paid by his insurance carrier. Applicant was unaware of the debts when he completed his SCA, and disputed them with the credit reporting agencies once he learned of them. As a result of the dispute, they were removed from his credit report. (Ans.)

SOR ¶ 1.h is a collection account for \$319 by a cable provider. Applicant was unaware of the debt when he completed his SCA, and testified that he has a current account with the same cable provider. He intends to dispute the account now that he is aware of the original creditor.

Applicant has a small amount in savings, and owns a car that is paid off. He sought advice from a credit counselor in 2019. The counselor assisted him with removing disputed accounts and advised him to refrain from undertaking payments on fraudulent accounts or the joint car loan that his spouse defaulted on because of the negative impact it would have on his divorce proceedings. He testified that he is a good employee and lives within his means. When he left his marital home in 2015, he took responsibility to pay his child support obligations, and he never carried any delinquent debts in the past.

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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

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

Applicant incurred debts that were beyond his control. The car loan was a joint account but Applicant's spouse was to pay the loan when they separated. Although Applicant remains responsible for the debt as a joint borrower, he was advised to refrain from paying the debt until his divorce is resolved. The account has been charged off, and the creditor is not actively collecting on it. The credit card debts were fraudulently incurred when Applicant's spouse opened the accounts without his knowledge. He disputed the debts and the largest was charged off, while the smaller debt remains with a collection agent. The medical debts were disputed and should have been paid by Applicant's insurance carrier. They were removed from his credit report. A small cable company collection account will be disputed now that Applicant is aware of the original creditor.

Applicant has taken responsible action to address his debts, and has legitimately disputed debts for which he is not responsible. He has made responsible financial decisions in the past, and incurred debts as a result of his separation and improper actions of his spouse. Applicant has received advice from a financial counselor and has worked to correct his financial record. There are clear indications that his financial problems are resolved or being resolved, and his financial status is under control. I find that continued financial delinquencies are unlikely to recur and his financial status does not cast doubt on his current reliability, trustworthiness, or good judgment. Mitigating conditions in AG ¶¶ 20(a) through (e) apply.

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When falsification allegations are controverted, as here, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)) An applicant's level of education and business

experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. (ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010))

Applicant did not report his delinquent debts on his SCA because he was unaware of them after separating with his spouse and leaving the family home in 2015. He denied intentionally falsifying his SCA, and satisfactorily explained the circumstances of the debts for which he became aware of, after completing his SCA. I find that based on Applicant's answer and testimony, his failure to report the SOR debts on his SCA was not intentional. He provided plausible explanations for his omissions, and intentional falsification is not supported by the evidence. AG ¶ 16(a) is not applicable to SOR ¶ 2.a. The personal conduct security concern is concluded for Applicant.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E, in my whole-person analysis. I believe Applicant adequately explained his financial situation, and despite the debts incurred as a result of his separation and improper actions of his spouse, his financial decision-making is sound and responsible. He has not incurred additional debts since his separation, and is in the process of concluding his divorce.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial consideration security concerns and the allegation of falsification is unfounded. Accordingly, I conclude Applicant has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant 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: Subparagraphs 1.a to 1.i:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge