



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-01771
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2019

Decision

FOREMAN, LeRoy F., 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 on February 11, 2018. On July 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 12, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 11, 2019, and the case was assigned to me on September 13, 2019. On the same day, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2019. I convened the hearing as scheduled. Applicant waived the 15-day notice required by Directive ¶ E3.1.8. (Tr. 6.) Government Exhibits (GX) 1, 2, and 4 were admitted in evidence without objection. GX 3, an unauthenticated summary of a personal subject interview, was not admitted. (Tr. 13) GX 5, an incident report in the Joint Personnel Adjudication System (JPAS), was admitted in part, in that the reference to a tax lien was admitted but the reference to an alcohol-related incident was not. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) 1 through 6 and 8 through 15, which were admitted without objection. AX 7 was withdrawn as moot after I sustained Applicant's objection to GX 3.

I kept the record open until October 11, 2019, to enable Applicant to submit additional documentary evidence. I extended the deadline after Applicant notified me of the unexpected death of his wife. He timely submitted AX 16 through 18, which were admitted without objection. DOHA received the transcript (Tr.) on October 11, 2019. The record closed on November 18, 2019.

Findings of Fact

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

Applicant is a 40-year-old employee of a defense contractor providing training and certification for Navy sailors. He served on active duty in the U.S. Navy from April 1998 to August 2018, and retired as a chief petty officer (pay grade E-7). He spent about 13 of his 20-plus years of active duty at sea and relied heavily on his wife to manage the family finances. (AX 8; Tr. 50-53.) He has worked for defense contractors since his retirement. He held a security clearance in the Navy and retained it when he began working for contractors.

Applicant married in May 2002 and has an adult foster daughter. His wife passed away on November 5, 2019, after the hearing. Her passing triggered several changes in Applicant's financial affairs, which were addressed in his post-hearing submission.

The SOR alleges six delinquent debts, which are reflected in credit reports from January 2018 and June 2019. (GX 2; GX 4.) The evidence concerning these debts is set out below.

SOR ¶ 1.a: military credit-card account past due for \$39, with a total balance of \$1,575. Applicant fell behind on his payments after he retired and the bills continued to be sent to his old address. He notified the creditor that his address had changed, and he now makes payments by automatic debit. As of September 6, 2019, the account was current. (AX 1.)

SOR ¶ 1.b: credit-card account referred for collection of \$1,020. Applicant's wife opened this account, using a power of attorney, while Applicant was deployed in 2015. The collection agency agreed to settle the debt for \$306, which Applicant paid on July 26, 2019. (AX 2.)

SOR ¶ 1.c: credit-card account referred for collection of \$569. Applicant's wife opened this account during a failed business attempt. The creditor offered to settle the debt for \$228. Applicant accepted the offer and paid it on August 1, 2019. (AX 3.)

SOR ¶ 1.d: credit-card account referred for collection of \$448. Applicant disputed this debt, and it was determined by the creditor to be fraudulent. In November 2018, the creditor asked the three credit-reporting agencies to delete this debt. (AX 4.) The debt is not reflected in the June 2019 credit report. (GX 4.)

SOR ¶ 1.e: real-estate mortgage loan past due for \$32,243, with a balance of \$165,849. Applicant and his wife purchased a home in 2005, while he was on shore duty. He obtained a VA loan for the entire purchase price of about \$151,000. (Tr. 72; GX 2 at 6.) At the time they bought the house, it was near the Navy training facility for sailors holding his rating, and he expected to have multiple assignments nearby and eventually live in the home after he retired. However, his promotion to chief petty officer made him ineligible for most of the positions at the nearby training facility.

From 2007 to 2017, Applicant was assigned to ships homeported more than 100 miles from his home, and he spent a total of about 13 years at sea. He and his wife tried to sell the house in 2008, but they were unsuccessful because of the downturn in the housing market. They were unable to rent the house because it is located in a rural area that is not densely populated. In 2012, Applicant's wife began suffering from multiple medical problems. She decided to live in the house until 2014, when her health problems made it necessary for her to live closer to her family and medical care. The house was vacant until they rented the house in 2016. Applicant lived aboard the ship to which he was assigned, and his wife lived in another state near her family and medical providers. They fell behind on the mortgage-loan payments because of the expense of maintaining it along with a separate residence for his wife. At the time of the hearing, Applicant had retired, and he and his wife maintained separate households. She lived near her family and medical care-givers, and he lived near his current workplace. The house is still rented, but it is 80 years old and requires extensive maintenance and repairs. (Tr. 49-55.) The tenants pay rent of \$700, but the mortgage-loan payment is \$944. (GX 2 at 6; Tr. 49-55, 78.)

Applicant has never sought or obtained financial counseling. (Tr. 86.) However, in July 2019, Applicant contacted a realtor specializing in assistance to veterans with VA loans. (AX 5.) The realtor is assisting him in seeking approval for a short sale of the home. (AX 12) The realtor testified that it probably will take 60-90 days to obtain approval from the lender for a short sale. (Tr. 24.) On November 15, Applicant was contacted by a listing realtor, who is anxious to sell the house. (AX 17.) As of the date the record closed, the delinquent mortgage loan was not resolved.

SOR ¶ 1.f: medical bill referred for collection of \$365. This debt was charged off in 2013. Applicant contacted the collection agency and was informed that it does not have an open account for it.

The passing of Applicant's wife significantly changed his financial situation. He is the beneficiary of a \$50,000 life insurance policy. His retired pay will increase because the monthly deduction of \$148 for the Survivor Benefit Plan has terminated. He plans to use the insurance money to pay his wife's funeral expenses, outstanding medical bills, and several debts, leaving a balance of about \$29,000, which he will use to either fix up the house for sale or resolve the past-due payments. He estimates that his net monthly remainder after all debt payments and monthly expenses will increase from \$926 to \$3,667. (AX 16; AX 18.)

Applicant's manager, a retired Navy captain, has daily contact with him and regards him as reliable and trustworthy, notwithstanding his delinquent mortgage payments. (AX 9.) Applicant's team leader, also a retired Navy officer, considers him trustworthy and honest. (AX 10.) One of Applicant's co-workers, a retired senior chief petty officer, who works daily with Applicant and travels with him frequently, has observed that Applicant is meticulous about safeguarding the large amount of classified information required for their job. He considers Applicant trustworthy, committed, and loyal. (AX 11.)

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 presented at the hearing establish the two 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 recent, numerous, and were not incurred under circumstances making recurrence unlikely. The illness and ultimate death of Applicant's wife were unusual circumstances, but the delinquent debts had already been incurred when she became too ill to live in the home with the delinquent mortgage loan.

AG ¶ 20(b) is established. Applicant encountered numerous conditions that were largely beyond his control: the downturn of the housing market in 2008, his numerous assignments to sea duty and shore assignments geographically distant from the family home, his wife's unsuccessful attempt to establish and operate a business, a fraudulent credit-card account, and his wife's illness and eventual demise. He has acted responsibly by resolving the debts alleged in SOR ¶¶ 1.a-1.c, successfully challenging the fraudulent debt alleged in SOR ¶ 1.d, making multiple efforts to resolve the delinquent mortgage loan alleged in SOR ¶ 1.e, and contacting the collection agency for the debt alleged in SOR ¶ 1.f.

AG ¶ 20(d) is established. Applicant resolved the delinquent debts alleged in SOR ¶¶ 1.a-1.c, and he made reasonable efforts to resolve the medical debt alleged in SOR ¶

1.f. The delinquent mortgage loan alleged in SOR ¶ 1.e is not yet resolved. However, a security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual 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 has taken significant actions to implement his plan to resolve the delinquent mortgage loan. He has obtained professional advice, initiated the process for a short sale, and listed the home for sale. He has a fall-back plan to use the insurance proceeds from his wife's death if necessary.

AG ¶ 20(e) is established for the credit-card account alleged in SOR ¶ 1.d, which Applicant disputed. The debt was determined to be fraudulent, and it has been removed from his credit record.

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 was candid, sincere, and credible at the hearing. He has served honorably in the U.S. Navy and held a security clearance for more than 20 years. I am confident that he will continue to demonstrate the reliability and trustworthiness he demonstrated on active duty and as an employee of a defense contractor. 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.f:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge