



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02051
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/30/2019

Decision

CERVI, Gregg A., 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 December 1, 2017. 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) effective June 8, 2017.

Applicant answered the SOR on August 20, 2019 (Ans.), and requested a decision based on the administrative record, without a hearing. The Government’s written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on September 12, 2019. A complete copy of the FORM

was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM and submitted a reply, dated November 2, 2019. The case was assigned to me on December 11, 2019. Applicant did not object to any matters contained in the record. Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through D are admitted into evidence without objection.

Findings of Fact

Applicant is a 32-year-old program analyst, employed by a government contractor since November 2017. He was unemployed from September to November 2017. He earned a general educational development (GED) certification in 2006, and completed some technical college studies. He served on active duty in the U.S. Army from 2008 until 2014, and deployed to Iraq. He was honorably discharged in November 2014. He married in 2007 and has three children. Applicant's last DOD security clearance was a secret clearance granted in 2007.

The SOR alleges under Guideline F that Applicant is delinquent on six debts totaling over \$26,000. These consumer debts were either charged off or in a collection status. The four largest debts (SOR ¶¶ 1.a – 1.d) were discussed during Applicant's personal subject interview with a government investigator. Applicant admitted the SOR allegations and provided some explanations. He noted that it was challenging to find work after leaving active duty and difficult to earn enough income to support his family. His wife worked to supplement the family income, but difficult work schedules caused a strain in their relationship. They did not legally separate or divorce, but they had a physical separation of unknown length. They eventually reconciled their differences and remained together. (Ans.) Applicant was hired as a defense contractor in November 2017, and worked in one state while maintaining his family in another state. In 2018, his unanticipated expenses for the final family move to a third state totaled approximately \$8,000. (AE A)

SOR ¶ 1.a is a vehicle loan that has been charged off for \$13,127. The account was listed in Applicant's SCA. Applicant voluntarily relinquished the vehicle in 2015 (GE 4), and the account was charged off in May 2016. (GE 5) Applicant was unable to provide specific details of the account during his personal subject interview, but claimed the account was delinquent due to his separation from his spouse. (GE 4) The record contains no evidence of efforts to resolve this debt.

SOR ¶ 1.b is a vehicle loan that has been charged off for \$5,125. Applicant listed the debt in his SCA, stating that the account became delinquent in 2015 due to marital hardships and the separation from his spouse. The account was charged off in March 2016. (GE 5) Applicant was unable to provide specific details of the account during his personal subject interview, but noted his intent to arrange to pay the debt. The record contains no evidence of efforts to resolve this debt.

SOR ¶ 1.c is a personal loan that became delinquent for \$4,593 in about February 2017, and charged off in August 2017. The account was not listed in Applicant's SCA. He was unable to provide specific details of the account during his personal subject interview, but he noted his intent to arrange to pay the debt. The record contains no evidence of efforts to resolve this debt.

SOR ¶ 1.d is a \$2,570 credit card account that became delinquent in about October 2015, and referred to collections. The account was not listed in Applicant's SCA. He was unable to provide specific details of the account during his personal subject interview. In Applicant's response to the FORM, he submitted an October 2019 settlement with the creditor, showing his agreement to pay \$105 in monthly installments from November 2019 to October 2020, totaling \$1,260. (AE C) No evidence of any payments toward this plan was submitted.

SOR ¶ 1.e is a \$690 credit card debt from 2015, currently in collections. The account was not listed in Applicant's SCA. In Applicant's response to the FORM, he submitted a final payment receipt from August 2019, showing the account was settled with a zero balance. (AE D)

SOR ¶ 1.f is a \$71 utility company debt from 2017, currently in collections. The account was not listed in Applicant's SCA. Applicant submitted a "paid in full" receipt from August 2019, showing the account was settled with a zero balance. (AE B)

The record does not contain evidence of Applicant's current financial status, income and expenses statement, or financial counseling.

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 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.

The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally

available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant has a history of financial delinquencies, partially due to his transition from active duty, a short period of unemployment, underemployment, a marital separation, and maintaining two households. He found it difficult to find work and earn enough income to support his family. His wife worked to supplement the family income, but difficult work schedules caused a strain in their relationship.

Applicant did not address his debts in a timely manner even though they were included in his 2018 personal subject interview. After the SOR was issued and the FORM was submitted, he contacted three creditors and paid the two smallest debts. (SOR ¶¶ 1.e and 1.f) The third creditor agreed to accept payments in an installment plan, but Applicant did not show evidence of good-faith payments toward the plan. (SOR ¶ 1.d) A future promise to pay, without additional concomitant action to show good-faith efforts to resolve the debt, is not sufficient to mitigate the SOR allegation. The remaining SOR debts, which include the largest, were not resolved, and no information regarding good-faith efforts to resolve them was provided. (SOR ¶¶ 1.a, 1.b, 1.c) Finally, no evidence of financial counseling or Applicant’s current financial status was submitted. I have insufficient evidence that Applicant’s financial problems are under control and are unlikely to recur.

Overall, Applicant’s history of unresolved debts and failure to show his current financial condition raise significant doubts about his ability or intent to satisfy his largest delinquent debts, and ability to maintain a satisfactory financial status. I am not convinced Applicant makes good financial decisions, and his financial status continues to cast doubt on his current reliability, trustworthiness, and good judgment. Although some of Applicant’s financial problems may have resulted from unusual or unforeseen events and employment irregularities, there is little evidence that he acted responsibly under the circumstances and that future delinquencies are unlikely to recur. Applicant made some late efforts to resolve two small debts and promised to pay another in installments, but the largest SOR debts remain unresolved, and insufficient evidence was submitted to show efforts to resolve them. No mitigation conditions fully apply, except that AG ¶ 20(d) applies to the resolved debts in SOR ¶¶ 1.e and 1.f.

Whole-Person Concept

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. AG ¶¶ 2(a), 2(c), and 2(d). 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 Guideline F in my whole-person analysis. I also considered Applicant's personal circumstances, financial challenges, and military service. However, Applicant did not sufficiently address the largest SOR debts and did not provide sufficient evidence of financial responsibility.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant or continue 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraphs 1.e – 1.f:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant or continue Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

Gregg A. Cervi
Administrative Judge