



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-00662
)
 Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: Mark A. Myers, Esq.
03/31/2020

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced past financial difficulties due to circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or judgment. His omissions on his security clearance application were unintentional. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 13, 2016. On March 29, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The DOD acted under Executive Order (Ex. 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 submitted his Answer to the SOR on April 23, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on

May 21, 2019, and the case was assigned to me on August 12, 2019. On August 30, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant called one witnesses, testified, and Applicant's Exhibits (AX) A through I were admitted without objection. I left the record open until October 10, 2019, to enable Applicant to submit documentary evidence. He timely submitted AX J through AX K, which were admitted without objection. DOHA received the transcript (Tr.) on October 11, 2019.

Findings of Fact

Applicant, 41, is an aircraft worker telecommunications engineer currently employed by a defense contractor since July 2019. He has worked for defense contractors since 2016. From 1997 until 2001, he served on active duty in the U.S. Navy, where he held a security clearance. He and his wife married in 2010 and have two daughters, ages 21 and 9. (GX 1; Tr. 27.)

Under Guideline F, the SOR alleges 17 past-due accounts totaling \$31,558. The debts are comprised of a \$20,111 debt to DFAS, 2 student loan accounts totaling \$6,503, 2 credit-card accounts totaling \$846, and 12 medical accounts totaling \$4,098. Applicant admits each of the debts and states that he is current on the student loan accounts, in a repayment plan for two of the medical accounts, and that 10 of the accounts are closed. The SOR alleges under Guideline E that Applicant intentionally falsified his security clearance application by failing to disclose his delinquent accounts. Applicant denies this allegation. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from January 2019 and December 2016, and discussed in his January 2018 personal subject interview (PSI). (GX 4; GX 3; GX 2.)

Applicant enlisted in the Navy in 1997 for a four-year commitment. While deployed in a combat zone in 1999, he reenlisted for an additional six years. He received a reenlistment bonus of \$32,000, to be paid in several installments. He received the first installment of \$14,000 in October 2000. Shortly after receiving the bonus payment, Applicant used the money to purchase a truck. He received a second installment of approximately \$1,700 in 2001. (Tr. 49-54.)

In October 2001, Applicant tested positive for amphetamines in a urinalysis. Ultimately, he received an other than honorable discharge. As a result of not fulfilling the terms of his reenlistment, Applicant was obligated to repay his reenlistment bonus. The account became delinquent in the amount of \$20,111 (SOR ¶ 1.n).

Since 2002, DFAS has captured Applicant's Federal tax refunds and applied them to the debt. Over the years, Applicant also made several unscheduled payments. He has called DFAS about 12 times over the past 10 years in an effort to establish a repayment plan, but has been unable to reach an agreement. On his most recent call, he was told that the only way he could bring the delinquent account current was to pay the balance in

full. (Tr. 56-57.) In April 2019, Applicant began making payments through an application on his phone. He has made a \$550 payment and two payments of \$200. He will continue to pay \$400 a month until the debt is paid off. As of October 9, 2019, the balance on the DFAS account was \$12,588 and is not accruing interest. His payments total \$9,459. (GX 1; Tr. 65-66; AX J; AX F.) SOR ¶ 1.n is being resolved.

Applicant enrolled in college courses in about 2005, under the erroneous impression that his tuition would be covered under the G.I. Bill. Applicant ended up using student loans to pay the tuition. He fell behind on payments and defaulted on the \$3,991 (SOR ¶ 1.a) and \$2,512 (SOR ¶ 1.b) loans. He entered monthly repayment plans for each loan in September 2017, and the loans are in current status. (AX I.) SOR ¶¶ 1.a and 1.b are being resolved.

Applicant incurred \$4,098 in delinquent medical debt as a result of medical expenses that were not paid by his insurance. (Tr. 39-40.) He has entered a repayment plan that combines the two largest debts, \$1,223 (SOR ¶ 1.c) and \$1,060 (SOR ¶ 1.d). His \$200 bimonthly payments are automatically debited from his checking account. The debt will be paid off in August 2020. (AX K.) SOR ¶¶ 1.c and 1.d are being resolved.

Applicant paid the medical debts alleged in SOR ¶¶ 1.g, 1.j, 1.m, 1.o, and 1.q and settled 1.f and 1.l. These debts total \$1,339. He was unable to find the creditors for SOR ¶ 1.h \$117, 1.k \$134, and 1.p. \$225. The debts alleged in SOR ¶¶ 1.g through 1.q do not appear on Applicant's recent CBRs. (AX G – AX I.) These debts are resolved.

Applicant paid the credit-card debts alleged in SOR ¶¶ 1.e \$515 and 1.f \$331. These debts are resolved. (AX G – AX I.)

Applicant emphatically stated that he did not intentionally falsify his e-QIP by failing to disclose his delinquent debts. Applicant was given the e-QIP to complete while he was at work. He felt pressured to complete it quickly and get back to work. He was aware of his DFAS debt, but was not aware of the other debts. He had never viewed his CBR until his PSI. (Tr. 42-43; Tr. 68-69.)

Applicant's previous supervisor while Applicant was in the Navy and current friend has known Applicant for almost 10 years and highly recommends him for a clearance stating that he is capable, honest, and trustworthy. Applicant's coworker since February 2019 recommends Applicant for a clearance and states that Applicant is trustworthy and obeys rules and regulations. (AX C.)

Applicant admits that he did not manage his finances well when he was younger and this was the primary cause of his debts. (Tr. 33.) He did not fully grasp the security significance of poor finances until undergoing the security clearance process. (Tr. 44-45.) He sought credit counseling through several different agencies but thought the monthly fees were unreasonable. (Tr. 65.) Applicant has a credit-monitoring application on his phone that alerts him when payments are due and through which he can directly contact his creditors. His credit score has improved by 130 points. (Tr. 60.) He also has an online

account with a credit reporting agency through which he monitors and maintains his accounts. He and his wife maintain a monthly budget. Applicant is current on all his ongoing financial obligations and has not incurred any recent delinquent debts. He was candid, sincere, and credible while testifying.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

However, a person can mitigate concerns about his or her ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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; and

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

Applicant incurred his largest debt under unusual circumstances that are unlikely to recur. Specifically, he received a lump-sum reenlistment bonus of \$14,000 which he used to purchase a vehicle. When he did not comply with the terms of his reenlistment, he was required to repay the bonus and the accrued interest. He was aware that the debt was being repaid through the capturing of his Federal tax refunds. He also made multiple attempts to negotiate a repayment plan, but was unsuccessful. He has recently been making monthly payments of \$400. His refunds will continue to be applied to this account.

Applicant entered repayment plans for his two student loans in 2017 and the accounts are current. He entered a repayment plan for the creditor of the two largest medical debts which will be paid in full by August 2020. He has paid all of the remaining SOR debts that he could identify. None of the remaining SOR debts remain on his current CBRs.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to 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. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant lives within his means and has not incurred any recent delinquent debt. He maintains a budget and routinely monitors his credit. His credit score has dramatically improved. He now fully understands the importance of maintaining his finances. Applicant's financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior and do not cast doubt on his current reliability, trustworthiness, or judgment. By monitoring his credit and maintaining a budget, Applicant has taken proactive steps to ensure ongoing financial stability. Although his financial record is not perfect, he has implemented a reasonable plan to resolve his financial issues within his means, and to avoid future financial difficulties. AG ¶¶ 20(a) and 20(d) apply.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility...

Applicant's omissions from his 2016 e-QIP could raise the following disqualifying condition:

AG ¶ 16(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 a falsification allegation is controverted, as in this case, the Government has the burden of proving it. 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).

Applicant unwaveringly asserted that he did not intentionally falsify his e-QIP. His omissions were unintentional, and the result of rushing through his e-QIP. Further, he did not know about the majority of his delinquent accounts. I found his explanation to be credible and consistent with the record evidence, and his demeanor to be honest, forthcoming, and candid. Therefore, I conclude that AG ¶ 16(a) does not apply.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant now recognizes the importance of maintaining financial stability and has taken significant measures to resolve his debts. He has a reputation of being hardworking, honest, and trustworthy. He was forthcoming and sincere during this testimony.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, 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. The Government failed to establish that Applicant's omissions on his e-QIP were deliberate. Accordingly, I conclude he has 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.q: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge