



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01328
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

January 28, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant defaulted on a credit-card debt and a medical bill. He provided evidence in mitigation. Eligibility for access to classified information is granted.

Statement of the Case

On February 16, 2018, Applicant submitted a security clearance application (SCA) seeking to renew a previously granted clearance. On June 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions on or after June 8, 2017.

On July 9, 2019, Applicant responded to the SOR and elected to have the case decided on the written record in lieu of a hearing. He admitted the credit-card allegation

(SOR ¶ 1.a) with an explanation in mitigation. He also represented that he had made arrangements with the creditor to repay the debt through a payment plan. He denied the medical-debt allegation (SOR ¶ 1.b) on the ground that he was unaware of this debt and after a diligent effort to identify the creditor, was unable to do so.

On September 25, 2019, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included seven attached documents identified as Items 1-7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. Within 30 days of his receipt of the FORM, Applicant provided a one-page statement with six attachments in mitigation of the issues raised in the SOR and the FORM. I have marked these documents as Applicant's Exhibits (AE) A through G. Department Counsel has raised no objections to Applicant's statement or documentary evidence. Applicant's Exhibits A through G are, therefore, admitted into the record.

In his response to the FORM, Applicant raised no objection to the admission of FORM Item 4, which included an unauthenticated report of investigation summarizing Applicant's August 20, 2018 background interview. In his FORM, Department Counsel had advised Applicant that he had the right to object to the admissibility of this evidence as unauthenticated. Department Counsel also informed Applicant that he could provide corrections and updates to the summary of his interview and that if he failed to object, he may be determined to have waived objections to the admissibility of the interview summary. I conclude that Applicant has waived any objections to the summary of his background interview. Accordingly, I have included this document in the written record in this case. I have marked Items 1 through 7 attached to the FORM as Government Exhibit 1-7, respectively. Government's Exhibits (GE) 1 through 7 are admitted without objection. The case was assigned to me on November 19, 2019.

Findings of Fact

I have incorporated Applicant's admissions in his response to the allegations set forth in SOR ¶ 1.a in my findings of fact and have noted his denial of SOR ¶ 1.b. Applicant's personal information is extracted from GE 3, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Government's FORM, Applicant's response to the FORM, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 65, is married and has two adult children. In 1976, at the age of 22, he enlisted in the U.S Navy and served on active duty for 16 years, after which he served in the Navy Reserve for another ten years. He was honorably discharged. Since at least 2006, he has worked for a defense contractor as a mechanical technician.

In or about 2012 or 2013, Applicant's wife became seriously ill and was unable to work for a period of time. She lost a significant amount of her income during her treatment and recovery. As a result, Applicant experienced financial difficulties. He and his wife

used a credit card to bridge the gap between their expenses and their reduced income. Eventually he defaulted on the credit card though he kept the mortgage on his residence in good standing throughout this period. He has also maintained a rental property, which he bought in 2007, without defaulting on any related obligations notwithstanding the 2008 housing recession. (SOR response.)

Credit-Card Account Charged-Off in the Amount of \$17,143 (SOR ¶ 1.a) – Applicant defaulted on this credit-card account in or about October 2013. He did not list this debt on his SCA. Applicant advised the investigator who conducted his background interview in August 2018 that he had forgotten about the credit card and intended to speak with his wife, who handles their family finances, about contacting the creditor to make payment arrangements. He blamed their default on the account on his wife’s loss of income while she was being treated for a serious illness. In his SOR response, he repeated this explanation as the cause of his default on the credit card, and explained that there were other sources of financial demands that caused him and his wife to experience financial difficulties at the time. Applicant advised in his response to the FORM that he “reestablished a payment plan with [the credit-card creditor] and have been making monthly payments.” He also provided a letter from the creditor, dated July 11, 2019, memorializing the terms of the installment plan, which calls for monthly payments of \$100 for 172 months. (GE 4 at 3; AE A, F.)

Medical Account in Collection in the Amount of \$241 (SOR ¶1.b) – The SOR alleges that this debt appears on Applicant’s March 26, 2019 credit report (GE 6 at 2). The debt also appears in the May 29, 2019 credit report (GE 5), but not in the March 14, 2018 credit report (GE 7). Neither GE 5 nor GE 6 contain any identifying information that would make it possible to identify the collection agency that holds this debt or the original medical provider. The subject of this debt did not come up in Applicant’s August 20, 2018 background interview, according to the investigator’s summary, presumably because it did not appear in GE 7. In his SOR answer, Applicant wrote that he was “not able to find any medical organization to whom I owe \$241.00.” He wrote further that he contacted the only medical provider of which he was aware, and was advised that he had no outstanding bills. When he prepared his response to the FORM, he obtained a copy of his Equifax credit report. He submitted this report, and it contains no identifying information for this debt. He wrote that he called Equifax and was unable to learn anything further that would allow him to identify the creditor and pay this bill. He also provided copies of invoices from his hospital and physician, which reflect zero balances. He wrote: “With such a severe lack of information I’m at a loss on what to do.” (GE 5, 6, 7; AE A, C, D, E, G at 1.)

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 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. . . . 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.

Applicant's admission in his SOR answer and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts") and 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(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 creditors or otherwise resolve debts.

The existence of this long-outstanding credit-card debt at the time of the issuance of the SOR renders this debt recent. Applicant's behavior of defaulting on this debt was infrequent and arose out of unusual circumstances, *i.e.*, his wife's serious illness and loss of income. The fact that the bill was not addressed until after Applicant was put on notice that his security clearance was in jeopardy raises concerns about his reliability, trustworthiness, and judgment. AG ¶ 20(a) is partially established.

Applicant claims that the illness of Applicant's wife resulted in a significant loss of income while she was being treated and during her recovery. Applicant had to use a credit card to pay some of their living expenses. The seriousness of her illness renders Applicant's claims credible. Applicant's late response in beginning to repay this debt undercuts an argument that he acted responsibly under the circumstances. On the other hand, he has now taken actions to begin to repay the debt on terms that the creditor has accepted. AG ¶ 20(b) is partially established.

Applicant presented no evidence that he received counseling to address his financial distress either when his wife lost her income due to her illness or more recently. AG ¶ 20(c) is not established.

Applicant has initiated a good-faith effort to resolve his credit-card debt, He has a brief track record of payments under the installment agreement. The small amount of the payment makes it credible that he will be financially able to continue making the required monthly payments, which will continue for many years past Applicant's likely retirement. Applicant has also made a good-faith effort to identify the creditor holding the medical debt alleged in SOR ¶ 1.b. There is nothing further Applicant can do about this debt in light of the lack of available information to make it possible for him to pay it. AG ¶ 20(d) is established.

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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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). Some factors warrant additional comments. Applicant is a mature individual who experienced a life-changing event without any serious financial consequences. Just as he weathered the real estate recession in 2008 without defaulting on his obligations on either his home or a rental property, he successfully managed his finances during his wife's illness and extended loss of income with only one credit-card default. He has also responded to the SOR allegation of a small medical debt in an appropriate and mature manner. The fact, however, that he did not address his credit-card debt until his security clearance and livelihood was at risk weighs against his evidence in mitigation. 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 credit-card debt and medical bill.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge