



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



In the matter of:)
)
) ISCR Case No. 19-01432
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2020

Decision

CERVI, Gregg A., 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 (SCA) on May 24, 2017. On June 7, 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 June 30, 2019 (Ans.), and requested a decision based on the written 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 July 26, 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 November 13, 2019. Applicant did not object to any matters contained in the record. Government Exhibits (GE) 1 through 5 and Applicant Exhibit (AE) A are admitted into evidence without objection.

Findings of Fact

Applicant is a 41-year-old deployable armed guard, employed by a government contractor since May 2017. He was unemployed from November 2016 to May 2017 after his discharge from the U.S. Army. He earned a bachelor's degree in 2016 and a master's degree in 2019. He served in the Army National Guard from 2001 to 2002, and was on active duty in the National Guard and the regular Army from 2004 until 2016. He deployed twice to Iraq and once to Afghanistan. He was awarded the Bronze Star Medal, six Army Commendation Medals, four Army Achievement Medals, and the Afghanistan Campaign Medal with two campaign stars. He was honorably discharged in November 2016. He married in 1997 and has three children.

The SOR alleges under Guideline F that Applicant is delinquent on ten debts totaling over \$38,000. These consumer debts were charged off or in a collection status. Applicant admitted the SOR allegations and provided explanations with each. He noted that it was challenging to find work after leaving active duty and once he found work with his current employer, he began to settle or pay his delinquent debts.

SOR ¶ 1.a is a mortgage account delinquency from 2016. Applicant contacted the lender in 2017, and negotiated a reduced interest rate. He has since brought the account current since at least June 2019. This debt is resolved.

SOR ¶¶ 1.b, c, d, h, and j are delinquent consumer debts, including two car loans and credit card accounts, that have been included in repayment plans. These debts became delinquent in 2017 and Applicant made contact with most of the creditors in 2018 to initiate repayment plans. Monthly installment payments have been consistently made per the plan requirements, and in the case of a car loan alleged in SOR ¶ 1.b, Applicant substantially increased the installment amount in July 2019. SOR ¶ 1.h alleges a car loan that Applicant admitted, but disputed the amount owed. He has since agreed to a repayment plan, and began payments in July 2019. These debts are in the process of being resolved.

SOR ¶¶ 1.e, f, and g are consumer and government debts that were paid in full in 2019. These debts are resolved. SOR ¶ 1.i is a credit card debt that has been canceled by the creditor, and a cancellation of debt form 1099-C was issued for tax year 2014, and corrected in 2019. This debt is no longer a concern.

Applicant noted in his response to the FORM, that most of his debts were incurred during his period of unemployment after leaving active duty. Since he began employment with his current employer, he has lived a modest lifestyle while sending his two daughters to college, with his youngest daughter is in high school. Applicant has taken overseas

assignments, and while overseas, he completed a master's degree and is working on a second master's degree. His spouse provided a letter of support, noting Applicant's current employment and veteran's benefits result in the best financial condition they have had in 24 years of marriage. She attests to Applicant's work ethic and trustworthiness, and she noted that they have worked together to devise a budget so that they can pay for college expenses and pay down debts. Applicant's current credit report shows no current collection accounts.

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 incurred financial delinquencies while unemployed after leaving military service. He began to address his debts once he was reemployed. Applicant made contact with creditors, arranged payment plans for the largest debts and began payments, and paid in full debts totaling over \$1,800. He also ensured that his mortgage was current and showed evidence of its good standing. One debt amount was disputed, but it is now in an agreed payment plan. A final aged credit card debt has been canceled by the creditor, and a IRS Form 1099-C was issued. Although I do not have evidence of professional financial counseling, Applicant has worked with his spouse on a budget and his current credit report shows no debts in collections.

Overall, Applicant made significant efforts to resolve his debts once he was financially secure. His current credit report shows an ability to maintain a satisfactory financial status. I am convinced Applicant now makes good financial decisions, and his

financial status no longer casts doubt on his current reliability, trustworthiness, and good judgment. Applicant's financial problems resulted from a period of unemployment, but since being reemployed, he has acted responsibly to resolve debts and has not accumulated new delinquencies. I do not believe that further financial problems are likely to recur. AG ¶ 20(a), (b), and (d) apply.

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 distinguished military service and significant efforts to resolve debts once reemployed. Applicant provided sufficient evidence to show reasonable resolution of the SOR debts and overall financial responsibility.

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 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: FOR APPLICANT

Subparagraphs 1.a – 1.j: For Applicant

Conclusion

I conclude that it is 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 granted.

Gregg A. Cervi
Administrative Judge