



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01663
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

February 10, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). In 2017 and 2018, Applicant defaulted on four debts totaling approximately \$18,000. Applicant provided substantial evidence in mitigation. National security eligibility for access to classified information is granted.

Statement of the Case

On March 1, 2018, Applicant submitted a security clearance application (SCA) seeking to renew a previously granted clearance. On August 29, 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.

Applicant responded to the SOR on September 10, 2019, and elected to have his case decided on the written record, in lieu of a hearing. He admitted the four SOR allegations and provided comments on each allegation and attachments.

Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), dated November 8, 2019, which included five attached documents identified as Items 1-5. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections, submit a written response, and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He was advised in the FORM that he had 30 days from his receipt of the FORM to submit his response. Applicant received the FORM on November 26, 2019. His response was received by DOHA on January 2, 2020, about 37 days after his receipt of the FORM. Applicant provided a two-page formal response and three proposed exhibits, which in one case consisted of nine letters grouped together as an exhibit. He marked the documents as Exhibits A through C. I have marked these exhibits as Applicant Exhibits (AE) A-C and the document attached to Applicant's response to the SOR as AE D. I have marked Items 1 through 5 attached to the FORM as Government Exhibits (GE) 1-5, respectively. The case was assigned to me on January 15, 2020.

Evidentiary Ruling

On or about January 2, 2020, Department Counsel submitted an objection to the admissibility of Applicant's response to the FORM and AE A through C on the basis that it was untimely. Applicant response was received by DOHA about a week after the deadline. His submission preceded the date the file was assigned to me. Department Counsel has not asserted that the timing of Applicant's response to the FORM and his submission of three proposed exhibits caused any prejudice to the Government. In the interest of fairness to Applicant, Department Counsel's objection is overruled. (See Directive, Additional Procedural Guidance ¶¶ E3.1.10 and E3.1.19.) Applicant's response to the FORM and AE A through C are admitted, as well as AE D, which was not the subject of an objection. Absent any objection, GE 1 through 5 are also admitted.

Findings of Fact

I have incorporated Applicant's admissions in his response to the allegations set forth in SOR ¶¶ 1.a-1.c in my findings of fact, and I have noted his comments on each allegation. Applicant's personal information is extracted from GE 2, 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, 58, has worked as a material handler for three different federal contractors since January 2012. His education history is not in the record. He served in the U.S. Army for two years until he failed a drug test in 1984. He received a General Discharge under Other than Honorable Conditions. He married in 1994 and was divorced in 2004. Applicant was granted a security clearance in 2012 in connection with his

employment with the defense contractor. With the submission of his March 2018 SCA, he seeks to renew his clearance eligibility.

SOR Allegations, Evidence and Findings

SOR ¶¶ 1.a and 1.b – Two Credit-Card Accounts with a Creditor Charged-Off in the Amounts of \$1,528 and \$192, respectively – Applicant opened two credit-card accounts with the same creditor in October 2014 and February 2016. In March 2017, he defaulted on both accounts, and they were charged off. In his SOR answer, Applicant responded that he had been making payments on the smaller debt and that his last payment would be made on September 6, 2019. He also wrote that he was in contact with the creditor and intended to begin making payments on the larger debt once the smaller debt was paid off. In his FORM response, he updated the status of the larger debt that is the subject of SOR ¶1.a. He wrote that he made arrangements to pay the creditor and that the account will be satisfied by March 31, 2020. (GE 4 at 2, 4, 6; GE 5 at 2-4.)

SOR ¶ 1.c – Car Loan Charged Off in the Amount of \$15,310 – Applicant opened this account in April 2015 to finance the purchase of a car. The original amount of the loan was \$25,928. He stopped paying the loan in January 2018 due to a dispute with the lender. He stored the vehicle, a convertible, in a family member's garage during the winter and reduced his insurance coverage by dropping the collision coverage while the vehicle was stored. In response, the lender increased his monthly payments from \$533 to \$1,019. Applicant was unable to pay the increased monthly amount, and he voluntarily returned the car to the lender in February 2018. He understood that after the resale of the vehicle, he was obligated to pay a deficiency of \$2,000. When shown his credit report during his February 2019 background interview, he learned that the bank was seeking to collect \$17,002. Applicant disputes the debt and has retained counsel to represent him. On April 10, 2019, his attorney wrote to the creditor disputing the debt on two grounds, the improper surcharge for insurance and noncompliance with the Uniform Commercial Code in the resale of the vehicle. On May 24, 2019, the lender's lawyer wrote Applicant and stated that the debt was \$10,319, much less than the \$17,002 and \$15,310 figures the creditor reported to the credit bureaus. The creditor then filed a lawsuit. Applicant's attorney represented in a letter addressed to DOHA that the court has ruled that the case presents factual issues requiring a trial, presumably in a ruling denying the creditor's motion for summary judgment. The attorney also writes that a trial date has not yet been set. (GE 1 at 6; GE 2 at 32-33; GE 3 at 11; GE 4 at 5; GE 5 at 3; FORM response at 2, 14.)

SOR ¶ 1.d – Credit Account for the Purchase of Furniture Charged-Off in the Amount of \$1,644 – In December 2012, Applicant opened this account to purchase furniture. He defaulted on the payments in February 2017. He subsequently entered into a payment plan with the creditor paying it \$89 per month. The debt was fully repaid on December 31, 2018, as evidenced by a letter from the creditor. (GE 1 at 7; GE 3 at 11.)

Whole-Person Evidence

Applicant submitted two character reference letters and four commendations relating to his work for the Army. This evidence strongly supports Applicant, stating he is a person of good character and integrity, as well as a leader and subject matter expert. His work has made significant contributions to the Army warfighter. Applicant also submitted similar evidence with his response to the FORM. (GE 3 at 12-17; FORM response at 5-14.)

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 admissions in his SOR answer, response to the FORM, 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(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay 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

Three of Applicant's debts became delinquent in early 2017. He has paid two of them, and the third will be resolved in the first quarter of 2020. His behavior three years ago is not recent or frequent, evidencing that Applicant is living within his means. It is unlikely that his past actions will recur, and those debts do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and (d) fully apply.

The fourth delinquent debt arose out of unusual circumstances and is being disputed by Applicant in court. Applicant's attorney in that litigation has provided correspondence evidencing his belief that Applicant has a reasonable basis to dispute this debt. His counsel asserts Applicant's defenses to the creditor's lawsuit in court as an officer of the court. Accordingly, I accept the attorney's view that Applicant has a reasonable basis to dispute the legitimacy of that debt. AG ¶ 20(e) fully applies.

Aside from his counsel's legal advice in the lawsuit, Applicant has not presented any evidence that he has received financial counseling. AG ¶ 20(c) partially applies, however, because there are clear indications that Applicant's financial problems are being resolved and are under control.

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). 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: FOR APPLICANT

Subparagraphs 1.a - 1.d: For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge