



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02432
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2020

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 13, 2018. On September 20, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on October 23, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a

notice of hearing on December 12, 2019, and the hearing was convened on January 16, 2020. Government Exhibits (GE) 1 through 3 were admitted into evidence without objection. Applicant testified and submitted no additional evidence. The record was held open to permit submission of additional documentary evidence, but nothing was submitted within the allotted time period. DOHA received the hearing transcript on January 29, 2020.

Findings of Fact

Applicant is a 56-year-old fuel systems mechanic for a defense contractor, employed since 2018. He graduated from high school in 1981. He served on active duty in the United States Navy from 1981 until he was honorably discharged in 1984. He married in 1986 and divorced in 1996. He again married in 2009 and divorced in 2019. He remarried in March 2019. He has one adult child, and his current spouse has three children.

The SOR alleges Applicant owes approximately \$36,000 in delinquent debt. He admitted all of the SOR allegations. Applicant testified that his debts arose from bad choices, travel expenses, and his spouse's spending.

SOR ¶ 1.a is a loan on a vehicle that was voluntarily repossessed. He received a collection notice prior to the hearing, but no contact with the creditor has been made. The debt remains unresolved. SOR ¶¶ 1.b and 1.c are delinquent vehicle loans. Applicant was not aware of when the loans became delinquent and their current status. He has had no contact with the creditors and the debts remain unresolved. SOR ¶ 1.d is a delinquent personal loan that Applicant thought was paid. However, he has not had contact with the creditor, nor does he know its current status. The debt remains unresolved.

SOR ¶¶ 1.e through 1.m include delinquent credit cards, utility debts, personal loans, and medical debts that remain unresolved. Applicant has not made contact with creditors to inquire into the current status of the debts or attempt to resolve them.

Applicant was laid off in 1998, and remained underemployed until 2010. He is currently paying his ex-spouse's car loan and insurance because she cannot afford it. He believes that since his last divorce, he is able to start saving about \$1,000 per month because he is moving to a lower-cost home. He has about \$1,025 in his bank accounts, and \$700 in a 401K retirement savings program. He has not pursued financial counseling or assistance with debt management.

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 the 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.

Applicant has a history of financial delinquencies that remain unresolved. The debts appear to have resulted from a long period of underemployment, as well as divorces and irresponsible spending. Applicant has not shown sufficient efforts to resolve his delinquent debts and there is insufficient evidence to show that the debts will be resolved. Applicant's financial status has been poor for some time, and there is insufficient evidence that it will improve in the near future. Overall, Applicant's financial status raise significant doubts about his financial management decisions, personal responsibility, and ability to address delinquent debts. I am not convinced Applicant makes good financial decisions, and his financial status continues to cast doubt on his reliability, trustworthiness, and good judgment. No mitigating condition fully applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), 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. 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 military service and employment history. However, I remain unconvinced of his financial responsibility and ability to meet his financial obligations.

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 him 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.m:	Against Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge