



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-02929
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*
05/19/2020

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) security concerns raised by his significant delinquent debts. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 7, 2019. On December 6, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR on January 8, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on January 28, 2020. On that same day, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. The Defense Office of Hearings and Appeals

(DOHA) transmittal letter is dated January 28, 2020, and Applicant's receipt is dated February 13, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. He did not file a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on May 12, 2020.

Findings of Fact

Under Guideline F, the SOR alleges nine credit-card debts totaling \$21,171. In his Answer, Applicant denies SOR ¶ 1.a, an \$885 charged-off account, and admits the remaining debts. The delinquent debts are reflected in Applicant's April 2019 credit bureau report (CBR), disclosed on his e-QIP, and discussed during his personal subject interview (PSI). (GX 5; GX 3; GX 4.) Applicant's admissions are incorporated in my findings of fact.

Applicant, 35, is the deputy director of client services currently working for a defense contractor since 2017. He received his associate's degree in 2006. He married in 2007 and divorced in 2008. He resides and shares expenses with his cohabitant. This is his first application for a security clearance. (GX 3; GX 4.)

Applicant states that his financial delinquencies are due to living beyond his means when he was younger, a period of reduced hours of employment, and an overall lower income at the time the debts were incurred. (GX 3; GX 4.)

In his Answer, Applicant's basis for denying SOR ¶ 1.a is that the debt does not appear on his January 2020 CBR. He does not state that he paid the debt, nor did he provide a copy of the CBR. Without evidence to establish otherwise, SOR ¶ 1.a is not resolved.

Applicant further states in his answer that he has contacted the creditors of the remaining eight accounts and is attempting to arrange for repayment plans. He provides telephone numbers for each of his points of contact, but does not provide any other information. He does not assert nor is there any evidence that he has made any payments on any of these accounts. SOR ¶¶ 1.b through 1.i are not resolved.

During his PSI, Applicant explained that, in an effort to rebuild his credit, he has incurred recent debt, which he timely pays. This includes a November 2018 purchase of a \$41,431 vehicle jointly with his cohabitant - with monthly payments of \$875, a credit card, a furniture purchase, and a jewelry purchase. Applicant stated he intended to repay his delinquent accounts after paying off his current accounts by September 2019. He planned to contact the creditors of the smallest delinquent accounts in an effort to reach settlement agreements. He further stated that he and his cohabitant split all expenses, and that he has a net monthly remainder of between \$830 and \$1,330 and a savings account of approximately \$5,000. (GX 4; GX 5.) There is no evidence that Applicant has participated in any financial counseling.

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 or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable 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).

The record establishes the following disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant’s financial issues are recent, ongoing, and unresolved. Applicant’s delinquent debts may have been incurred, in part, due to circumstances beyond his control. Specifically, he experienced periods of reduced work hours and low-paying employment. However, he did not act responsibly under the circumstances. Applicant was given notice that the Government was concerned about his financial issues, first when he answered questions regarding his delinquent debts on his February 2019 e-QIP, and again when he answered questions about those accounts during his May 2019 PSI. He received the December 2019 SOR that sets forth the financial considerations security concern and lists nine delinquent debts totaling over \$21,000. Yet, despite having a monthly net remainder of between \$830 and \$1,330, he has not made a single payment on any of his delinquent accounts.

Although Applicant is current on his recently incurred debt, he remains legally obligated to pay his significant delinquent debt. His failure to do so raises concerns about his willingness to abide by rules and regulations, and about his reliability, trustworthiness, and good judgment. Applicant did not provide any evidence of any resolution of or recent actions he has taken to resolve his ongoing delinquent accounts. He has not participated in any financial counseling. None of the mitigating conditions 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(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guideline F in my whole-person analysis. 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 not mitigated the security concerns raised by his significant delinquent debt. Accordingly, I conclude he has not 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): AGAINST APPLICANT

Subparagraphs 1.a – 1.i: Against Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge