



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01279
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Department Counsel
For Applicant: *Pro se*

03/17/21

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 June 7, 2016. On May 9, 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on July 29, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 11, 2020,

scheduling the hearing in Applicant's metropolitan area for March 25, 2020. The hearing was canceled due to pandemic-related cessation of travel and courtroom availability.

DOHA issued a notice of video teleconference on October 7, 2020, and the hearing was convened on November 12, 2020. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through Q. DOHA received the hearing transcript on November 23, 2020.

Findings of Fact

Applicant is a 44-year-old engineer for a defense contractor, employed since 2004. Applicant earned a bachelor's degree in 2003 and has some credits toward a master's degree. He served in the U.S. Air Force from 1995 to 1999, when he was honorably discharged. Applicant is not currently married and has no children. He was previously married and divorced from 1994 to 1999, and 2012 to 2014. Applicant has had security eligibility since 2006.

The SOR alleges under Guideline F that Applicant owes approximately \$58,516 in 14 delinquent debts and a home foreclosure in 2015. Applicant admitted the SOR allegations, and provided explanations and documentation with his Answer.

Applicant began accumulating debts in 2013. He feared layoffs at his work would affect him, so he began to save money instead of paying debts and expenses. He accrued credit cards and increasing debt and living beyond his means. (GE 2) He lived in a home that he could not afford, and his income fell short of his expenses. Applicant also admits to irresponsible financial decisions with his home, credit cards, loans, and vehicles. Applicant allowed his debts to accumulate because of their "enormity." In 2014, Applicant divorced. He consulted an attorney to file a petition in bankruptcy and paid him \$3,000. He was advised however, that his income was too high to qualify for a Chapter 7 bankruptcy. Applicant declined to file a Chapter 13 because it was "not within his goals."

Applicant defaulted on his mortgage and in 2015, his home mortgage was foreclosed and the property was reclaimed to satisfy the debt. (SOR ¶ 1.a) Applicant has been paying on bank or credit card collection accounts alleged as SOR ¶¶ 1.i and 1.m after judicial action was taken to obtain a judgment for the accounts. He also obtained settlement offers on bank collection accounts alleged in SOR ¶¶ 1.f and 1.o, however, he has not made payments on the settlements as of the hearing date. The remaining SOR debts are unpaid and Applicant has not taken action to resolve them.

Applicant intends to address a charged off car loan that was reduced to judgment in 2017 and 2019. The creditor offered to accept two lump-sum payments, and Applicant intends to address this debt next. He also owes the IRS \$5,728 for unpaid Federal taxes from 2017 and 2019, and was to begin paying \$1,000 per month beginning in November 2020. Applicant claimed that he has already paid off IRS debts for 2017 and 2018 through a payment plan. He noted that he intentionally delays paying taxes when they are due so

that he can accumulate savings. He has not changed his employment withholding to address his end-of-year tax obligations.

Applicant expressed a personal preference to keep cash rather than pay debts or the IRS. He obtained a \$30,000 loan against his 401K retirement plan in 2017. He used about \$15,000 to put a down payment on a vehicle, and used about \$15,000 for vacations. Applicant earns about \$100,000 per year, and he currently has savings of about \$15,500. Applicant considers his savings to be for emergencies, not to pay debts. He has not sought 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 § 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:

- (b) unwillingness to satisfy debts regardless of the ability to do so; 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(b), and (c). Applicant admitted to failing to pay Federal income taxes when required, however it was not alleged in the SOR. Therefore, I will only consider it when evaluating (a) Applicant’s credibility; (b) to evaluate his evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether he has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's history of intentional debt accumulation reveals financial irresponsibility. His financial problems have been longstanding and remain a recent and concern. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant's second divorce may have contributed to his debts, but he began accumulating them for fear of a job loss prior to his divorce. He has remained employed since 2004, and earns a substantial income. However, he has not shown a willingness to address his debts in a responsible and timely manner. Despite resolution of some of his debts, and payments toward his IRS debt, I am not convinced he has acted responsibly and is willing to do so in the future. A majority of his debts have been ignored and remain delinquent, despite available funds from a 401k loan and savings.

Applicant has not sought help from a financial counselor, and seems satisfied to allow debts to become delinquent. His financial condition is not under control and will likely continue. 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 employment status, divorces, tax status, and military service. I remain unconvinced of his overall financial responsibility and ability, intent, and desire to meet his financial obligations in the future.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interest 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.h, 1.j – 1.l, 1.n – 1.o:	Against Applicant
Subparagraphs 1.i and 1.m:	For 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