



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01401
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro Se*

03/04/2021

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted security clearance applications (SCA) on August 14, 2014 and November 25, 2019. On September 5, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I. 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 September 30, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2020. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2020, scheduling the hearing in Applicant's metropolitan area for March 26, 2020. The hearing was canceled due to COVID-19-related cessation of travel and courtroom availability. Department Counsel amended the SOR to add allegations under Guideline F (Financial Considerations). Applicant answered the amended SOR on May 20, 2020.

DOHA issued a notice of video teleconference on October 7, 2020, and the hearing was convened on October 21, 2020. Government Exhibits (GE) 1 through 9 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which included several documents. DOHA received the hearing transcript on October 30, 2020.

Findings of Fact

Applicant is a 56-year-old personal computer technician for a defense contractor, employed since December 2018. He received a high school equivalency certificate in 1983 and earned some college credits and information technology (IT) certificates. He was married in 2013 and divorced in 2014, but they continue to cohabitate. Applicant has one adult daughter that lives with him and two adult stepchildren. Applicant served in the Army National Guard and Army Reserve from 1990 to 2017, some of which was in the individual ready reserve. From 2005 to 2017, Applicant was on active duty as a volunteer Active Guard and Reserve (AGR). He was honorably discharged at the expiration of his military enlistment contracts.

The SOR alleged under Guideline I that Applicant was twice evaluated in 2015 (SOR ¶ 1.a) and 2018 (SOR ¶ 1.b) by mental health professionals who called into question his judgment, reliability, trustworthiness and mental stability. Applicant denied the allegations. Under Guideline F, the amended SOR also alleged that Applicant has 17 delinquent debts totaling about \$37,484. Applicant admitted all of the financial allegations.

Applicant deployed to Afghanistan from 2013 to 2014, and served as an IT analyst and on occasion, in a personal security detail. He returned to his National Guard unit, but soon thereafter volunteered for a one-year assignment with the active duty Army in another state. He served in a dual role, filling a position of a sergeant major (E-9) while holding the rank of staff sergeant (E-6). This caused several conflicts when he attempted to protect his junior soldiers, and also a conflict with an Army officer that accused him of chest-bumping him. He felt that he had not decompressed for his deployment, and took on additional stress in this position.

Applicant was referred for a psychological evaluation at an Army medical center in March 2015. Applicant reported that he was treated in 2011 with Ambien for insomnia and that he and his spouse had marriage counseling in 2014. He reported the dispute with the officer that resulted in his referral and the difficulty he was experiencing in the job. Applicant's personal problems checklist assessment showed no stressors. The

licensed clinical psychologist noted that this is highly unusual and uncommon in healthy individuals. His personality assessment inventory (PAI) suggested that Applicant may not have answered in a forthright manner and showed that he was defensive and viewed himself to be free of any shortcomings. The clinical assessment was that he was reflecting anti-social behavior. Despite this, the psychologist made no diagnosis and noted that he does not require treatment. His prognosis was "good," based on no problems reported. She noted however that there does appear to be significant defects in psychological, social, or occupational functioning that could impair this judgment, reliability, or stability. She gave him an unfavorable security clearance recommendation.

After returning from assignment in about 2016, Applicant received orders for another assignment with active duty troops after being home about one to two months. He also received notice that he would be medically boarded for injuries he sustained in Afghanistan. This again increased his stress. He filled a position of a sergeant first class, while he retained the rank of staff sergeant. He believed the previous occupant of the position was derelict in her duties and did not properly train the 20 subordinate soldiers for whom she was responsible. Applicant believed the job was stressful, and added to his eventual diagnosis for post-traumatic stress disorder (PTSD).

Applicant stated that he attended private counseling from about 2014 to November 2017. He was discharged from the Army in 2017 with a medical separation, and he began employment as a civilian contractor about four days later. He performed his job well and had no incidents with coworkers. He spent about three years in physical therapy for neck and back injuries, and continues to be in pain from these injuries. He was prescribed Zoloft by his primary care physician for PTSD that keeps him calm and content.

In March 2018, Applicant was re-evaluated by a private licensed psychologist at the request of the DOD CAF. Applicant had difficulty arriving at his scheduled appointments on time, or making them altogether. He believes the doctor was biased against him for this reason. Applicant was diagnosed with PTSD. Although the doctor could not make conclusions based on her meetings with Applicant, she opined that based on his record, he demonstrated certain personality difficulties. She noted that Applicant "plays by his own set of rules." She noted that besides PTSD, Applicant did not meet diagnostic criteria for any other psychiatric condition. However, she determined that Applicant's judgment, reliability, and trustworthiness are impaired, based on his history of anti-social behavior, his tendency to be evasive regarding his legal history, and his limited insight into the ways he may have contributed to conflict in his relationships. She assessed his mental health prognosis as "poor" and requiring intensive, long-term therapy.

Applicant testified that since his 2018 evaluation, he has been taking his medication and has not had any confrontations except for a time where he protected his daughter from a violent boyfriend. Applicant claimed the man was at his home when he became violent with his daughter. Applicant asked him to leave, and the man approached him with a knife. Applicant stated that he calmly disabled the man and led him to the end

of his driveway to wait for police to arrive. The man was arrested and Applicant was praised for his response.

Applicant has not taken action to address the SOR debts. He stated he was current on his mortgage after a loan modification. He has not attended formal financial counseling, but has read writings of a well-known financial manager who advises addressing the smallest debts first. At the time of the hearing, he had not filed his 2017 income tax return because he is unable to determine how to report his overseas earnings while deployed. Applicant has about \$400 in savings, and earns about \$60,000 per year. He noted that he has no net remainder after paying monthly expenses.

Applicant received a \$60,000 medical separation payment in 2017 and used the money left over after taxes to buy a 47-acre ranch. He rescues horses and other animals, but has been generally unable to place them in new homes. He has had to learn regenerative farming techniques so that he can grow sufficient grass to feed his animals. Applicant has also taken over his step-son's car expenses. He has a budget and his daughter and grandson live with him and his ex-wife.

Applicant has an 80% disability rating from the Veteran's Administration (VA). He sees a primary care physician at the VA who treats his anxiety, but he has not requested psychological counseling or PTSD treatment. Applicant noted that he learned from past counseling how to handle stress. He does not believe he has a current recommendation to attend counseling and does not feel a need for counseling while he is on his medication. He noted he has "great" reviews by his employer and has not had any law enforcement interactions in the past two years. No evidence of civilian employment problems or manifested psychological issues since the 2018 assessment was offered into evidence. I found Applicant's testimony to be straightforward, forthcoming, clear, calm, and sincere.

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 I: Psychological Conditions

AG ¶ 27 expresses the security concern pertaining to psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted

when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this Guideline may be raised solely on the basis of mental health counseling.

The relevant disqualifying conditions under AG ¶ 28 include:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, reliability, or trustworthiness.

The admissions, testimony, and documentary evidence in the record are sufficient to establish the disqualifying condition under AG ¶¶ 28(b).

The following mitigating conditions under AG ¶ 29 are potentially relevant:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant testified that he is taking a doctor-prescribed medication to assist him with his PTSD symptoms. This medication has modulated his mood and reduced his anxiety to where he is functioning as expected. There is no evidence that Applicant has had any psychological problems since leaving active duty. He has testified that he is getting along well with his coworkers and members of his household. He noted that his daughter, who lives with him with her child, has commented on the difference in personality and ability to stay calm.

The evidence indicates that Applicant's condition is under control with medication, and that he no longer shows indications of emotional instability. He has been incident free for at least three years, and he has learned from past counseling how to handle stress when it occurs. AG ¶ 29 (a), (d), and (e) apply.

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a), (c), and (f).

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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA Appeal Board has long held:

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016); *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886

(1961). Failure to comply with Federal tax laws suggests that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

Applicant admitted to an inability to satisfy debts. He has made the first steps toward devising a plan to address them, but it is not enough to mitigate the financial considerations raised in the SOR. Applicant's income is apparently insufficient to meaningfully pay past-due obligations, and he has not shown an ability to tackle the debts any time soon. In addition, Applicant has a past-due tax return that has not been filed.

Although failure to pay Federal taxes when due was not alleged in the SOR, it is appropriate to consider it:

(a) to assess 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).

Based on the record presented, I am unable to conclude that Applicant's financial problems are under control or are unlikely to recur. He has not established a reliable track record of addressing his debts and outstanding tax obligation, and he has not participated in formal financial counseling. He is learning sustainable farming to help with his animal management, but the cost of managing the rescue animals appears to be beyond his financial means. I remain doubtful about Applicant's ability to meet past and future financial obligations. None of the mitigating conditions apply.

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 Guidelines I and F in my whole-person analysis. I also considered Applicant's employment status and performance, military service, care for abandoned animals, and intentions to resolve his debts and file his delinquent tax return. However, I remain unconvinced of his overall ability to meet financial delinquent obligations. The concerns over his psychological condition have been mitigated.

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 I: Subparagraphs 1.a – 1.b:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a – 2q:	AGAINST APPLICANT 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. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge