



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01743
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro Se*
06/28/2021

Decision

BENSON, Pamela C., Administrative Judge:

Applicant made significant progress in resolving his delinquent accounts and mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application on August 7, 2019. On October 15, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (EO) 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 the DOD on June 8, 2017.

Applicant submitted an undated answer to the SOR and requested a decision on the written record without a hearing. On December 16, 2020, the Government sent Applicant a complete copy of its written case, a File of Relevant Material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. He received the FORM on January 8, 2021. The FORM notified Applicant that he had an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM, and the case was assigned to me on March 9, 2021. I admitted Items 1 through 7 into evidence without objection.

On May 25, 2021, I requested Applicant provide updated information since the documents he provided with his response to the SOR were no longer current. I held the record open until June 4, 2021. On June 4, 2021, Applicant provided updated information that he attached to his original SOR response. I have labeled his SOR response and attachments as Applicant's Exhibit (AE) A, and his most recent submission of updated documentation as AE B. These documents were admitted into evidence without objection.

Findings of Fact

Applicant is 42 years old. In 2006, he married his wife, and they separated in December 2013. They have a 12-year-old son. Applicant has worked for his employer since 2012, where he is currently a director. He earned a master's degree in 2006. His employer has requested that Applicant be issued a DOD security clearance in order to enable him to perform specific employment duties. (Item 2)

Applicant admitted the accounts alleged in SOR ¶¶ 1.b and 1.g, and denied the remaining debts. (SOR ¶¶ 1.a, 1.c, 1.d., 1.e, and 1.f.) The total amount of indebtedness alleged is \$71,131, which includes over \$21,500 in federal tax liens. (Items 1 – 7; AE A)

Applicant stated in his SOR response that he was actively working to resolve his delinquent accounts. Although the SOR alleged indebtedness totaled \$71,131, he claimed that he had reduced the overall amount of indebtedness to \$48,760. On May 25, 2021, I requested Applicant provide updated documentation to show his history of payments and the current status of his SOR accounts. I held the record open for ten days in the event he wanted to submit this requested documentation. On June 4, 2021, Applicant provided the requested updated information that he attached to his original SOR response. (AE A, AE B)

According to Applicant, his financial issues worsened in approximately 2014, following the separation from his spouse in late 2013. She had sporadic employment from 2013 to 2017, after which time she was no longer employed. Since she has earned the same amount of income, or more, as compared to Applicant, the loss of her income during their separation was a major factor contributing to their financial problems. He fully supported his family although they are separated, and his spouse continued to have access to their joint bank account. She uses his income to pay their joint accounts as well as to fund her and their son's living expenses. His spouse has always handled the family finances. Applicant described his financial situation as acceptable, but disorganized. He has never participated in financial counseling. When he submitted updated information to the record on June 4, 2021, he reported that his spouse had been hired in early 2021 and is currently employed. (Item 1, Item 3; AE A, AE B)

SOR ¶ 1.a alleges Applicant is indebted to Midland Funding in the amount of \$20,957, for an account placed into collection. Applicant denied this allegation and provided documentation showing that he has been making consistent monthly payments of \$290 since March 2019 to the creditor. As of April 2020, the current account balance was \$8,410. As of June 4, 2021, the outstanding balance was \$6,380. This delinquent account is in the process of being resolved. (Item 1, Item 3, Item 4, Item 5, Item 6; AE A, AE B)

SOR ¶ 1.b alleges Applicant is indebted to Bank of America for a charged-off account in the amount of \$7,453. He admitted this debt and intends to settle this debt, but he has prioritized other delinquent accounts to pay before he takes any action on this account. Based on the updated information provided on June 4, 2021, Applicant recently hired an attorney to negotiate a settlement with the creditor, but a settlement resolution has not yet been reached. This debt has not yet been resolved. (Item 1; AE A, AE B)

SOR ¶¶ 1.c, 1.d, and 1.e allege student loan accounts placed for collection with ECMC in the total amount of \$21,144. Applicant admitted he owed these debts but denied the SOR allegations since he was in the process of consolidating the three student loans into a single loan through FedLoan Servicing. If the consolidation is approved, it would take the student loans out of “delinquent” status. Updated information provided on June 4, 2021, showed that the loan consolidation was approved in January 2021, and since that time, Applicant has made consistent monthly payments of \$240.88. There is sufficient evidence to show that the student loans are currently in the process of being resolved. (Item 1, Item 4, Item 5; AE A, AE B)

SOR ¶ 1.f alleges Applicant is indebted to the Federal government in the amount of \$9,824 after a tax lien was entered against him in 2014. He denied this tax debt and provided documentation with his SOR response that the 2011 tax debt had been resolved and the tax lien released in October 2020. (Item 1, AE A)

SOR ¶ 1.g alleges a 2019 Federal tax lien in the amount of \$11,753. Applicant admitted this Federal tax debt and stated in his SOR response that he was in the process of working with the Internal Revenue Service to resolve this debt. On June 4, 2021, Applicant provided updated information to show that the tax debt has been paid and the tax lien was released in April 2021. (Item 1; AE B)

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.” (*Egan* 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.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant 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." (EO 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. (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. (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)). "Security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531; AG ¶ 2(b)).

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

AG ¶ 19 describes conditions that are disqualifying. The following are potentially applicable in this case:

- (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 and the record evidence establish AG ¶¶ 19(a), 19(c), and 19(f).

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;
- (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.

There is evidence in the record that Applicant's finances suffered due to a 2013 separation and worsened from his wife's inability to find employment following their separation. These are circumstances beyond his control. He continued to finance two households and fully supported his spouse and child to at least early 2021, at which time his spouse found employment. Applicant acted responsibly under the circumstances when he had his student loans consolidated and taken out of default status. He acted responsibly and showed good faith by contacting his creditors to arrange payment plans or settlements, and made consistent payments in accordance with the payment plan. He paid his delinquent taxes in full and the tax liens were released. Applicant made significant progress resolving his delinquent debts, and it is clear that he is committed to repaying all of his outstanding accounts. Under the current circumstances, there are clear indications that his finances are under control and are unlikely to recur. Financial considerations security concerns are mitigated. AG ¶¶ 20(a), (b), (d) and (g) apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the financial considerations security concerns raised by his delinquent debts. The record provides sufficient evidence to demonstrate that he is reliable, trustworthy, and exercises good judgment. Accordingly, Applicant has met his burden of showing that it is clearly consistent with the interests of national security 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge