



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-02943
)
 Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*
03/09/2021

Decision

HESS, Stephanie C., Administrative Judge:

Applicant incurred delinquent debt due to unusual circumstances that were beyond his control. He acted responsibly in his efforts to resolve the debts. The Guideline F (Financial Considerations) security concerns raised by his delinquent debts are mitigated. Access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on November 27, 2017. On January 24, 2020, 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 March 2, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on October 21, 2020. On October 26, 2020, a complete copy of the file of relevant material (FORM) which included Government Exhibits (GX) 1 through 6, 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 October 26, 2020, and Applicant's receipt is dated November 6, 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 January 14, 2021.

Findings of Fact

Under Guideline F, the SOR alleges six delinquent debts totaling \$35,679. In his Answer, Applicant denies SOR ¶ 1.d, a \$13,368 charged-off account, and admits the remaining debts. The delinquent debts are reflected in Applicant's March 2019 and January 2018 credit bureau reports (CBR), discussed during his personal subject interview (PSI), and partially disclosed on his e-QIP. (GX 6; GX 5; GX 4; GX 3.) Applicant's admissions are incorporated in my findings of fact.

Applicant, 32, has been employed as a federal contractor part time since November 2017. He served honorably on active duty in the U.S. Navy from June 2009 until June 2013, which included a six-month combat deployment. He received his bachelor's degree in 2017. He has resided and shared expenses with his fiancée since 2016. He was first granted a security clearance in or about 2010. (GX 3; GX 4.)

Applicant states that his past financial delinquencies arose due to a confluence of several "life events." After leaving active duty, Applicant was unemployed from June until October 2013 when he obtained part-time seasonal employment. The part-time employment ended in December 2013, and Applicant was unemployed until November 2017 when he began working part time for his current employer. (GX 3; GX 4.)

In November 2011, Applicant secured a vehicle loan for approximately \$15,502 and maintained timely payments. In December 2013, while between insurance policies, Applicant totaled the vehicle. Applicant believed that he had insurance that should have covered the vehicle between policies and attempted to get proof of insurance from his provider, but was unsuccessful. He contacted the creditor in an effort to enter a monthly repayment plan, but the creditor demanded payment in full. Applicant intends to pay this debt. The \$11,572 debt alleged in SOR ¶ 1.a reflects the balance due on this account. The debt was charged off by the creditor.

The \$6,675 debt alleged in SOR ¶ 1.b is for a delinquent credit card that Applicant opened in 2011. He fell behind on his payments while unemployed and incurring unanticipated costs after totaling his vehicle and moving. The account became delinquent in July 2014 with a balance of \$7,500. Applicant entered a monthly repayment plan of \$150 a month in December 2018. (GX 4; GX 6.) This debt is being resolved.

The \$2,837 debt alleged in SOR ¶ 1.c was a secured account that was charged off in 2013. Both of Applicant's CBRs reflect a \$0 balance due. (GX 5; GX 6.) This debt has been resolved.

Applicant denies the \$13,368 charged-off debt alleged in SOR ¶ 1.d. In June 2014, Applicant signed an agreement for a non-refundable deposit to hold an apartment in a complex that primarily housed college students. He did not sign a lease. While waiting for an apartment to become available, he needed a place to live so he rented in a different complex. He notified the original complex that he would not be renting from them in July 2014. In 2017, Applicant discovered that the original complex had charged him for a full year despite the fact that he did not sign a lease or reside in the complex. Applicant contacted the complex in July 2017 to dispute the debt but was unable to reach a resolution. He disputed the debt with a major credit-reporting company in October 2017. (GX 4.) The dispute is reflected on his January 2018 CBR. (GX 5.) The debt does not appear on his March 2019 CBR. (GX 6.) This account has been resolved.

Applicant does not recognize the \$581 and the \$646 medical debts alleged in SOR ¶¶ 1.e and 1.f. (GX 4.) Both debts were assigned for collection in January 2015 and closed in April 2015. (GX 5.) The debts do not appear on Applicant's March 2019 CBR. (GX 6.)

During his PSI, Applicant explained that he is seeking higher paying employment opportunities and that he is actively focused on proper money management. He has no current delinquencies and characterizes his financial status as stable, stating that he is saving money, paying his bills on time, and trying to repair his credit.

Applicant's CBRs show a credit history dating back to 2008 that include paid-off student loans, credit cards, personal loans, a line of credit, and his 2017 apartment rental agreement. Despite his 2013 to 2017 period of unemployment and his ongoing underemployment, Applicant has not incurred any delinquent debt since 2015. He lives within his means and does not have any open credit accounts. (GX 6.)

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.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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,

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts, and

AG ¶ 20(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.

After leaving active duty in June 2013, Applicant was unemployed, with the exception of a two-month seasonal employment from October through December 2013, until he gained his current part-time employment in November 2017. During his more than four years of unemployment, Applicant overall maintained his finances. However, due to unusual circumstances, he fell behind on several of his obligations including the \$6,675 credit-card account alleged in SOR ¶ 1.b. He acted responsibly by entering a monthly repayment plan for this debt in 2018 and continuing to make timely installments.

In December 2013, while briefly uninsured, Applicant totaled his vehicle and incurred a debt for the balance due on it. (SOR ¶ 1.a.) This event occurred more than seven years ago under circumstances that are unlikely to recur. Applicant acted responsibly by attempting to resolve this debt, first with the insurance provider and then with the creditor. However, he was unable to resolve the debt and it has been charged off by the creditor. Applicant remains willing to pay this debt.

The \$2,837 credit-card debt alleged in SOR ¶ 1.c was a secured debt and there is no outstanding balance. After unsuccessfully attempting to resolve the \$13,368 debt claimed by an apartment complex, Applicant disputed the debt and it has been removed from his credit report. Applicant does not recognize the two medical debts totaling \$1,227 (SOR ¶¶ 1.e and 1.f) and they do not appear on his 2019 CBR.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The financial issues Applicant experienced were not caused by reckless or irresponsible behavior. The issues are the result of a sustained period of unemployment, a vehicle accident, and ongoing underemployment. He has resolved or is resolving more than 64% of the total amount of the SOR debts. Applicant’s credit history between 2009 and 2019 includes consistent repayment of personal loans, student loans, credit cards, and a line of credit. Although three of the SOR debts remain outstanding, the charged-off balance for the vehicle loan and the two medical debts that are no longer on Applicant’s CBR are unlikely to be sources of vulnerability to coercion or exploitation.

Applicant’s long history of overall financial stability, his resolution of the majority of the SOR debt, and his current financial circumstances are sufficient to establish a track record of financial responsibility. He is focused on proper money management which is demonstrated by the fact that he has not incurred any delinquent debt since 2015. He lives within his means and has no open credit accounts. He acted in good faith to resolve his outstanding debts by entering a repayment agreement for his credit-card debt, by successfully disputing the apartment complex debt, and by contacting the creditor in an effort to resolve the vehicle-loan debt and maintaining his willingness to pay the debt. He established a plan to resolve his delinquent debts and has implemented that plan. Applicant’s past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), 20(d) and 20(e) 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably on active duty in the Navy from 2009 until 2013, including a combat deployment. He was granted his first security clearance in approximately 2010. His overall credit history is indicative of a person who takes his financial responsibilities seriously. He incurred delinquent debt between 2013 and 2015 due to unusual circumstances that were beyond his control but he acted responsibly. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Security clearance adjudications are not meant to be punitive but rather are to determine an applicant's current ability to properly handle and protect classified information. Ultimately, the record shows that Applicant has demonstrated the good judgment, reliability, and trustworthiness required of those granted access to classified information.

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 mitigated the security concerns raised by his financial issues. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a – 1.f:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge