



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 12-07908
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

04/16/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On June 24, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On July 17, 2014, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 11, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 3. On February 11, 2015, a copy of the FORM was mailed to Applicant, giving him 30 days from its receipt to submit objections or provide additional information. He received the FORM on February 18, 2015, and did not submit a response. The case was assigned to me on April 3, 2015.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has been working for that contractor since March 2012. He graduated from high school in 1992. He reported no military service. He married for the second time in 2005. He has two children, ages, 4 and 9, and two stepchildren, ages 15 and 17. He is seeking a security clearance for the first time.¹

The SOR alleged that Applicant had 14 delinquent debts totaling about \$45,896 (SOR ¶¶ 1.a-1.n). In his Answer to the SOR, Applicant admitted all but one of the allegations. For the allegation in SOR ¶ 1.m (a debt alleged to be 180 days or more past due in the amount of \$16,953), he indicated that the account was in “good standing (Remodify)” His response to the allegation in SOR ¶ 1.m is considered a denial. His admissions are incorporated as findings of fact.²

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 26, 2012. He disclosed that he was unemployed from September 2011 to February 2012, after being laid off from a job. He also disclosed that he had 15 delinquent debts, and the reason for those delinquencies was “lack of work/income.”³

In his Answer to the SOR, Applicant stated that three of his family members (stepfather, mother-in-law, and father-in-law) passed away since he started his current job and that the past few years had been stressful and emotional. He attributed his financial problems to being laid off from a job of 20 years and losing overtime work during the recession in 2007 and 2008. He stated that, due to those financial hardships, he fell behind on paying his debts as he was supporting a family of six. He indicated that he had plans to pay the debts as financial resources become available and that he never thought of engaging in illegal acts to generate funds.⁴

A credit report dated April 12, 2012, reflected that the debt alleged in SOR ¶ 1.m was a conventional real estate mortgage loan that had a date of last activity of October

¹ Item 2.

² Item 1.

³ Item 2.

⁴ Item 1.

2011 and was 180 days past due in the amount of \$20,962. Applicant did not provide any documentation to support his claim that this mortgage loan had been modified and it was now in good standing.⁵

No documentation was submitted to show that Applicant made any payments towards the delinquent debts or that he entered into any repayment agreement to resolve them. Because no budgetary information was provided, the amount of his monthly income, expenses, and debt payments are unknown.⁶

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the

⁵ Items 1 and 3.

⁶ Items 1 through 3.

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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for financial considerations is set out in AG ¶ 18 as follows:

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 information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

Because Applicant accumulated debts that he was unable or unwilling to satisfy for an extended period, the following disqualifying conditions under AG ¶ 19 are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(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.

During the recession of 2007 and 2008, Applicant lost overtime work. In 2011, he was unemployed for six months after being laid off from a job. In the past three years, three members of his family passed away. While these events were conditions beyond his control that contributed to his financial problems, he does not receive full credit under AG ¶ 20(b) because he has not established that he acted responsibly under the circumstances. No documentation was presented to show that he has taken any steps to resolve the alleged debts. Furthermore, no documentation was presented to show his income and current financial situation. It is unknown whether he has the means to begin resolving some or all of these debts. From the evidence presented, I am unable to find that his financial problems are under control or are being resolved. His delinquent debts are ongoing, significant, and continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching

a determination.⁷ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. Doubts remain about his current eligibility for access to classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: Against Applicant

Subparagraphs 1.a – 1.n: Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge

⁷ The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a):

(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.