



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-07969
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 23, 2012. On December 3, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 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 September 1, 2006.

Applicant answered the SOR on January 16, 2015; denied all the allegations; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 29, 2015, and the case was assigned to me on November 23, 2015. On November 30, 2015, the Defense Office of Hearings and Appeals (DOHA)

notified Applicant that the hearing was scheduled for December 16, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until January 15, 2016, to enable him to submit additional documentary evidence. He did not submit any additional evidence. At my request, Department Counsel submitted information regarding the applicability of the Servicemembers' Civil Relief Act (SCRA),¹ which is attached to the record as Hearing Exhibit (HX) III.² DOHA received the transcript (Tr.) on December 24, 2015.

Findings of Fact

Applicant has been employed a defense contractor since December 2011. He worked part time for this contractor while still on active duty in the U.S. Navy. He served in the U.S. Navy from January 1992 to January 2012, when he retired as a petty officer first class. While on active duty, he was deployed three times. During his military service, he was awarded the Navy-Marine Corps Commendation Medal, and he received four awards of the Navy-Marine Corps Achievement Medal. (AX A.) He held a security clearance while in the Navy, but it expired after he left active duty. (Tr. 8.)

Applicant married in July 1993 and divorced in September 1995. He married his current spouse in October 1997. He and his current spouse have two sons, ages 8 and 15. He took college courses in 2008, 2009, 2011, and 2012, but he did not receive a degree.

When Applicant submitted his SCA, he disclosed the automobile repossession alleged in SOR ¶ 1.b. His May 2012 credit bureau report (CBR) reflected the repossession as well as a mortgage foreclosure on a resort property (alleged in SOR ¶ 1.a) and a delinquent credit-card debt for \$513 (alleged in SOR ¶ 1.c).

Applicant purchased a time-share resort property in 1998. He fell behind on his payments due to the expensive maintenance fees. He was able to pay the mortgage loan but unable to pay the annual \$3,000 maintenance fees in full. He tried to sell the property in 2002, without success. (Tr. 29-31.) The lender foreclosed on the property in July 2006. The balance due after foreclosure was about \$3,298. (GX 2 at 2; GX 3 at 6.) Applicant testified that he assumed the foreclosure and sale of the property satisfied the debt, because he did not receive any deficiency notices. He first learned about the deficiency when he was questioned by a security investigator in 2012. He testified that he was unable to make contact with anyone who could agree to a settlement of the deficiency. (Tr. 32-33.)

¹ After reviewing the SCRA, I have concluded that it does not protect Applicant, because the financial obligations in this case were not incurred before his entry into military service.

² HX I is the Department Counsel's Exhibit List. HX II is the letter from Department Counsel to Applicant, transmitting copies of the documents that would be presented at the hearing.

Applicant opened a charge account with a discount department store in July 1998. He stopped using the charge card but did not realize that he was accruing monthly maintenance fees on the account. In April 2012, the account was referred for collection of \$513. (GX 2 at 12.) Applicant was unaware of the debt until he saw his credit report after submitting his SCA. He testified that he paid the debt by credit card but did not have a receipt for the payment. (Tr. 37-38.) The debt is not reflected in his October 2014 CBR. Because less than seven years have elapsed since the debt was charged off and referred for collection, the absence of the debt on his most recent CBR indicates that it was resolved.³

In late 2005 or early 2006, Applicant was transferred from a duty station in the western United States to a duty station in the mid-Atlantic United States. For reasons not reflected in the record, his mail was forwarded to an incorrect address, and he did not receive his monthly bills. After he missed two payments on his automobile loan, his car was repossessed without notice. Applicant contacted the lender and offered to bring the payments up to date. The lender refused his offer and sold the automobile. The lender claimed a deficiency of \$10,139, but Applicant estimated the deficiency to be \$7,648. The deficiency was not unresolved. (GX 1 at 32; GX 2 at 2.)

In November 2006, Applicant was diagnosed with cancer and received chemotherapy in February 2007. (AX B.) He receives disability pay of \$2,000 per month in addition to his military retired pay. His net monthly income is about \$6,147. His monthly expenses are about \$1,794 and his debt payments are about \$1,780, leaving him a net monthly remainder of about \$2,573. (GX 2, Personal Financial Statement.) Applicant's October 2014 CBR reflected delinquent debts. He has several active credit cards, a mortgage loan on his residence, and a car loan, all of which are current.

The debts alleged in SOR ¶¶ 1.a (alleged time-share deficiency) and 1.b (alleged repossession deficiency) are not reflected in Applicant's October 2014 CBR. The state statutes of limitation have run on both debts.⁴

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.

³ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

⁴ A table reflecting the statutes of limitation for each state can be found at www.bankrate.com.

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." 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 evidence establishes the allegations in SOR ¶¶ 1.a and 1.b. The debt in SOR ¶ 1.c has been resolved. The debts alleged in SOR ¶¶ 1.a and 1.b are sufficient to raise two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

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

AG ¶ 20(a) is established for SOR ¶ 1.a. Applicant purchased the time-share property when he was a young and inexperienced sailor, and he did not understand the financial implications of the purchase. The mortgage was foreclosed and the property sold in 2006, nine years ago. His naïve venture into resort-property ownership was an

isolated incident, not likely to recur, and it does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(a) is also established for SOR ¶ 1.b. The repossession of his car occurred nine years ago. Since the repossession, he has managed his finances responsibly.

AG ¶ 20(b) is established for the car repossession in SOR ¶ 1.b. Applicant's reassignment under military orders and the misrouting of his mail were circumstances beyond his control. Undoubtedly, he should have realized that he had not made his car payment for two months. However, he was dealing with the innate disorganization of a cross-country move. When he realized that he had missed two car payments, he acted responsibly by contacting the creditor and attempting to resolve the delinquency, to no avail. Applicant's bout with cancer also was a circumstance beyond his control. However, it occurred after the repossession, and there is no evidence that it contributed to his failure to make timely payments on the automobile loan.

AG ¶ 20(c) is established for the credit-card debt alleged in SOR ¶ 1.c, but not for the debts alleged in SOR ¶¶ 1.a and 1.b, which have not been paid. Although the statutes of limitation have run for the debts in SOR ¶¶ 1.a and 1.b, reliance on a statute of limitations "is not normally a substitute for good-faith efforts to pay off debt." ISCR Case No. 07-16427 (App. Bd. Feb. 4, 2010.) However, the non-collectability of the debts is relevant, because it greatly reduces Applicant's vulnerability to coercion or duress and the temptation to engage in illegal conduct to generate funds.

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. An administrative judge should consider the nine 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has a long record of honorable military service. He held a security clearance throughout his Navy career, apparently without incident. He was candid, sincere, and credible at the hearing.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The record reflects that Applicant has put his financial mistakes behind him, and his financial situation is under control. The evidence leaves me with no doubt about his current reliability, trustworthiness, and good judgment.

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 delinquent debts. 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

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge