



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



In the matter of:)
)
) ISCR Case No. 12-08508
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On July 24, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense 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 could not find under the Directive that it is clearly consistent with the national interest to grant Applicant access to classified information and referred his case to an administrative judge so that a determination could be made to grant, deny, or revoke his security clearance. Applicant answered the

SOR on September 4, 2014, and requested a hearing on November 18, 2014. This case was assigned to me on January 15, 2015. On February 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for February 23, 2015. The hearing was held as scheduled. Applicant waived the 15-day notice requirement for hearings in ¶ E3.1.8 of the Directive.¹

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5, while Applicant testified and offered Applicant's Exhibits (AE) A through E. All the exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on March 2, 2015.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since September 2010. He graduated from high school in 1997. He served on active duty in the U.S. Air Force from October 2000 to October 2006, attained the grade of staff sergeant (E-5), and received an honorable discharge. He currently serves in the Air Force Reserve as a second lieutenant (O-1). He earned an associate's degree in 2008 and a bachelor's degree in 2009. Since then, he has been working on a master's degree. He is married and has two children, ages 8 and 15. He has held a security clearance since about 2001.²

The SOR alleged that Applicant had 17 delinquent debts totaling about \$197,000 (SOR ¶¶ 1.a-1.q). In his Answer to the SOR, Applicant admitted to all of the allegations with the exception of SOR ¶ 1.m. His admissions are incorporated as findings of fact. Credit reports dated April 12, 2012; March 7, 2012; and January 28, 2015; contain substantial evidence of the alleged debts.³

Applicant attributed his financial problems to being laid off from a job in January 2007. At that time, he had been working in that job for about seven months following his discharge from the military. When he was laid off, his wife was pregnant, and they had just purchased a home. He then obtained a job in a restaurant as a waiter and bartender, but could not keep up with the bills. He also began attending college on the GI Bill and graduated with a bachelor's degree in two-and-a-half years. Soon after graduating, he obtained his current job. He indicated that he never had a delinquent debt prior to being laid off in 2007.⁴

¹ Tr. 12-13.

² Tr. 5-8, 28-29, 35-36; GE 1.

³ Applicant's Answer to the SOR. "It is well-settled that adverse information from a credit report can normally meet the substantial basis standard and the government's obligation under ¶ E3.1.14 [of the Directive] for pertinent allegations." See ISCR 08-12184 at 7 (App. Bd. Jan. 7, 2010).

⁴ Tr. 29-31, 35-36.

SOR ¶ 1.i – mortgage loan for \$191,020 in foreclosure status. Applicant was laid off from his job during a national recession. During that period, the value of his home dropped from approximately \$230,000 to \$130,000. After graduating from college in 2009, he moved to another state for a job opportunity. He was unable to rent his home because individuals could rent homes twice the size of his in that area for the amount of rent he would have needed to charge to cover his mortgage payments. He had a Veterans Affairs (VA) mortgage loan on the home, which limited his ability to dispose of the home through a short sale. He indicated that he received a \$150,000 cash offer for a short sale that the mortgage lender declined. The home was foreclosed. In the foreclosure process, the VA purchased the home and later disposed of it. He has been in contact with the VA, which has not made a request for him to pay the mortgage loan deficiency. His most recent credit report reflected that the mortgage loan had a zero balance.⁵

SOR ¶¶ 1.d, 1.e, and 1.f – past-due student loans in the amount of \$705. Applicant is attending post-graduate school. His student loans are in forbearance.⁶

SOR ¶¶ 1.a-1.c, 1.g-1.h, 1.j-1.q – delinquent accounts totaling \$5,340. Documentation established that Applicant paid the debts in SOR ¶¶ 1.a (\$778), 1.b (\$272), 1.c (\$317), 1.h (\$909), 1.j (\$743), 1.k (\$130), 1.n (\$98), and 1.o (\$45). A number of those debts were resolved through settlement agreements and paid by money borrowed from his 401(k) account. The debt in SOR ¶ 1.l (\$1,085) is a duplicate of the debt in SOR ¶ 1.a. Applicant denied the debt in SOR ¶ 1.m (\$1,273), claiming he paid that debt through a repayment agreement in 2011. This debt no longer appears on his most recent credit report. Applicant pointed out that the debts in SOR ¶¶ 1.g (\$232), 1.p (\$51), and 1.q (\$185) also no longer appear on his credit reports. These remaining debts may have fallen off this credit report and are considered minor.⁷

Applicant's wife does not work outside the home. He indicated that he had a net monthly remainder of about \$600. When he started working for his current employer, his annual income was about \$42,000. At the time of the hearing, his annual income had increased to \$75,000. He testified that he had just received a promotion, and his annual income would soon increase to \$107,900.⁸

Applicant's work performance appraisals for 2013 and 2014 indicated that he either achieved or exceeded all goals. He is a hard-working, dedicated employee. He provided character reference letters that describe him as a trusted and respected

⁵ Tr. 31-33; GE 1, 2, 5; AE A, C; Applicant's Answer to the SOR.

⁶ Tr. 6-7, 39-42, 44; GE 2-5; AE C.

⁷ Tr. 37-39, 42-46; GE 1-5; AE B, C; Applicant's Answer to the SOR.

⁸ Tr. 33-34, 46, 50; Applicant's Answer to the SOR.

leader. His current landlord indicated that his rent payments have always been paid in a timely manner.⁹

In the Air Force, Applicant received two Air Force Achievement Medals and a Good Conduct Medal. He served on active duty in Korea.¹⁰

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, to reach his 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 strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

⁹ AE D, E.

¹⁰ Tr. 28-29.

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. The evidence established the above disqualifying conditions.

Five 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.

In January 2007, Applicant was laid off from a job when his wife was pregnant and after they had just bought a home. He then obtained a job working in a restaurant, began going to college, and was unable to keep up with his bills. He completed his bachelor's degree in two-and-a-half years. His unemployment and the national recession were conditions beyond his control that contributed to his financial problems. In September 2010, he obtained his current job. His home was foreclosed, but the VA paid the mortgage lender. The VA has not made a demand for the mortgage loan deficiency. Applicant is now attending post-graduate school. His student loans are in forbearance. Of the remaining 13 debts, he has paid 9 of them. Three other debts are no longer reported on his credit report. Applicant has acted responsibly under the circumstances in addressing his financial problems. He is living within his means and is financially stable. His financial problems are resolved, are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. AG ¶ 20(e) applies to the duplicate debt in SOR ¶ 1.I.

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(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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 served honorably on active duty in the Air Force for six years. He continues to serve as an officer in the Air Force Reserve. He is a valued employee and recently received a promotion with a substantial pay raise. He held a security clearance for many years without any apparent problems. He encountered financial problems and has been working steadily to resolve them. He will continue to act responsibly in handling his financial matters. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all of the above reasons, I conclude that Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings 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 F: For Applicant

Subparagraphs 1.a-1.q: For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge