



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No.12-09720
)
 Applicant for Security Clearance)

Appearances

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

03/09/2016

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 on April 4, 2012. On August 26, 2015, 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 September 14, 2015; denied all the allegations; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 12, 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 him 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 through C, which were admitted without objection. I kept the record open until January 8, 2016, to enable him to submit additional documentary evidence. He timely submitted AX D through K. DOHA received the transcript (Tr.) on December 24, 2015.

Findings of Fact

Applicant is a 29-year-old pipefitter employed by a defense contractor since February 2012. He graduated from high school in June 2005, worked for a private employer from July 2005 to February 2006, and worked for a defense contractor from February 2006 to June 2007. He received a security clearance in January 2007 but it was terminated when he voluntarily left his job in June 2007, seeking opportunities in the private sector. He worked various intermittent and part-time jobs until he began his current employment.

Applicant's April 2012 credit bureau report (CBR) reflected the debts alleged in SOR ¶¶ 1.a, 1.e, and 1.f. (GX 3.) His October 2014 CBR reflected the debts alleged in SOR ¶¶ 1.b-1.d. (GX 4.) He disclosed numerous delinquent debts in his SCA. (GX 1 at 46-55.) In a personal subject interview (PSI) in May 2012, he told a security investigator that he had engaged a debt-consolidation company to assist him with his delinquent debts, and he acknowledged numerous delinquent debts reflected in his April 2012 CBR. He attributed his financial problems to his periods of unemployment. (GX 2 at 9-13.)

Applicant purchased a home in December 2014. He testified that he tried to contact all his creditors and resolve all his delinquent debts in order to qualify for a loan. (Tr. 31-32.) At the hearing, Applicant submitted a September 2015 CBR that reflected no delinquent accounts. (AX A.)

In his post-hearing submission, Applicant presented documentary evidence that the debts alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f had been paid in full. The debt in SOR 1.e was paid in June 2014. The debts in SOR ¶¶ 1.a, 1.b, and 1.e were paid in December 2015. (AX E through K.) Applicant stated that he was unable to contact the original creditors or collection agencies for the medical debts alleged in 1.c and 1.d, because there was no contact information on GX 4. (AX D.)

The SOR and GX 4 identify the debt alleged in SOR ¶ 1.c as "medical" and list the first three numbers of a seven-number account. GX 4 reflects that the date of last activity was October 2008, the balance due is \$314. The "type of loan" is listed as "Collection/Attorney fees." There is one comment below the partial account number stating: "Outstanding balance; consumer disputes this account; medical." There is no name, address, or phone number listed for either the original creditor or the collection agency. The CBR does not reflect the basis for the dispute or when it was filed.

The SOR and GX 4 identify the debt alleged in SOR ¶ 1.d as “medical” and list the first three numbers of a seven-number account. GX 4 reflects that the the date of last activity was October 2008, and the balance due is \$85. The “type of loan” is listed as “Collection/Attorney fees.” The only comment is “Outstanding balance; medical.”

Applicant did not file his federal and state income tax returns for tax years 2009 through 2011 because he did not have a regular job. His failure to file income tax returns was alleged in SOR ¶¶ 1.g, and 1.h. He intermittently did odd jobs for a friend, who paid him in cash and gave him money when he needed it. (Answer to SOR; GX 2 at 9; Tr. 24.) He testified that he earned about \$200 per month during this time. (Tr.37-38.) The various employers listed on his security clearance applicant were those who gave him intermittent jobs during 2009 through 2011. He testified that he listed them because he thought it would look better on his application than a four-year gap, with no explanation why he did not have a job. (Tr. 24.) Department Counsel conceded, based on IRS Publication 501, that Applicant was not required to file an income tax return or pay income taxes, because his income in 2009 and 2010 was below \$9,350, and it was below \$9,500 in 2011. (Tr. 48.) The record contains no evidence regarding the minimum income required to trigger a requirement to file a state income tax return for those years.

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 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 SOR alleges six delinquent debts totaling about \$6,033 (SOR ¶¶ 1.a-1.e). It also alleges that Applicant failed to file federal and state income tax returns for tax years 2009 through 2011 (SOR ¶¶ 1.g and 1.h).

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).

Three disqualifying conditions under this guideline are potentially applicable: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same").

Applicant's April 2012 and October 2014 CBRs establish AG ¶¶ 19(a) and 19(c). AG ¶ 19(g) is not established, because Applicant was not required to file returns for 2009 through 2011.

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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts were numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant voluntarily quit his job in 2007, resulting in multiple periods of unemployment and underemployment.

AG ¶ 20(c) is partially established. Applicant hired a debt-consolidation agency, but he did not receive the type of financial counseling contemplated by this mitigating condition. However, there are “clear indications” that his financial problems have been resolved.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f. The two medical debts in SOR ¶ 1.d and 1.c are not resolved, despite Applicant’s best efforts to resolve all his financial problems. However, it would be unreasonable to expect Applicant to identify and contact the original creditor or the collection agency and resolve the debts, which are more than seven years old, without more information than was provided in the October 2014 CBR and the SOR. They were not reflected in the April 2012 CBR, and Applicant was not questioned about them in the PSI. SOR ¶¶ 1.d and 1.c fall short of the specificity required by Directive ¶ E3.1.3, and they did not provide sufficient notice to Applicant to enable him to respond and present evidence for my consideration. See ISCR Case No. 03-07826 at 3 (App. Bd. Jun. 17, 2005); ISCR Case No. 02-10215 (App. Bd. Jan. 30, 2004).

AG ¶ 20(e) is not established because Applicant did not dispute any of the debts alleged in the SOR. GX 4 reflected that the medical debt alleged in SOR ¶ 1.c was disputed, but it did not reflect when it was disputed or the basis for the dispute.

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 was candid, sincere, and credible at the hearing. He has made great strides in overcoming his irresponsible past. He now has a steady job with a future and

has recently purchased a home. His most recent CBR reflects that he is living within his means and fulfilling his financial obligations.

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.h: 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