



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



In the matter of:)
)
) ISCR Case No. 12-10131
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

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 April 4, 2015, 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 by DOD on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national

interest to grant Applicant a security clearance. On April 20, 2015, Applicant answered the SOR and requested a hearing. This case was assigned to me on June 15, 2015. On July 6, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for July 21, 2015. The hearing was held as scheduled. Applicant waived the 15-day notice requirement under ¶ E3.1.8 of the Directive.¹

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant's Exhibits (AE) A through J. The record of the proceeding was left open until August 4, 2015, to provide Applicant an opportunity to present additional matters. Applicant submitted documents that were marked as AE K through O. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 27, 2015.

Findings of Fact

Applicant is a 50-year-old employee of a DOD contractor. He has been working for that contractor since June 2005. He graduated from high school in 1984, received a bachelor's degree in 2008, and a master's degree in 2010. He served in the Army from January 1985 to May 2005 and retired in the grade of first sergeant (E-8). He has been married five times. He married his current wife in 2010. He has three children, ages 5, 13, and 23. He has held a security clearance since about 1985.²

The SOR alleged that Applicant had four delinquent debts totaling \$88,883. In his Answer to the SOR, Applicant denied each allegation with explanations. Credit reports dated June 14, 2012, and October 29, 2014, contain entries establishing each debt.³

Applicant attributed his financial problems to the financial irresponsibility of his fourth wife and their divorce in 2008. In an interview with an Office of Personnel Management (OPM) investigator, Applicant stated that his fourth wife caused their financial problems by spending too much money. He indicated they lived above their means and were not able to pay their bills. Each of the four SOR debts dates back to when Applicant was married to his fourth wife.⁴

SOR ¶¶ 1.a and 1.b – first and second mortgage loans with past-due amounts totaling \$25,410 and outstanding balances totaling \$508,612. These mortgage loans were for a home that Applicant and his fourth wife purchased for about \$500,000 in

¹ Tr. 13-15.

² Tr. 6-8, 36-38, 40-52; GE 1; AE A.

³ Applicant's Answer to the SOR; GE 3, 4. "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. 35-40; GE 2.

2007. His monthly mortgage payments were about \$3,200. Prior to his divorce in 2008, Applicant obtained a mortgage loan modification, but that did not resolve his problems. He requested a second loan modification, but that was denied. Due to a downturn in the real estate market, the value of his home had decreased to about \$120,000 less than the amount he owed on the mortgage loans. Following his divorce, he requested authorization to execute a deed in lieu of foreclosure. The lender was willing to accept a deed in lieu of foreclosure, but his ex-wife refused to sign the documents. He next requested authorization for a short sale, but never received a response from the lender. The lender eventually foreclosed on the property and later sold it. He indicated that public records revealed the property sold for \$389,000. He never received an IRS Form 1099 concerning the foreclosure or resale. In his post-hearing submission, he provided a credit report dated July 31, 2015, reflecting that both mortgage loans had zero balances and zero past-due amounts. The remarks section of the entry for the first mortgage reflected "Foreclosure redeemed." These mortgage loans are resolved.⁵

SOR ¶ 1.c – charged-off account for \$34,734. This was a vehicle loan that was opened in 2007. Applicant's ex-wife used this vehicle, while he drove a 17-year-old vehicle that had been fully paid. He testified that they purchased the new vehicle for about \$38,000. The monthly payments were about \$800. When they separated she left the vehicle in the driveway. In about 2009, the vehicle was repossessed after Applicant requested the creditor retrieve it. He did not know whether the vehicle was resold. Applicant disputed this debt. An entry in the credit report dated February 24, 2015, reflected that this debt was deleted from the credit file. This debt did not appear on his credit report dated July 31, 2015. This debt is resolved.⁶

SOR ¶ 1.d – judgment for \$28,739. This was a personal loan that Applicant obtained to consolidate marital debts. In 2012, Applicant entered into a consent judgment with the creditor. Under that agreement, payments of \$400 per month were automatically withdrawn from his checking account. These payments were made for two years, totaling about \$9,600, until the debt was transferred to another collection agency. At that point, he received notices that the payments were no longer being accepted. He later negotiated a settlement with the new collection agency. He provided documentation showing he paid an additional \$5,000 to fully satisfy this debt.⁷

In his post-hearing submission, Applicant provided a personal financial statement that reflected his total net monthly income was \$6,573, his total monthly expenses were \$3,490, and his total monthly debt payments were \$892, which left him a net monthly remainder of \$2,191. He also reported having \$35,582 in savings and \$80,000 in stocks and bonds.⁸

⁵ Tr. 52-63; GE 3, 4; AE O; Applicant's Answer to the SOR.

⁶ Tr. 63-68; GE 3, 4; AE I, O; Applicant's Answer to the SOR.

⁷ Tr. 68-72; GE 3, 4; AE B, C, D, O; Applicant's Answer to the SOR.

⁸ AE N.

Applicant's work performance reviews for 2013 and 2014 reflect that he successfully achieved all expectations and was a valued leader and manager. He is described as a role model of company values. A coworker indicated that Applicant is a person of good moral character who is an invaluable member of the team.⁹

In the military, Applicant was awarded two Meritorious Service Medals, four Army Commendation Medals, ten Army Achievement Medals, and six Army Good Conduct Medals.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

⁹ AE E-H.

¹⁰ AE A.

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 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. Record evidence is sufficient to raise 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.

While married to his fourth wife, Applicant experienced financial problems. He claimed she was not fiscally responsible and caused their financial problems. They divorced in 2008. Their divorce and her spending habits were conditions beyond his control. He attempted to resolve the delinquent mortgage loans (SOR ¶¶ 1.a and 1.b) through loan modifications, a deed in lieu of foreclosure, and short sale, but those efforts were unsuccessful. The property was foreclosed and later sold. His credit reports now reflect the mortgage accounts have zero balances. Applicant successfully disputed the debt in SOR ¶ 1.c, which has been deleted from his credit report. He has settled and paid the debt in SOR ¶ 1.d. His financial problems are limited to the time he was married to his fourth wife over seven years ago. There is no evidence of recent financial delinquencies. From the evidence presented, I find that his financial problems are resolved and are unlikely to recur. His prior financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. All of the mitigating conditions apply to varying degrees.

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 in the military for 20 years and retired in the grade of first sergeant. He has worked for his current employer for over ten years and is a valued employee. He encountered financial problems in his fourth marriage, but those problems have been resolved. For the past seven years, he has not encountered any new financial problems.

Overall, the record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all the above reasons, I conclude that Applicant mitigated the financial 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.d:	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