



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



In the matter of:)
)
) ISCR Case No. 13-01296
)
Applicant for Security Clearance)

Appearances

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

07/28/2014

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 February 7, 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; 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 make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant answered the

SOR on February 26, 2014, and requested a hearing on April 10, 2014. On May 19, 2014, the case was assigned to me. On June 4, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for June 24, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, while Applicant testified and offered Applicant Exhibits (AE) A and B. The record of the proceeding was left open until July 23, 2014, for Applicant to submit additional matters. He timely submitted documents that were marked as AE C through L. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 7, 2014.

Findings of Fact

Applicant is a 63-year-old project engineer who works for a defense contractor. He has worked for his current employer since August 1978. He earned a bachelor's degree in January 1987 and a master's degree in business administration in May 1991. He has been married four times, most recently in April 2004. He has four children, ages 25, 30, 35, and 44, and a stepchild, age 34. He has held a security clearance without incident since about 1979.¹

The SOR alleged that Applicant had three delinquent student loans totaling \$67,853 (SOR ¶¶ 1.a – 1.c). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings as fact.²

In his Answer to the SOR, Applicant also stated:

I do admit that I have not paid off these student loans in which I am the co-signer for my son [name omitted]. He is the primary signer on these loans. In the past, I have helped him out in making payments. Once he moved away, I was less inclined to continue doing that for him, particularly since he has been avoiding me. I want him to step up and take responsibility for these loans. It has been more of a matter of principle to me with this issue. Up to this point, I have not been willing to let him off the hook. I understand that this has affected my credit rating, and now potentially my security clearance. Therefore, I have to start addressing this in the near term. I have the financial ability to start making payments, or to settle the debt by using some of my 401K funds. I am not pleased with this, but am considering the latter, just to get the burden of this off my shoulder. . . .³

¹ Tr. 6-7, 21-23, 28-37, 58-60; GE 1.

² Applicant's Answer to the SOR; GE 2, 3.

³ Applicant's Answer to the SOR.

At the hearing, Applicant testified that the defaulted student loans were incurred for his son's college education between 2004 and 2008. His son lived at home while attending college and was awarded a bachelor's degree in 2008. The combined payments on the three student loans were a little less than \$400 per month. After completing college, his son had irregular employment and made some payments on the student loans. If his son missed payments, Applicant would make them. Applicant indicated that he covered about 10 payments for his son. In 2010, Applicant was putting pressure on his son to come up with a plan for getting his financial affairs in order. Applicant left for a vacation and told his son that he wanted to see the plan when he returned. While Applicant was gone, his son had moved out of the house. Applicant has not seen him since then. Applicant's daughter told him that his son was paying his debts. Applicant had not heard anything from the student loan creditor and thought those loans were being paid. His son, however, defaulted on those loans in 2011.⁴

At the hearing, Applicant indicated that, while he continued to hope that his son would accept responsibly for the student loans, he finally realized that he needed to take action to resolve them. He indicated that he was in negotiations with the bank and expected to reach a settlement agreement in the near future.⁵

In his post-hearing submission, Applicant provided documentation showing the three delinquent student loans were resolved. On July 11, 2014, the creditor sent Applicant a letter agreeing to accept \$25,300 as settlement in full for the three student loans. In that letter, Applicant was also advised that he might receive an Internal Revenue Service 1099 Form indicating that he would be responsible for paying taxes on any difference between the principle balance of the loans and amount paid. On July 19, 2014, Applicant mailed the creditor three cashier's checks totaling \$25,300. Applicant indicated that the creditor preferred to settle these accounts with lump-sum payments rather than through installment payments.⁶

Applicant has not defaulted on any other debts. His annual salary is about \$125,000. His wife is employed as the chief administrative officer of a medical facility and earns about \$95,000 per year. They own a home, which has a 15-year mortgage. They have about seven years remaining on that mortgage. Their monthly mortgage payment is about \$2,500. He estimated that his and his wife's net monthly remainder (monthly income minus expenses and debt payments) was about \$2,000 to \$3,000.⁷

Applicant's work evaluations for 2012 and 2013 indicated that he was a "successful contributor." The Chief Financial Officer at the company stated that

⁴ Tr. 23-25, 37-46, 57-58, 61-63; GE 2.

⁵ Tr. 23-25, 27-28, 54-56, 61-63, 68-70.

⁶ AE F-L.

⁷ Tr. 46-54; GE 2.

Applicant was scrupulously honest, conscientious, trusted, and honorable. In 2013, Applicant received a community impact volunteer award for his contributions to those less fortunate in the community.⁸

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 unfavourable, 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.

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.

⁸ Tr. 58- 60; AE A-E.

“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;
- (c) a history of not meeting financial obligations;

Applicant cosigned three student loans on which his son defaulted. Following that default, Applicant did not make any payments on those loans for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant's son was primarily responsible for paying the delinquent student loans. When his son failed to make those payments, Applicant became responsible for those payments. Applicant initially decided not to make the payments on those loans with the hope that his son would make a turnaround and accept responsibility for them. Applicant's decision in that regard was not a condition beyond his control.

When Applicant finally realized that his son would not accept responsibility for the student loans and that these delinquent debts were placing his security clearance in jeopardy, he entered into a settlement arrangement with the creditor and resolved these debts. Those delinquent debts arose under circumstances that are unlikely to recur. Applicant's financial situation is stable. The alleged debts do not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) apply. AG ¶ 20(b) does not apply.

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 has worked for the same employer for over 35 years. He is a valued employee. He has held a security clearance for many years without incident. These debts were unresolved because Applicant was trying to have his son take responsibility for his educational debts. When he finally concluded that his son would not accept responsibly for those debts, Applicant resolved them.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has 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.c: 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge