



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-00128
)
Applicant for Security Clearance)

Appearances

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

07/08/2014

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 March 4, 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. On March 20, 2014,

Applicant answered the SOR and requested a hearing. 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, 2012. The hearing was held as scheduled. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3, while Applicant testified and offered Applicant's Exhibits (AE) A through E. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 1, 2014.

Findings of Fact

Applicant is a 31-year-old mechanical engineer who works for a defense contractor. He has been employed in his current job since June 2013. He earned a bachelor's degree in December 2011. He married in October 2013 and has no children. This is the first time that he has sought to obtain a security clearance.¹

The SOR alleged that Applicant had six delinquent debts totaling \$81,547 (SOR ¶¶ 1.a – 1.f). The allegations consisted of three student loans (SOR ¶¶ 1.a – 1.c) and three credit card accounts (SOR ¶¶ 1.d – 1.f). In his Answer to the SOR, Applicant admitted each debt. His admissions are incorporated as findings as fact.²

In about 2002, Applicant was attending his sophomore year in college when his mother had a stroke. At that point, he left college to return home to assist her. He began working fulltime in various restaurant jobs to help make ends meet but did not have extra money to make payments on the student loans. In those jobs, he was making about \$28,000 per year.³

From January 2003 to December 2011, he attended a community college and a university on a part-time basis until he earned his bachelor's degree in mechanical engineering. In 2004, he met his future wife and they began living together. She worked in the banking industry. She was laid off from her job when the real estate market collapsed. He also was laid off from a job when the restaurant at which he was working went out of business. At the time he was laid off, his future wife was only working at a part-time job. They were forced to rely on credit cards to cover living expenses.⁴

Applicant indicated that his current job is his first stable source of income. Shortly after starting that job, he contacted a consumer debt counseling company to establish a debt repayment plan. For the past ten months, he has been making regular payments to such a plan. At the time of the hearing, his payments under that plan totaled over

¹ Tr. 5-6, 25-26, 29; GE 1, 2.

² Applicant's Answer to the SOR.

³ Tr. 25-26; Applicant's Answer to the SOR; GE 1.

⁴ Tr. 25-27; GE 1.

\$1,427. Of those payments, \$800 has been paid toward the debts in SOR ¶¶ 1.d and 1.e. He still owes about \$400 on those two debts. Applicant also independently reached a settlement agreement with the creditor of the debt in SOR ¶ 1.f and paid that debt in October 2013.⁵

The consumer debt counseling company also provided him assistance with both his private and federal student loans. His two private student loans (SOR ¶¶ 1.a and 1.b) totaling \$44,341 were charged off. In June 2014, the company servicing the two private student loans offered him a new repayment program in which he will be required to pay \$250 per month for both loans. After making the first three payments, the interest rate for these loans will be reduced from about 12% to 0.001% as long as he continues making timely payments. The first payment on the repayment program was due shortly after the hearing.⁶

Applicant's federal student loans were consolidated into one account (SOR ¶ 1.c) totaling \$35,000. His federal student loans have been in forbearance. The federal student loans will be placed in an extended repayment plan. Under this plan, he will be required to pay \$205 monthly for 25 years. He indicated that he is confident he could make all of his student loan payments.⁷

Applicant indicated that he has not incurred any new delinquent debts since his graduation from college in 2011. His current annual salary is \$56,000. He expects to receive a pay raise soon. His wife is working part time and currently earns about \$15,000 to \$20,000 per year. He testified that their net monthly remainder (monthly income minus monthly expenses and debt payments) was between \$200 and \$500. That figure took into consideration his upcoming monthly obligation of paying \$459 toward his federal and private student loans.⁸

Applicant's company has between 200 to 300 employees, including about 20 to 30 engineers. In December 2013, he received the company's President's Award for Excellence, which recognizes outstanding performance, unselfish dedication, and exceptional contributions. Only two employees in the company received this annual award last year.⁹

Applicant's performance evaluation indicated that he exemplified unquestionable ethical and professional behavior at all times. He supervisor stated that Applicant is a

⁵ Tr. 27-29; Applicant's Answer to the SOR; GE 2, 3; AE A, B.

⁶ Tr. 28-31, 34-35; GE 2, 3; AE A, B, C.

⁷ Tr. 28-31; GE 3; AE A, B.

⁸ Tr. 31-36.

⁹ Tr. 33-34; AE E.

“responsible, mature, trustworthy individual who portrays the highest values of professionalism, ethics, morals and accountability in all aspects of his professional and personal life.”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 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.

¹⁰ Applicant’s Answer to the SOR; AE D.

“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 totaling over \$80,000 that he was unable to satisfy 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.

In about 2002, Applicant's mother suffered a stroke. At that time, he left school to assist his family. He worked in low-paying restaurant jobs. In 2004, he met his future wife, and they began living together. She worked in the banking industry but was laid off when the real estate market collapsed. Applicant was also laid off from a job. His mother's medical problems as well as his and his wife's employment problems were conditions beyond his control that contributed to his financial problems. From about 2003 to 2011, he continued to attend college part time until he earned his bachelor's degree. Since then, he obtained stable employment in June 2013 and sought financial counseling. He has resolved one debt (SOR ¶ 1.c) and established repayment plans for his remaining debts. He has been making regular payments toward the debts in SOR ¶¶ 1.d and 1.e. He will soon begin making payments on the student loans, some of which were in forbearance. Since graduating from college he has incurred no new delinquent debts. He presented sufficient evidence to show that his financial problems are under control, are being resolved, and are unlikely to recur. He has acted responsibly under the circumstances. AG ¶¶ 20(b) and 20(c) apply. AG ¶¶ 20(a) and 20(d) partially 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 is a young man who is beginning his professional career. In a relatively short period, he established himself as a valued, reliable, and trustworthy employee. He has taken meaningful steps to show that he is committed to resolving his financial problems. His current financial situation is stable and improving.

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.f:	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