



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-00631
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On October 15, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended

that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

Applicant answered the SOR on April 23, 2014 and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 30, 2014, was provided to him by letter dated October 8, 2014. Applicant received the FORM on October 20, 2014. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information within the allotted period of 30 days after receipt of a copy of the FORM. On November 17, 2014, Department Counsel indicated that he had no objection to Applicant's additional information. On November 21, 2014, the case was assigned to me.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶ 1.a and denied SOR ¶ 1.b with explanations. His admissions are incorporated in my findings of fact.

Background Information

Applicant is a 49-year-old supply technician, who has been employed by a defense contractor since August 2013. He seeks a security clearance in conjunction with his current employment. (Item 5.)

Applicant graduated from high school in May 1984 and attended college from May 1994 to July 1994. He completed 23 years of active and reserve military service. Applicant served in the U.S. Army from 1984 to 1994 and in the Air Force Air National Guard of the United States (Air Force – ANGUS) from 1999 to 2012, with a period of active duty from 2007 to 2008. Applicant retired from the Air Force – ANGUS with 23 years of qualifying service as a Technical Sergeant (pay grade E-6). (Items 5, 8, and FORM response.)

Applicant was previously married from 1986 to 1996, and again from 1997 to 1999. Both marriages ended by divorce. He married a third time in 2003. Applicant has three children, ages 28, 16, and 9, and two adult stepchildren. (Items 5, 8.)

Financial Considerations

Applicant's SOR contains two separate allegations: (1) a charged-off home equity line of credit (HELOC) account for \$108,744 opened in 2003 that he used to pay credit card debts. Applicant defaulted on the HELOC along with his mortgage that resulted in foreclosure in 2010; and (2) a cable company collection account for \$216 that Applicant stated he does not recognize and will attempt to remove from his credit report. (SOR ¶¶ 1.a, 1.b, SOR answer, Item 8.)

There is substantial evidence to support the SOR allegations and that Applicant has a history of financial problems. Applicant admitted SOR ¶ 1.a, and his November

2013 credit report documents both SOR debts. (SOR answer, Item 6.) Applicant attributes his financial difficulties to his inability to return to active duty and reverting back to Air Force ANGUS status, which resulted in a loss of income in the 2008 to 2010 timeframe and “deterioration of the 2008 economy.” Applicant asserts that despite being underemployed, he managed to maintain payments on his automobiles and revolving accounts and that his other accounts are in good standing. He added that he disputes a debt on his credit report, presumably the debt in SOR ¶ 1.b, and is “preparing a complaint to submit before the Federal Trade Commission.” (Item 8, FORM response.)

As noted by Department Counsel in his FORM, there is no record evidence showing Applicant utilized credit counseling or assistance with budgeting, or attempted to negotiate and/or repay his debts once his financial situation stabilized. Although Applicant provided information in his FORM response regarding his loss of income and underemployment in the 2008 to 2010 timeframe, he failed to address the shortcomings of his case as noted by Department Counsel. Applicant has not provided any documentation showing that the two SOR debts are paid, settled, in a payment plan, cancelled, forgiven, or otherwise resolved. It is clear that Applicant remained employed in full time positions since at least 2007, and most notably he was able to maintain full time employment as a civilian contractor since 2013. (SOR answer, Item 8, FORM response.)

In Applicant’s FORM response, he stated that he hoped his additional information “will present the fact that I am not a threat to our great nation and its interests but like our nation, I am trying to build a stronger financial future and create a promising well being that will promote a stronger economy with recovering possibilities not for just myself but for my family as well.” (FORM response.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines 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 overarching 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.

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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports.

The evidence establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating 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.

Considering the record evidence as a whole,¹ I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

to explain, extenuate, or mitigate the security concern. The available information shows that Applicant has taken little affirmative action to resolve his delinquent debts.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.² Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on a scant paragraph of explanation, financial considerations security concerns remain.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be considered to suggest that I have based this decision, in whole or in part, on any express or implied decision as to an applicant's loyalty or patriotism.

² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,⁴ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge

⁴ AG ¶ 2(a) (1)-(9).