



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



In the matter of:)
)
) ISCR Case No. 14-01709
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro Se*

02/13/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guidelines F, financial considerations. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on July 3, 2013, seeking a security clearance. On June 13, 2014, the Department of Defense (DOD) 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; DOD 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 adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On September 25, 2014, Applicant answered the SOR.

On October 27, 2014, he indicated that he elected to have his case decided on the written record in lieu of a hearing. On November 12, 2014, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 8. On November 13, 2014, a copy of the FORM was mailed to Applicant, giving him 30 days from its receipt to submit objections or supply additional information. He did not submit a response to the FORM. The case was assigned to me on February 4, 2015.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant filed Chapter 13 bankruptcy in February 2012, which was dismissed in March 2012 (SOR ¶ 1.a); that he was indebted to the bankruptcy court for an unpaid filing fee of \$206 (SOR ¶ 1.b); that he failed to file his federal income tax returns for 2009, 2010, and 2011 as required (SOR ¶ 1.c); that he had an Internal Revenue Service (IRS) tax lien entered against him for \$10,369 in June 2010 (SOR ¶ 1.d); that he had a state tax lien entered against him for \$3,956 in January 2009 (SOR 1.e); and that he had nine delinquent debts totaling about \$119,589 (SOR ¶¶ 1.f-1.n). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.¹

Applicant is a 57-year-old employee of a defense contractor. He has been working for that contractor since September 2011. He served in the U.S. Army Reserve (inactive) from 1983 to 1995 and was honorably discharged. He took college and technical training courses in 2008 and 2009, but has not apparently earned a degree or certification. He is married and has four children, ages, 12, 28, 32, and 34. He is seeking a security clearance for the first time.²

Applicant was unemployed from November 2010 to September 2011, after leaving a job because he was informed his performance was unsatisfactory. He was also unemployed from December 2008 to August 2009, after being laid off from that job. No other explanation was provided for his financial problems.³

Applicant filed a *pro se* Chapter 13 bankruptcy petition in February 2012. The petition indicated that Applicant estimated that he had between 1-49 creditors, \$100,000-\$500,000 in estimated assets, and \$100,000-\$500,000 in estimated liabilities. The bankruptcy records contained a notice of filing deficiencies advising Applicant of his failure to file a creditor matrix as well as the following documents:

- Statement of Financial Affairs (Form 7);
- Schedules A thru J;

¹ Items 1, 4, 6, and 7.

² Item 5.

³ Item 5.

- Summary of Schedules, Page 1 (Form 6 – Summary);
- Statistical Summary (Form 6 – Summary);
- Declaration Concerning Debtor’s Schedules (Form 6);
- Statement of Current Monthly Income (Form 22C);
- Chapter 13 Plan, complete with signatures;
- Certificate of Credit Counseling; and
- Pay Advices: Copies of Pay Stubs.

Applicant was given 14 days to correct the noted deficiencies. On February 28, 2012, his Chapter 13 bankruptcy was dismissed for failing to file the creditor matrix within the period allotted. The bankruptcy records also reflected he owed a filing fee balance of \$206. No proof was provided to show the delinquent filing fee has been resolved.⁴

In his e-QIP, Applicant disclosed that he failed to file his federal income tax returns for 2009, 2010, and 2011 because he did not funds available to pay the income taxes. He did not specifically state that he filed those tax returns, but did indicate that he entered into an agreement with the IRS in March 2013 to make biweekly payments of \$100 via a payroll deduction. No proof of the agreement or the periodic payments was provided. In the e-QIP, he also indicated that he is working on a payment plan for a delinquent student loan and provided no proof of those efforts.⁵

A credit report dated July 31, 2013, contained entries reflecting the alleged tax liens and debts in SOR ¶¶ 1.d-1.n. A credit report dated October 27, 2014, reflected the following:

- a. The mortgage loan alleged in SOR ¶ 1.f was modified under a Federal Government plan and the alleged past-due amount had been reduced from \$53,652 to \$11,129.
- b. The charged-off student loan for \$844 in SOR ¶ 1.k was paid.
- c. The balances of the delinquent debts in SOR ¶ 1.g, 1.i, and 1.j had increased.
- d. The federal and state tax liens remained unchanged.
- e. The balance of the debt in SOR ¶ 1.n remained unchanged.

⁴ Item 8.

⁵ Item 5.

The latest credit report did not reflect the debts in SOR ¶¶ 1.h, 1.l, and 1.m, and it is unknown what, if any, action was taken regards those debts.⁶

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, in reaching a 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.

⁶ Items 6 and 7. Applicant’s credit report of July 31, 2013, reflected a higher balance (\$28,217) for a charged-off student loan than that was alleged in SOR ¶ 1.g (\$26,499).

“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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal . . . income tax returns as required

In February 2012, Applicant filed Chapter 13 bankruptcy, which was dismissed shortly after being filed. He failed to file his federal income tax returns for 2009, 2010, and 2011 as required. He accumulated two tax liens and nine delinquent debts that he was unable or unwilling to satisfy for an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Four financial considerations 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 2008 and 2009, Applicant was unemployed for about nine months after being laid off from a job. In 2010 and 2011, he was unemployed for about 11 months after leaving a job for performance issues. His first period of unemployment and possibly the second period resulted from conditions beyond his control that contributed to his financial problems. The evidence shows that he was able to modify his mortgage loan and reduce the past-due amount owed on that loan. He also paid off a small student debt for \$884. Other than those actions, little is known about what steps, if any, Applicant has taken to resolve the remaining debts. He stated that he entered in an agreement with the IRS and was making payments on his past-due federal income taxes, but he provided no proof of the agreement or payments. Likewise, he provided no proof of a purported repayment agreement on a student loan. He did not provide a sufficient explanation for failing to file his federal income tax returns as required. His delinquent debts are ongoing and significant. From the evidence presented, I am unable to find that his financial problems are under control, are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, and good judgment. I am also unable to find that he has acted responsibly under the circumstances. AG ¶¶ 20(b) and 20(d) partially apply. AG ¶¶ 20(a) and 20(c) do not apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁷ In this case, I gave due consideration to the information about

⁷ The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a):

Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. His handling of his financial problems leaves me with doubts as to his current eligibility for access to classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.n:	Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge

(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.