



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 14-02433
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 19, 2013. On October 1, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on January 11, 2015; answered it on January 16, 2015; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 26, 2015, and the case was assigned to me on March 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2015, scheduling the hearing for March 23, 2015. I convened the

hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until April 15, 2015, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on April 1, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 30-year-old security officer employed by a federal contractor since December 2012. He graduated from high school in July 2003, and he received an associate's degree in April 2006. He recently received a bachelor's degree in network security. (Tr. 36.) He has never married and he has no children. He lives with his elderly grandparents and cares for them. (Tr. 23.)

Appellant's SCA reflects that he was unemployed from September 2004 to March 2005. He worked in various computer-related jobs from March 2005 to February 2011. He left his job in February 2011 because of "pay issues," and was unemployed until August 2011. He worked as a dishwasher from August 2011 to February 2012 and was then unemployed until June 2012, while he was a full-time student. He has worked part-time as a doorman since June 2012.

Applicant's SCA reflects that he received clearances from other government agencies in September 2007 and February 2011 but was denied a clearance in February 2012. He testified that he has a DOD security clearance and is seeking an upgrade to a higher-level clearance. (Tr. 9.)

In his Answer to the SOR, Appellant provided a payroll register reflecting his pay. Between January and July 2014, his net pay per two-week pay period varied between \$782 and \$145. His net pay for most pay periods was in the \$400-\$500 range. He owes his employer \$3,000, which he is paying by deductions of \$100-\$250 from his pay for each pay period. He testified that his net monthly remainder is usually about \$150. (Enclosure to Answer; Tr. 25-27)

Appellant testified that he has reduced his monthly income from his employer because he has started his own company. His own company has not yet received the required licensing and has not generated any income. (Tr. 24-25, 37.) His company is unlicensed because he has twice failed the written examination. (Tr. 40.)

The SOR alleges 12 delinquent debts, totaling almost \$16,000, which are reflected on his credit bureau reports (CBRs) from May 2010, April 2013, April 2014, and February 2015. (GX 2 through 5.) He admitted all the debts alleged in the SOR and admitted that he had not resolved any of them.

Applicant was engaged to be married, but the relationship broke up in 2013. He testified that the debts alleged in SOR ¶¶ 1.j and 1.k were the result of the breakup. (Tr. 42-43.) However, his credit reports reflect that the judgment in SOR ¶ 1.j was entered in March 2011 and the debt in SOR ¶ 1.k was placed for collection in October 2011, well before the breakup. (GX 3 at 8-9.)

On April 9, 2015, Appellant signed a contract with a debt-resolution company to resolve four debts: an auto repossession deficiency charged off in July 2011 for \$8,786 (SOR ¶ 1.a); a telephone account placed for collection in June 2010 for \$2,209 (SOR ¶ 1.b); a credit card account charged off in March 2009 for \$776 (SOR ¶ 1.c); and a delinquent cell phone account for \$517 that is not alleged in the SOR. (AX B at 7.) His debt-resolution plan provides for monthly \$250 payments, to be paid by direct debit from his credit union account beginning on April 15, 2015. The plan contemplates 38 monthly payments. (AX B at 12-13.)

In a post-hearing statement dated April 15, 2015, Appellant stated that he had paid the \$98 electric bill (SOR ¶ 1.f) and three medical debts for \$15, \$15, and \$13 (SOR ¶ 1.g-1.i). He provided confirmation numbers for the payments but did not submit any documentary evidence of payment. He stated that his debt-resolution company was reviewing the \$1,004 fitness-club debt that was placed for collection in August 2012 (SOR ¶ 1.l), to determine if it could be included in the debt resolution plan. He promised to pay three debts after his next payday: the \$337 telephone debt placed for collection in October 2011 (SOR ¶ 1.d); the \$269 medical debt, placed for collection in July 2012 (SOR ¶ 1.e); and the unsatisfied judgment for \$500, entered in March 2011 (SOR ¶ 1.j). (AX A.)

In addition to the debts alleged in the SOR, Appellant has about \$75,000 in student loans. He testified that his mother was providing \$400 per month to assist him with the loan payments. His student loans currently are deferred. (Tr. 27-28.)

Policies

“[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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 concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his CBRs, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(a) is not established. Applicant's debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's unemployment from February 2011 to August 2011 was due to "pay issues." His unemployment from February to June 2012 was due to his voluntary decision to be a full-time student. Neither circumstance was a condition largely beyond his control. The breakup of his long-term engagement was a condition beyond his control, but it occurred after the debts alleged in the SOR ¶¶ 1.a-1.f and 1.i-1.l were either charged off or referred for collection. Furthermore, he has not acted responsibly. He took virtually no significant action to resolve the debts until he signed the contract with the debt-management company on April 9, 2015.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling and his financial situation is not under control.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant claimed to have paid the debts in SOR ¶¶ 1.f-1.i, but he presented no documentation to support his claim. He has included the debts in SOR ¶¶ 1.a-1.c in his debt-resolution plan, but the plan requires monthly \$250 payments, and he testified that he has a net monthly remainder of only about \$150 per month. He promised to pay the debts in SOR ¶¶ 1.d, 1.e, and 1.j, but a promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

Whole-Person Concept

Under AG ¶ 2(c), 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. In applying the whole-person concept, an 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. An 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.

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 mature, well-educated adult. He has accumulated almost \$16,000 in delinquent debts, most of which are several years old, plus about \$75,000 in student loans, which are currently deferred. His plan for resolving his debts depends on his unrealized dream of establishing his own company. His financial problems date back to March 2009 (SOR ¶ 1.c), but he took virtually no action to resolve them until after the hearing.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his history of delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.l:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge