



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-02460
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on December 12, 2013. On July 22, 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 August 6, 2014; responded by denying all the allegations on August 11, 2014; and requested a decision on the record without hearing. On September 5, 2014, he requested a hearing. (Hearing Exhibit (HX) I.) Department Counsel was ready to proceed on October 29, 2014, and the case was assigned to me on October 31, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing on the same day, scheduling the hearing for November 18, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Department Counsel's letter transmitting copies of GX 1 through 3 to Applicant is attached to the record as HX II. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until December 3, 2014, to enable him to submit additional documentary evidence. He timely submitted AX K through U, which were admitted without objection. Department Counsel's comments regarding AX K through U are attached to the record as HX II. DOHA received the transcript (Tr.) on December 2, 2014.

Findings of Fact

Applicant is a 46-year-old aircraft mechanic employed by a defense contractor since November 2013. He served on active duty in the U.S. Navy from September 1989 to May 2010, when he retired as a petty officer first class. He has a 50% service-connected disability. (AX B.) He worked for a defense contractor as a maintenance supervisor from June 2010 to November 2013, when he began working for his current employer. He received a security clearance in the Navy and retained it during his employment with defense contractors. (Tr. 46.)

Applicant married in August 1990. He and his wife had two children during their marriage, now ages 21 and 15. In 2009, Applicant's then wife left him and the children without warning. (Tr. 37.) Applicant filed for and received a divorce in January 2013. The parties were given joint custody of the children, with Applicant having primary physical custody. (AX J.) His son lives independently and his daughter lives with him. He does not receive any child support from his ex-wife. His ex-wife was employed until she left him in 2009, but she is not currently employed. (Tr. 44-45, 52-53.)

While on active duty, Applicant deployed frequently and relied completely on his wife to handle the family finances. He gave her a power of attorney because he was rarely at home. (Tr. 37-38.) In March 2007, Applicant obtained a debt-consolidation loan for \$11,446, at his wife's suggestion, and he paid off his debts in preparation for retirement from the Navy. (Tr. 35-36, 47-49.) He paid off the debt-consolidation loan in January 2012. (AX D.) When Applicant received the SOR in August 2014, he learned that he had \$17,000 in delinquent debts.

In his response to the SOR, Applicant denied the six debts alleged, and he attached documents reflecting that the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.f had been resolved. He explained that the debts were incurred by his ex-wife without his knowledge and in his name, using a power of attorney. When he contacted his ex-wife about the debts, she told him, "Go to hell." (Tr. 53.) He initially refused to pay them, claiming that they were her responsibility, but has since resolved all but one of them.

After Applicant's stepfather passed away, his mother gave him about \$20,000, and he used some of it to resolve the delinquent debts alleged in the SOR. (Tr. 39.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a, judgment for \$2,280, filed in September 2012. In Applicant's response to the SOR and at the hearing, he denied any knowledge of this judgment. He searched the internet for the name of the party who obtained the judgment, obtained a copy of the case file from the court, and tried to contact the party at the telephone number and address listed in the case file; but he has been unable to locate or contact the person who obtained this judgment. (Tr. 83; AX S; AX T; AX U.)

SOR ¶ 1.b, individual installment account charged off for \$6,940 in January 2011. This account was sold several times by a succession of collection agencies, and the current owner of the debt has been paid in full. (Answer to SOR; AX L through R.)

SOR ¶ 1.c, credit card account charged off for \$906 in June 2009. This account was settled for \$634 in August 2014. (Answer to SOR; Tr. 56-57; AX K.)

SOR ¶ 1.d, collection account for \$6,429. A collection agency obtained a judgment for this debt in July 2012, and it was settled for \$4,800. (Answer to SOR; GX 2 at 3; Tr. 59-61.)

SOR ¶ 1.e, collection account for \$582. This debt, a delinquent department store account, has been resolved. (Answer to SOR.)

SOR ¶ 1.f, collection account for \$138. This debt, a delinquent cell phone account, has been resolved. (Answer to SOR.)

Applicant was suspended from work shortly after the SOR was issued. (Tr. 17.) Before he was suspended, he was earning about \$23 per hour for 40 hours a week and working about 20 hours overtime. (Tr. 40.) He receives monthly military retired pay of \$1,637 and monthly disability pay of \$875. (AX B; AX C.) His budget provides for annual income of \$58,800 and expenses of \$48,592, which amounts to a net monthly remainder of about \$848. (AX A; Tr. 40-41.) He is current with his bills. He is supporting himself with his retired pay, disability pay, about \$5,000 remaining from his mother's gift, and about \$3,000 that he withdrew from his civilian retirement account. (Tr. 70.) He has not sought financial counseling because he has been able to resolve all his delinquent debts and is able to live within his means. (Tr. 75.)

Applicant's current supervisor has known him for about nine years and was his supervisor in the Navy. He describes Applicant as kind, generous, trustworthy, and a person with a strong sense of duty and high integrity. (AX F.) Two former subordinates, who worked for Applicant for five years, have married each other, and have become Applicant's close friends. They consider him level-headed, loyal, trustworthy, and a caring father. (AX H; AX I.) Applicant's neighbor, who has known him for about a year, considers him trustworthy, dependable, and a role model for her teenage son. (AX G.)

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 SOR alleges six delinquent debts totaling about \$17,275. 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).

Even though Applicant denied all the allegations in the SOR, his credit bureau reports are sufficient to 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”). It is well settled that adverse information from a credit report will normally meet the requirement in Directive ¶ E3.1.14 that an allegation be supported by substantial evidence. ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010.)

The following mitigating conditions 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; and

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

AG ¶ 20(a) is established. Although Applicant's debts are numerous and recent, they were incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's debts were incurred without his knowledge and through the financial irresponsibility of his ex-wife, which were circumstances largely beyond his control. He has acted responsibly and has resolved all the debts except the judgment in SOR ¶ 1.a. He has made extensive efforts to contact the party who obtained the judgment in SOR ¶ 1.a, but he has been unsuccessful.

AG ¶ 20(d) is established. Applicant has resolved the debts in SOR ¶¶ 1.b-1.f and has made good-faith efforts to contact the creditor in SOR ¶ 1.a.

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 served honorably for 20 years in the U.S. Navy, and he has established a reputation for trustworthiness, honesty, and integrity as a civilian contractor employee

since his retirement. He has held a security clearance since he first enlisted in the Navy. He was candid, sincere, and credible at 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 mitigated the security concerns based on financial considerations. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge