



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



In the matter of:)
)
) ISCR Case No. 14-02521
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

11/24/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Clearance is granted.

Statement of the Case

On July 22, 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 acted 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 continue Applicant's security clearance. On August 27, 2014, Applicant answered the SOR and elected to have his case decided on the written record in lieu of

a hearing. On September 22, 2014, Department Counsel compiled the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 5.

On September 26, 2014, DOHA forwarded to Applicant a copy of the FORM with instructions to submit objections or additional information within 30 days of its receipt. Applicant received the FORM on October 9, 2014, and submitted matters within the allotted time period, which have been marked as Item 6. The case was assigned to me on November 3, 2014. Items 1 through 6 are entered into the record.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He began working for that employer in January 2014. He graduated from high school in 1979. From 1983 to 2008, he served on active duty in the U.S. Air Force (USAF), attained the grade of master sergeant (E-7), and retired honorably. He has been married three times. He married his current wife in 2003. He has three children, ages 25, 28, and 32. He has held a security clearance for about 30 years without incident.¹

The SOR alleged that Applicant had five delinquent debts totaling \$57,734. In his Answer to the SOR, Applicant admitted one allegation (SOR ¶ 1.c) and denied the remaining debts. His admission is incorporated as a finding of fact. Each of the alleged debts is listed as a collection account on his credit report dated February 12, 2014.²

Applicant attributed his financial problems to his wife being laid off from her job in February 2007. He indicated that, before she lost her job, they always paid their bills in a timely manner. Her loss of employment resulted in about a 35% reduction in their income. In 2005, his wife was medically discharged from the USAF with a 50% rated disability. Because her physical disability has limited her employment opportunities, she had difficulty finding other employment after being laid off. With the loss of her income, they were unable to pay various bills.³

SOR ¶ 1.a – collection account in the amount of \$3,312. This was a home project credit card account that was opened in 2006. Applicant paid off this debt on March 9, 2012, well before the SOR was issued.⁴

SOR ¶ 1.b – collection account in the amount of \$1,136. This was a duplicate of the debt alleged in SOR ¶ 1.d.⁵

¹ Item 3.

² Items 1, 3.

³ Items 1, 3, 5.

⁴ Items 1, 3 at Attachment A, 5.

SOR ¶ 1.c – collection account in the amount of \$287. This was a cell telephone account that was opened for his son in 2005. His son was supposed to be responsible for making the payments. Applicant was unaware this account was delinquent until he received the SOR. On August 23, 2014, he paid off this account.⁶

SOR ¶ 1.d – collection account in the amount of \$1,532. This was a credit card account that was opened in 2002. Applicant paid off this debt on March 29, 2012, well before the SOR was issued.⁷

SOR ¶ 1.e – collection account in the amount of \$51,467. This was a second mortgage on a home that Applicant and his wife purchased for \$218,000 in 2006. The home was financed with a \$174,000 first mortgage and \$44,000 second mortgage. Their monthly mortgage payments were \$2,165 for both mortgages. At that time, their monthly income was about \$10,490. After Applicant's wife was laid off and they exhausted their savings, they were unable to make the mortgage payments. In 2008, the mortgage holder initiated foreclosure proceedings. The home was vacated in June 2008. Applicant believed the foreclosure proceeding were completed in 2009. He never received any notification of a deficiency on the first or second mortgage. His credit report reflected that the first mortgage was foreclosed and had a zero balance. After receipt of the SOR, Applicant arranged to resolve the second mortgage even though it was past the five-year statute of limitation for collection. Under the repayment arrangement, he agreed to make a lump-sum payment of \$2,000 and 25 monthly payments of \$375 to fully satisfy the debt. The total settlement amount is \$11,000. He provided proof that he made the \$2,000 lump-sum payment and first \$375 monthly payment.⁸

After Applicant retired from the USAF in 2008, he began working for a defense contractor in the Arabian Gulf. In 2011, he accepted a job in Afghanistan in which he earned about \$10,123 a month. Starting in about April 2011, Applicant's wife began paying their delinquent debts. By March 2012, she paid six delinquent debts totaling about \$7,000. In 2013, he returned to a job in the United States in which he earned about \$2,600 per month. He and his wife received financial counseling to better manage their finances and improve their credit score. His reduced salary along with his monthly retired military pay of \$2,323 and his wife's monthly disability pay of \$960 was not sufficient to improve their financial situation. He decided to reapply for a job overseas with his former employer. In January 2014, he was rehired by his former employer for an overseas job in which he is earning about \$90,000 annually.⁹

⁵ Items 1, 3, 5. Account numbers confirm that these are duplicate debts.

⁶ Items 1, 3 at Attachment B, 5.

⁷ Items 1, 3 at Attachment C, 5.

⁸ Item 1, 3 at Attachment E, 5, 6.

⁹ Item 3.

With his new job, Applicant indicated that his and his wife's monthly income is \$10,561, their monthly expenses are \$4,100, and their monthly debt payments are \$2,633, which includes the monthly payment on the debt in SOR ¶ 1.e. Their net monthly remainder is about \$3,828.¹⁰

Applicant presented letters of reference that attest to his reliability, honesty, trustworthiness, and good judgment. He was awarded two Meritorious Service Medals, four Air Force Commendation Medals, two Air Force Achievement Medals, and nine Good Conduct Medals. In his civilian job, he received merit-based salary increases of 12.87% in December 2010, 5.14% in February 2012, 3.5% in February 2013, and 7.35% in March 2014.¹¹

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, 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

¹⁰ Item 3.

¹¹ Item 3.

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. “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 that he was unable to pay for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five 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;

(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.

In 2007, Applicant's wife was laid off from her job. Due to her physical disabilities, she was unable to find other employment. Her physical disabilities and her unemployment were conditions beyond his control that contributed to his financial problems. Since then, Applicant has acted responsibly in resolving his delinquent debts. He paid the debts in SOR ¶¶ 1.a, 1.c, and 1.d and entered into a repayment agreement for the debt in SOR ¶ 1.e. He sought financial counseling. His financial problems are under control, are being resolved, and are unlikely to recur. AG ¶¶ 20(b), 20(c) and 20(d) apply. AG ¶ 20(a) partially applies. AG ¶ 20(e) applies to the duplicate debt in SOR ¶ 1.b.

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.

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.

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 served for 24 years in the USAF in an exemplary manner. He retired in the grade of master sergeant. In his civilian job, he has served overseas in dangerous areas and has received a number of meritorious pay raises. He has acted responsibly in addressing his financial problems. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. Therefore, I conclude Applicant mitigated the security concerns under Guideline F.

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.e:	For Applicant

Decision

In light of all the circumstances presented by the record, 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.

James F. Duffy
Administrative Judge