



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-03075
	)	
Applicant for Security Clearance	)	

Appearances

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

03/17/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on January 21, 2014. On October 2, 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 October 8, 2014; answered it on November 13, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015, and the case was assigned to me on January 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2015, scheduling the hearing for February 23, 2015. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until March 6, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX I through M. Department Counsel's comments regarding AX I through M are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on March 4, 2015.

Findings of Fact

In his answer to the SOR, Applicant did not expressly admit or deny the debts alleged in the SOR, but he stated that he was making monthly payments on the debt in SOR ¶ 1.a and had paid the debts in SOR ¶¶ 1.b and 1.d-1.i. He admitted filing Chapter 13 bankruptcy petitions as alleged in SOR ¶ 1.j and 1.k. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 54-year-old electronic technician employed by federal contractors since March 1995. He married in November 1993 and has two adult children and two adult stepchildren. He has held a security clearance since October 2003.

Applicant and his wife filed a joint Chapter 13 bankruptcy petition in April 2005. The petition was dismissed in September 2005 for failure to pay the required filing fees. In his answer to the SOR and at the hearing, Applicant explained that the failure to pay the fees was due his mistaken belief that the filing fees would be paid by payroll deduction. He was allowed to refile his petition in October 2005, and the debts were discharged in October 2008, after he and his wife completed the three-year payment schedule. (GX 4.)

Applicant testified that he resorted to Chapter 13 bankruptcy in 2005 after his father passed away and he became responsible for supporting his mother. At about the same time, his wife was laid off, making it impossible to keep up with their financial obligations. He estimated that about \$80,000 in debts were included in the bankruptcy. The payments on their home mortgage loan were paid separately and not included in the bankruptcy. (Tr. 51-52.) His wife is now working part time.

The debts alleged in the SOR arose after Applicant's bankruptcy. They are reflected in Applicant's credit bureau reports (CBRs) dated January 25, 2014 (GX 2) and January 14, 2015 (GX 3). The evidence regarding these debts is summarized below.

SOR ¶ 1.a, judgment for medical treatment, filed in May 2012 (\$12,201). Applicant underwent surgery, believing that it was covered by his medical insurance. Coverage was denied on the ground the surgery was for a pre-existing condition. After negotiating a payment agreement, Applicant made \$100 payments in July and August 2012, a \$659 payment in May 2013, and has been making monthly \$50 payments since June 2013. (Tr. 26; AX B; AX C; AX L.)

SOR ¶ 1.b, judgment filed in January 2008 (\$304). Applicant testified that he thought he satisfied this judgment in November 2014, but he learned that he owed attorney's fees. (Tr. 26-27.) He satisfied the judgment in full in February 2015. (AX D.)

SOR ¶ 1.c, car loan charged off in September 2009 (\$11,044). Applicant researched the history of his vehicle on Carfax after encountering numerous problems, and he discovered that the vehicle had been damaged in a flood. He returned the vehicle to the dealer and offered to negotiate a settlement. After receiving the SOR, he attempted to contact the dealer, but found that the local dealership was closed. After considerable research, he located the parent company in another state and wrote them a letter on February 27, 2015, offering to negotiate a settlement. As of the date the record closed, he had not received a response. (AX I; AX J.) In his post-hearing submission, he included a printout of a website reflecting numerous complaints of fraudulent practices by this dealership. (AX K.)

SOR ¶ 1.d, satellite television service bill referred for collection in October 2009 (\$350). In his answer to the SOR, Applicant stated that this debt was removed from his CBR in April 2014. In November 2014, he received a letter from the collection agency stating that the account was closed. (AX E.) He contacted the original creditor, who informed him that it had no record of the debt. (Tr. 28.) It is not reflected in Applicant's January 2015 CBR.

SOR ¶ 1.e, car rental bill referred for collection in November 2008 (\$250). Applicant thought this debt was for damage to a rental vehicle. (Tr. 29.) He paid the debt in November 2014. (AX F.)

SOR ¶¶ 1.f and 1.i, delinquent medical bills (\$142 and \$50.) In his answer to the SOR, Applicant stated that he thought these bills were included in the judgment alleged in SOR ¶ 1.a. When he learned that they were not included in the judgment, he paid them. (Tr. 29-30; AX G.)

SOR ¶ 1.g, telecommunications bill referred for collection in August 2011 (\$132.) Applicant opened this account for a relative, who failed to make the payments. This debt was paid in full in November 2014. (AX H.)

SOR ¶ 1.h, traffic ticket referred for collection in November 2011 (\$60). Applicant's granddaughter received a traffic ticket while driving Applicant's car. He paid the ticket in November 2014. (AX M.)

Applicant has been enrolled in a financial counseling program through his credit union since October 2014. The credit union is attempting to assist him in resolving the auto loan alleged in SOR ¶ 1.c. (Tr. 28-29, 32-33. 45-46.)

Applicant has owned his home for 21 years and is current on his mortgage loan payments, credit card payments, and car payments. His most recent personal financial

statement reflected net monthly income of \$5,000, expenses of \$1,866, debt payments of \$1,886, and a net monthly remainder of \$1,258. (Tr. 35; AX A.)

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 answers to the SOR, admissions at the hearing, and the documentary evidence in the record 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 are potentially relevant:

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;

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

AG ¶ 20(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.

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

AG ¶ 20(b) is established for SOR ¶¶ 1.a and 1.k. Applicant's need for surgical treatment in 2012 resulted in the debts in SOR ¶¶ 1.a, 1.f, and 1.i. His bankruptcy filing in 2005 was precipitated by his father's death, his mother's financial needs, and his wife's loss of employment. In each case, Applicant acted responsibly. He kept in contact with creditors, successfully completed his bankruptcy, paid several debts alleged in the SOR, and negotiated a payment plan for the debt in SOR ¶ 1.a.

AG ¶¶ 20(c), 20(d), and 20(e) are established. In July 2012, Applicant began making regular payments on the debt in SOR ¶ 1.a. He sought financial counseling in October 2014 and began resolving the debts in SOR ¶¶ 1.b-1.i. He successfully disputed the debt in SOR ¶ 1.d, paid the debts in SOR ¶¶ 1.b and 1.e-1.i, and is making good-faith efforts to resolve the debt in SOR ¶ 1.c.

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 was candid, sincere, and credible at the hearing. He has worked for federal contractors and held a security clearance for many years. He owns his home, lives a modest lifestyle, and has benefited from financial counseling. 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 raised by his delinquent debts. 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.k:

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