



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 14-04909 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2015

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 (SCA) on May 17, 2013. On January 24, 2015, 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; Department of Defense 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 answered the SOR on February 18, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 21, 2015. On June 22, 2015, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He

received the FORM on June 25, 2015. He requested an extension of time until August 25, 2015 to respond, which was granted. He timely submitted additional materials in his response to the FORM, which were received without objection. The case was assigned to me on October 1, 2015.

Findings of Fact

In his answer to the SOR, Applicant denied the debt alleged in SOR ¶ 1.a. However, in his response to the FORM, he admitted it and submitted evidence that the debt had been resolved. His admission in his response to the FORM is incorporated in my findings of fact.¹

Applicant is a 45-year-old systems analyst employed by a federal contractor since August 2003. He married in May 1999. He and his wife have two sons, ages 15 and 13. He has held a security clearance since September 2003.

When Applicant submitted his SCA, he disclosed a defaulted mortgage loan, a short sale, and a deficiency of \$87,611 after the short sale. (Item 2 at 35.) The debt occurred as a result of Applicant's purchase of a two-family rental property in 2007. He purchased the property for \$465,000 and financed the purchase with first and second mortgages. He was unable to rent the property and fell behind on his mortgage loan payments. He completed a short sale of the property, but the proceeds of the sale were insufficient to satisfy the second mortgage. The delinquent second mortgage account was sold to another lender. When Applicant received a notice of foreclosure on the second mortgage, he notified the holder of the mortgage that there was no property to foreclose, because it had been sold at a short sale. His attorney advised him not to pay the deficiency.

After receiving the SOR and the FORM, Applicant obtained further advice and conducted additional research, and he determined that the deficiency balance on the second mortgage had been converted to an unsecured loan and sold, and that the debt on the unsecured loan was a valid debt. (Response to FORM, Exhibit B.) The short sale and unsecured loan were reflected on his credit bureau report (CBR) dated May 23, 2013. (Item 3 at 11.) In July 2015, the holder of the unsecured loan offered a settlement of \$21,152, and Applicant accepted the offer. (Response to FORM, Exhibit C.) He paid the agreed amount, and received written confirmation from the successor creditor that the debt was "settled in full." (Response to FORM, Exhibits D and E.)

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

¹ The FORM included a summary of a personal subject interview conducted in June 2013 (Item 4). The summary was not authenticated as required by Directive ¶ E3.1.20. There is nothing in the record indicating that Applicant was aware of the authentication requirement or that he waived it. Therefore, Item 4 was not admissible, and I have not considered it in my decision.

“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 in his SCA and response to the FORM, corroborated by his CBR, establish one disqualifying condition under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”). No other disqualifying conditions are established.

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; 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 delinquent debt is recent and was not incurred under circumstances making recurrence unlikely, it was a single, isolated incident, and it does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is established. The downturn in the rental market and the decline in real estate values were conditions beyond Applicant's control. When he was unable to make his payments on the mortgage loans, he obtained approval for a short sale. When he realized that the proceeds of the short sale did not completely resolve the problem, he contacted the holder of the debt and resolved it.

AG ¶ 20(d) is established. Applicant made a good-faith effort to resolve his debts through a short sale, and when he learned that the short sale did not satisfy the second mortgage loan, he resolved it.

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 has worked for the same federal contractor and held a security clearance for many years. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). However, his prompt resolution of the debt, once he determined that it was valid, has resolved any doubts about his good judgment, trustworthiness, and reliability.

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 financial problems. 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

Subparagraph 1.a:

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