



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



In the matter of:)
)
[REDACTED]) ISCR Case No. 14-06772
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on April 29, 2013. On August 7, 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 received the SOR and answered it on September 27, 2015, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on December 9, 2015, and a complete copy of the file of

relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant the same day. Additionally, the FORM included a two-allegation amendment to the SOR¹, and requested that Applicant answer the amendment in his Response to the FORM. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 16, 2015, and filed his Response on January 3, 2016. He submitted two documents, which I have admitted into the record as Applicant's Exhibits (AX) A and B. The case was assigned to me on March 3, 2016.

Findings of Fact

The amended SOR alleges five delinquent debts totaling approximately \$27,884, which include a \$17,724 delinquent mortgage (SOR ¶ 1.a). In his Answer and Response, Applicant admitted each of the debts. However, in his Response, Applicant stated that he had received a mortgage modification and that the mortgage was current since November 2015. He provided evidence in support of this statement. (AX A; AX B.) He admitted the delinquent credit card debts alleged in the amended SOR as ¶¶ 1.d and 1.e. He denied being past due on the auto account as alleged in SOR ¶ 1.c, stating that the account is paid in full and closed. This statement is supported by the December 2015 credit bureau report (CBR) (GX 5.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 35-year-old high-voltage maintenance worker employed by a defense contractor since August 2006. He has never married and has no children. He purchased his current home in late 2009.

Applicant first encountered financial difficulties in 2011. He entered into a credit-counseling program prior to submitting his e-QIP in April 2013. However, due to reduced work hours in the winter of 2015, he experienced a loss of income, was unable to maintain the required payments, and was released from the program. The debts alleged in SOR ¶¶ 1.d and 1.e, which became delinquent in 2015, had been included in the credit-counseling program, as were several other accounts not alleged in the SOR because they are current. (GX 4.) The debt alleged in SOR ¶ 1.b is for a credit card that was charged off in 2011.

Applicant has successfully reached a mortgage modification and has been current on his payments since November 2015. (AX B.) He states that now that his mortgage is current, he will focus on repaying his delinquent consumer accounts. (AX A.) He has paid and closed a number of credit accounts and paid off a student loan. (GX 4.) The remaining delinquent accounts total \$9,897. (GX 1; GX 4.)

¹ The SOR contained allegations identified as ¶¶ a-c. The amendment to the SOR contained allegations identified as ¶¶ c and d. For the purpose of clarity, I have lettered the allegations in the SOR as ¶¶ a-c and the allegations in the amendment as ¶¶ 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 “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’s 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 and e-QIP, 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;

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

AG ¶ 20(a) is partially established. Applicant still has several unresolved debts. However, the debts alleged in SOR ¶¶ 1.d and 1.e are older debts which became delinquent in 2015 when he could no longer afford the credit-counseling payments while concurrently rehabilitating his mortgage. He exercised good judgment by proactively entering a credit-counseling program and, again, by reaching a mortgage modification. He also paid off the debt alleged in SOR 1.c and several other accounts, including a student loan. He has not incurred any new delinquent debt since 2011. His behavior does not cast doubt on his “current reliability, trustworthiness, or good judgment.”

AG ¶ 20(b) is established. Applicant experienced financial difficulties, which were exacerbated by a downturn in employment in late 2015. He had been acting responsibly by participating in a credit-counseling program, which included the repayment of several of his debts. When he could no longer afford the payments and his mortgage, he again acted responsibly by prioritizing his mortgage. He worked with a lender to reach a modification and he brought his account current in November 2015.

AG ¶ 20(c) is established. Applicant has received financial counseling and he has resolved or is resolving his debts. He has paid off and closed a number of credit accounts and is current on his mortgage. He has established a track record of working to resolve his debts. The three remaining delinquent debts total less than \$10,000. There is a “clear indication” that his financial problems are under control.

AG ¶ 20(d) is established. Applicant entered a credit-consulting program prior to submitting his e-QIP in April 2013 and made payments until 2015. He reached a mortgage modification and is current with the payments. He paid off the debt alleged in SOR ¶ 1.c. Now that his mortgage is current, he will pay down his consumer debts. “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).

A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has a plan and is executing 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 I have also considered the following:

Applicant lives within his means and is current on all his ongoing financial obligations. He has been proactive about resolving his financial issues and I am confident that he will continue his good-faith efforts to resolve his remaining delinquent debts.

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 grant him 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 – 1.e:

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.

Stephanie C. Hess
Administrative Judge