



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 10-06586
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guidelines F (financial considerations) and G (alcohol consumption). Clearance is granted.

Statement of the Case

On January 7, 2010, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 18, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and G. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended

that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On March 23, 2015, Applicant responded to the SOR. On May 20, 2015, Department Counsel was ready to proceed. On June 1, 2015, DOHA assigned Applicant's case to me. On June 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for July 7, 2015. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 12, which were received into evidence without objection. Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through I, which were received into evidence without objection. I held the record open until July 24, 2015, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE J and K, which were received into evidence without objection. On July 15, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In his SOR answer, Applicant denied SOR ¶¶ 1.a. and 1.d with explanations, and admitted the remaining allegations with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 53-year-old lead mechanical technician employed by a defense contractor since May 1996. He seeks a secret security clearance to comply with company job requirements. (GE 1; Tr. 14-15)

Applicant was awarded his General Educational Development certificate in 1979, and did not pursue higher education. He served in the U.S. Navy from December 1979 to August 1988, and was honorably discharged as a torpedoman's mate first class (pay grade E-6). (GE 1; Tr. 16-18; AE E) Applicant was married from September 1982 to August 1999, and that marriage ended by divorce. He remarried in June 2010. He has two adult sons from his first marriage, and has an adult stepson and an adult stepdaughter from his current marriage. His wife works part time as a housekeeper for a resort. (GE 1; Tr. 18-22)

Applicant's stepson is incarcerated and his stepdaughter is "in and out of jail" and dependent on Applicant for support. Applicant and his wife were granted full custody of their six-year-old grandson, the son of his stepdaughter, on December 8, 2014. (AE G; Tr. 22-25)

Financial Considerations

During Applicant's March 3, 2015 Office of Personnel Management Personal Subject Interview (OPM PSI), he stated that his past driving under the influence (DUI) arrests, discussed *infra*, had a negative impact on his career and financial situation. His driver's license was suspended four times and affected his ability to get to work.

After his last 2007 DUI arrest, he was put on leave of absence for 16 months because he was not allowed to drive on his work site. Applicant used his credit cards to pay attorney fees and associated court costs and was unable to remain current on his credit cards because he was out of work. (GE 5) Applicant reiterated during his hearing the adverse impact alcohol had on his financial situation. (Tr. 25-27)

Applicant's SOR lists four debts, and the following summarizes the status of those SOR debts:

SOR ¶¶ 1.a and 1.d – 2009 credit card company judgment for \$9,020, and a charged-off credit card company debt for \$13,281, respectively. These amounts are for the same creditor and same debt. By letter agreement dated March 18, 2015, Applicant settled his debt with this creditor in the amount of \$11,325, with his first payment of \$1,325.24 due by May 8, 2015, and eight payments of \$1,325.24 due by the 18th of each month. Applicant submitted proof of payments to date. **DEBT BEING RESOLVED.** (SOR answer; GE 4; AE C; Tr. 25-32)

SOR ¶1.b – 2009 credit card company judgment for \$5,551. Applicant submitted a Satisfaction and Release of Lien of Judgment dated June 23, 2015, reflecting that Applicant paid \$6,461.01 on April 15, 2015, and this debt had been paid and satisfied. **DEBT RESOLVED.** (SOR answer; AE A; Tr. 32-33)

SOR ¶ 1.c – Delinquent medical account for \$207. Applicant successfully disputed this debt, and by letter dated March 31, 2015, the creditor stated this account was closed and to disregard any previous notices for this account. **DEBT RESOLVED.** (SOR answer; AE B; Tr. 33-34)

Applicant did not participate in financial counseling. (Tr. 34-35) He is current on his daily living expenses and is living within his means. Applicant's annual income, taking into account his wife's wages, ranges from \$80,000 to \$90,000. (Tr. 36-39)

Alcohol Consumption

Applicant's alcohol-related problems span a 12-year period and are summarized as follows:

In November 1997, Applicant was arrested and charged with DUI and driving with .08 or higher blood alcohol content (BAC). He pled guilty to the DUI, the BAC charge was dismissed, and he was sentenced to six months probation, ordered to

attend a first offenders program, and his driving privileges were restricted for 90 days in lieu of two days in jail. (SOR answer; GE 8; Tr. 39-40);

In April 1999, Applicant was arrested and charged with DUI. In November 1999, he was found guilty and sentenced to six months probation, ordered to perform community service, required to attend courses, fined, and ordered to pay court costs. His driver's license was suspended for six months. (SOR answer; GE 9; Tr. 40-41, 43);

In July 2003, Applicant was arrested and charged with DUI. In October 2003, he was found guilty and sentenced to 180 days detention, of which 170 days were suspended, sentenced to probation for 12 months, ordered to attend DUI school, required to install an interlock device on his car for one year, and ordered to pay court costs. (SOR answer; GE 10; Tr. 41-42, 44);

From November 2003 to March 2004, Applicant was treated as an outpatient at an alcohol counseling center and was diagnosed with alcohol abuse and alcohol dependence. (SOR answer; Tr. 44-47);

In February 2007, Applicant was arrested and charged with DUI, a felony, driving with a suspended license, and unlawful use of a driver's license. In June 2008, he was found guilty of reckless driving, sentenced to supervised probation for one year concurrent with any active sentence, ordered to attend DUI school and a victim awareness panel, and to pay court costs, and fined. (SOR answer; GE 11; Tr. 47-48); and

From November 2008 to May 2009, Applicant was treated at the same alcohol counseling center and diagnosed with alcohol dependence. As of March 2010, Applicant was still consuming alcohol. (SOR answer; GE 12; Tr. 48-49)

Applicant stopped drinking on June 11, 2010. He attributes his ability to refrain from drinking to inner strength, his wife, the need to remain sober to raise his grandson, and co-worker support. Applicant's wife no longer drinks and quit at the same time he did. Applicant credibly testified regarding the adverse impact alcohol has had on his life and of his continuing commitment to refrain from alcohol. (GE 7; AE J; Tr. 49, 51-57)

Post-hearing, Applicant submitted a substance abuse evaluation dated July 9, 2015. He was evaluated by a clinical psychologist, who was credentialed as a certified addiction professional (CAP) and as a certified alcoholism and drug abuse counselor (CADAC). Her conclusions and recommendations read in part: "Currently, [Applicant] does not meet clinical criteria for any substance use disorder, given his self-report of maintained abstinence for the duration of at least 1 year. Therefore, substance abuse treatment is not clinically indicated or appropriate at this time." (AE J)

Character Evidence

Applicant submitted numerous letters from professional sources as well as work-related certificates and awards. The collective sense of these documents is very favorable regarding his character, work performance, reliability, and accomplishments, and indicative of an individual maintaining sobriety. (SOR answer; AE F, AE H(1) – H(9), AE I(1) – AE I(10)).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines 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 overarching 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.

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 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 “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. See *also* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

The facts do not support application of application of AG ¶¶ 20(b) or 20(c). However, the facts support full application of AG ¶¶ 20(d) and 20(e). Applicant has fully resolved the debt in SOR ¶ 1.b, and is making substantial progress in paying off the debts in SOR ¶¶ 1.a and 1.c; those two debts were determined to be the same creditor and were combined. Although Applicant maintained contact with his creditors during a period of unemployment, he was unable to repay them because he was not earning income. Applicant successfully disputed the debt in SOR ¶ 1.d. He has resolved two of his debts and is in the process of resolving his one remaining debt.¹

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

Alcohol Consumption

AG ¶ 21 articulates the security concern relating to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 provides two alcohol consumption disqualifying conditions that could raise a security concern and may be disqualifying in this case, (a) "alcohol-related incidents away from work, such as driving while under the influence," and (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence." Applicant's history of alcohol-related concerns is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 22(a) and 22(d).

Two alcohol consumption mitigating conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant presented credible evidence of actions taken to overcome his four DUI arrests and problems with alcohol spanning a 12-year period. He has not consumed alcohol in over five years and received a favorable current substance abuse evaluation. Applicant's work performance, work-related certificates and awards, and reference of letters are indicative of his sobriety. Additionally, his sobriety is supported by his own credible testimony. Applicant acknowledged the problems misuse of alcohol has caused him, and demonstrated remorse and a steadfast commitment to continue lifestyle changes consistent with responsible use of alcohol. AG ¶¶ (a) and (b) are fully applicable.

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 the 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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guidelines F and G are incorporated in this whole-person section. However, further comments are warranted.

Applicant's combined 30 years of military service and employment with a defense contractor weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant's debts have been resolved or are being resolved. Despite his financial setback, it is clear from Applicant's actions that he is on the road to a full

financial recovery. These factors show responsibility, rehabilitation, and mitigation. Applicant has mitigated financial considerations concerns.

I was particularly impressed with Applicant's demeanor during his hearing and the apparent effect the misuse of alcohol has had on him. Applicant has been willing to do whatever is necessary to recover from his alcohol-related problems. The process has been costly for him, not only financially, but also personally and professionally. Additionally, he has also taken on the added responsibility of caring for his grandson. Applicant has demonstrated the correct attitude with regard to alcohol abstinence and has mitigated alcohol consumption concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

Formal findings For or Against Applicant 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.d:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is granted.

Robert J. Tuidor
Administrative Judge