



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-01067
)
 Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on September 15, 2010. On February 10, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline F. DOHA 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 the Department of Defense on September 1, 2006.

Applicant received the SOR on February 20, 2012; answered it on March 6, 2012; and requested a determination on the record without a hearing. Department Counsel submitted the Government's written case on April 10, 2012. On April 11, 2012, 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 April 16, 2012, and he timely submitted additional evidence, which was included in the record without objection. The case was assigned to me on May 24, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 47-year-old service desk administrator employed by a defense contractor since January 2005. He has worked for various federal contractors since February 1998. He was laid off in October 2004 and unemployed until January 2005. He received a security clearance in January 1998 and was sponsored for a top secret clearance by his current employer in January 2005.

Applicant has never married. He has a ten-year-old daughter who lives with him. He received an associate's degree in computer information systems in 1997 and a bachelor's degree in information systems management in 2002.

Applicant invested in a four-unit rental property in 2004. He had difficulty keeping the units rented and collecting rent from existing tenants, and he fell behind on his mortgage payments. The mortgage became delinquent in December 2008, and the property was foreclosed in August 2009. During two personal subject interviews in September and December 2011, Applicant told investigators that the first and second mortgages on this property were satisfied by the foreclosure sale. (FORM at Item 5, pp. 242 and 249.) He produced no documentation showing that the proceeds of the foreclosure sale were sufficient to satisfy the debt or that the lender had forgiven the debt.

In early 2008, Applicant began investing in the stock market, using borrowed funds. After the market decline in 2009, he was unable to make the payments on the loan as well as his other debts.

The debt alleged in SOR ¶ 1.a is a line of credit. Applicant's October 2011 CBR reflects that the account was opened in September 2005, became delinquent in December 2008, is past due in the amount of \$2,785, and has a balance of \$18,457. (FORM at Item 5, p. 369.) The same debt, listed under the name of the original creditor, is reflected in his September 2010 CBR. (FORM Item 10.) Applicant disputed the debt in November 2011, but the dispute is not resolved. His dispute letter does not deny the debt. It asks the named creditor, a collection agency, to identify the original creditor,

validate the debt, and provide proof of its authority to collect the debt. (FORM at Item 5, p. 336.) He admitted this debt in his response to the SOR.

Applicant's February 2012 CBR reflects that the line of credit alleged in SOR ¶ 1.b (\$30,786) was charged off in December 2008. The delinquent credit card account alleged in SOR ¶ 1.c (\$30,809) was charged off in October 2008. The delinquent credit card account alleged in SOR ¶ 1.d (\$17,589) was referred for collection in November 2008. The delinquent credit card account alleged in SOR ¶ 1.e (\$17,307) was referred for collection in May 2009. The two delinquent student loans alleged in SOR ¶¶ 1.f and 1.g (\$16,384 and \$17,094) were placed for collection in September 2009. (FORM Item 12.) Applicant presented no evidence of any efforts to resolve these debts.

In a personal financial statement dated December 20, 2011, Applicant listed net monthly income of \$5,422, monthly expenses of \$1,435, debt payments of \$2,925, and a net remainder of \$1,062. His debt payments include the first and second mortgages on his personal residence and the mortgage on one rental property. It does not include payments on the debts alleged in the SOR. (FORM at Item 5, p. 254.)

Applicant filed a petition for Chapter 13 bankruptcy on April 25, 2012. The creditor's meeting is scheduled for June 7, 2012. In his petition, he listed total assets of \$300,460 and liabilities of \$408,500. He has agreed to surrender his rental property to the lender, and to continue making payments to the lender for his current residence. The list of creditors includes those alleged in SOR ¶¶ 1.b-1.g. It does not list the collection agency alleged in SOR ¶ 1.a, but it lists the original creditor for the debt. The Chapter 13 payment plan provides for monthly \$300 payments for 60 months, beginning in May 2012. The payment plan does not include payments on Applicant's delinquent student loans. (Response to FORM.)

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, 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 applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an applicant'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 credit reports and his admissions in response to the SOR establish the following 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.") Thus, the burden shifted to him to refute, explain, extenuate, or mitigate the facts.

Security concerns based on financial considerations may be mitigated by any of the following conditions:

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; or

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, because Applicant's debts are numerous, ongoing, and did not occur under circumstances making them unlikely to recur. AG ¶ 20(b) is not established because Applicant's financial problems were caused by voluntary, albeit unwise, financial decisions and not by conditions beyond his control. AG ¶ 20(c) is not fully established, because Applicant has not received counseling beyond what is

required in connection with his bankruptcy, and his bankruptcy is not far enough along to provide “clear indications” that the problem is under control.

AG ¶ 20(d) is not established, because Applicant has not demonstrated good-faith efforts to resolve the debts alleged in the SOR. 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. The timing of Applicant’s bankruptcy indicates that it was motivated by a desire to protect his clearance rather than a sense of obligation. Furthermore, he has not yet established a track record of compliance with the Chapter 13 payment plan that is sufficient to overcome his history of financial delinquencies.

AG ¶ 20(e) is not established by Applicant’s dispute of the debt alleged in SOR ¶ 1.a. His dispute letter merely asked for the identity of the original creditor, validation of the debt, and proof of the collection agency’s authority to collect it. His September 2010 CBR, listing the original creditor, establishes the validity of the debt, and Applicant admitted the debt in his answer to the SOR.

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 is a mature, well-educated adult. He has admitted his past mistakes, and has acted wisely by seeking to resolve his delinquent debts through a Chapter 13 bankruptcy. He has not explained, however, his lack of good-faith efforts to resolve debts that have been delinquent for several years. It is too soon to determine if he will

comply with his Chapter 13 payment plan, resolve the student loans not included in the plan, and demonstrate overall financial responsibility.

My ability to assess Applicant's sincerity and credibility is limited, because he requested a decision without a hearing. He has not submitted any documentary evidence showing the quality of his duty performance or his reputation for reliability, trustworthiness, or good judgment.

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 not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not 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): **AGAINST APPLICANT**

Subparagraphs 1.a-1.g: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge