



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-03138
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2012

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 November 5, 2010. On August 3, 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 grant or 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 August 10, 2012; answered it on August 15, 2012; and requested a hearing before an administrative judge. DOHA received the request on August 21, 2012. Department Counsel was ready to proceed on September 18, 2012, and the case was assigned to me on September 21, 2012. DOHA issued a notice of hearing on October 1, 2012, scheduling it for October 24, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified but presented no witness or documentary evidence. DOHA received the transcript (Tr.) on November 5, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted the single allegation in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 30-year-old employee of a defense contractor. He received an associate's degree in computer electronics technology in June 2002. He received a security clearance in November 2002 and worked for defense contractors from November 2002 to March 2005. He worked for a private employer from March 2005 until July 2010, when he resigned and received \$50,000 in severance pay because of a reduction in force. He used \$20,000 of the severance pay to off credit card debts and \$5,000 for automobile repairs. (GX 2 at 8.)

When Applicant submitted his security clearance application, he was unemployed, but he had received a job offer as an information technology (IT) service technician that was contingent on obtaining a security clearance. (GX 2 at 4-5.) As of the date of the hearing, he had been unable to qualify for the IT position, but he had been working as an electrician for another defense contractor since about January 2011, earning \$20.75 per hour. (GX 2 at 21; Tr. 33-35.)

Applicant married in September 2004 and divorced in August 2008. He married his current spouse in May 2009. He has no children. He and his current spouse separated in January 2011. (Tr. 29.)

Applicant purchased a car and a home in 2005. He fell behind on his car payments, and the car was voluntarily repossessed in June 2008. He paid the deficiency after the repossession sale, which was less than \$10,000, using funds from a home-equity line of credit (HELOC) on his home. He also used the HELOC to pay off credit card debts and other financial obligations. (Tr. 27.)

Applicant's home loan was secured by an adjustable-rate mortgage. He was current on his mortgage payments until the interest rate adjusted upwards in 2008, increasing his monthly payments from about \$1,400 to more than \$2,000. He was unable to refinance because the value of his home had decreased. He tried a short sale but was unsuccessful. He lived in the home with two roommates after he and his wife separated, but they moved out. His real estate agent advised him to move out of his home, and he moved in with a cousin. He testified that the property was foreclosed and

he received an Internal Revenue Form 1099-C, Cancellation of Debt. He was unable to produce any documentation pertaining to the foreclosure. He testified that his tax preparer advised him that he owed no taxes on the cancelled debt. (Tr. 22-23.) When the primary mortgage loan was foreclosed, Applicant's HELOC had a balance of about \$20,000.

Applicant was unable to pay off the HELOC, and it was charged off in September 2008. (GX 3 at 2.) He received a settlement offer from the HELOC lender but was financially unable to accept it. He has attempted to obtain a personal loan to settle the HELOC, but he has been unsuccessful because of his bad credit rating. (GX 2 at 7-8; Tr. 24-26)

The delinquent HELOC is the sole debt alleged in the SOR. Applicant has not disputed the debt and has not sought or received financial counseling regarding it.

Applicant submitted a personal financial statement (PFS) in May 2012. His PFS reflects net monthly income of \$3,212, expenses of \$2,060, debt payments of \$793, and a net remainder of \$358. (GX 2 at 16.) His debt payments are for a car loan with a balance of \$35,245 and monthly payments of \$632, a personal loan with a balance of about \$2,900 and monthly payments of \$111, and a credit card account with a balance of \$440 and monthly payments of \$50.

The car loan reflected on Applicant's PFS was incurred when he bought a car with his cousin as a cosigner. After a family disagreement, his cousin told him that he no longer wanted to be liable as a cosigner. Applicant was unable to dispose of the car, and he allowed it to be voluntarily repossessed in August 2012. The lender offered to settle the deficiency after repossession for \$3,250. As of the hearing date, Applicant had not been financially able to accept the settlement offer. (Tr. 35-36.)

Applicant is paying as agreed on the personal loan and credit card account reflected on his PFS. (Tr. 38-39.) He rents a room for \$380 per month and drives a car that his mother loaned him. He has no savings and no retirement accounts. (GX 2 at 16)

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).

The evidence establishes the 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; and

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

AG ¶ 20(a) is not established. Although only one delinquent debt is alleged in the SOR, Applicant has incurred numerous delinquent debts, including a foreclosure on the first mortgage on his home, the delinquent HELOC alleged in the SOR, and two car repossessions. He has not resolved the delinquent

HELOC and the latest car repossession. His debts did not arise under circumstances making them unlikely to recur.¹

AG ¶ 20(b) is partially established. Applicant has encountered several conditions beyond his control: two marital breakups, a downturn in the real estate market, and periods of unemployment. The first car repossession was not due to circumstances beyond his control, but rather a decision to purchase an automobile that he and his first wife could not afford. The rise in Applicant's home loan interest rate was not a condition beyond his control, because he voluntarily agreed to an adjustable-rate mortgage. However, the downturn in the housing market, which made refinancing impossible, was a condition beyond his control. He acted reasonably, maintaining contact with the lender and attempting a short sale. Applicant's marital breakups were conditions beyond his control, leaving him with a single income to handle debts incurred with two incomes. On the other hand, his reaction to excessive indebtedness has been to borrow more money. He resolved the deficiency after the first repossession by using his HELOC. He is now attempting to pay the delinquent HELOC and the deficiency after his second car repossession by obtaining another loan, in addition to the \$2,900 personal loan he is currently obligated to pay.

AG ¶ 20(d) is partially established. Applicant has demonstrated his good faith by remaining in contact with the lender for his HELOC, and he has received a settlement offer. However, the debt was charged off in September 2008, and he has not made any payments on the debt for at least four years.

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

¹ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the delinquent debts not alleged in the SOR for these limited purposes.

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 and sincere at the hearing. He has struggled financially since 2008, and he has no clear plan to regain financial stability. His pattern is to resolve debts by incurring more debt. He likely could benefit from financial counseling, but he has not sought it.

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement 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 aspires to obtain a loan and pay off the delinquent HELOC, but his aspiration has not yet evolved into a plan, and he has taken no significant steps to resolve the debt.

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

Subparagraph 1.a: Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge