



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



In the matter of:)
)
) ISCR Case No. 11-04909
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On April 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On April 30, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 26, 2015. The Defense

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 3, 2015, and the hearing was convened as scheduled on September 22, 2015.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified and submitted Applicant Exhibits (AE) A through F. The record of the proceedings was left open until October 5, 2015, to provide Applicant the opportunity to submit additional documents. He timely submitted documents that were marked as AE G through I. All exhibits were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on September 30, 2015.

Procedural Matters

Department Counsel made a motion to withdraw the allegations in SOR ¶¶ 1.d and 1.e. Applicant had no objection to the motion. The motion was granted, and those allegations were withdrawn.¹

Department Counsel made a motion to amend SOR ¶ 1.a to reflect that the debt was owed to a state instead of the Internal Revenue Service (IRS). Applicant had no objection to the amendment. The motion to amend was granted.²

Findings of Fact

Applicant is a 40-year-old mechanic who works as a quality assurance inspector for a defense contractor. He has been working for that contractor in the Middle East since May 2011 and has worked overseas for other defense contractors for a number of years. He earned a general educational development certificate in 1996 and an associate's degree in 2003. He has been married twice. He married his current wife in 2005. He has three children, ages 15, 16, and 22.³

Excluding the withdrawn allegations, the SOR alleged that Applicant had three delinquent debts totaling \$64,168 (SOR ¶¶ 1.a-1.c). In his Answer to the SOR, he denied each debt. Substantial evidence of the alleged debts is contained in GE 1-4.⁴

In 1999, Applicant was involved in a car accident and incurred a broken pelvis and hip. He was determined to be fully disabled and collected about \$1,000 per month in disability payments from the Social Security Administration (SSA). While receiving the disability benefits, he knew there was a limit on how much income he could earn, but did not know the exact restrictions. In 2006, he received a letter from SSA that indicated

¹ Tr. 23-25.

² Tr. 43-44.

³ Tr. 5-7, 23, 37-39, 42-43; GE 1.

⁴ GE 1-4; Applicant's Answer to the SOR.

he was earning more income than he was allowed. At that time, his disability payments stopped, and he has not received any further disability payments since then.⁵

A credit report dated June 12, 2010, reflected that Applicant's SSA account had been placed for collection in the amount of \$20,955 (SOR ¶ 1.c). This delinquent account was the result of his overpayment of disability payments. In 2008, he started repaying this debt through a monthly pay allotment of \$300. When he left his job later that year, the allotment stopped. In 2012, the SSA began garnishing his pay at a rate of \$600 every two weeks. By early 2014 (well before the issuance of the SOR), he fully repaid this debt. In July 2014, he received a letter from the SSA stating he overpaid the debt and would be receiving a refund of \$2,535.⁶

In 2008 and 2009, Applicant worked overseas, and a portion of his income was exempt from taxation. In those years, his income was greater than the exemption, and he incurred taxes that he could not pay. In his security clearance application (SCA), he disclosed that he owed approximately \$36,000 to the IRS for 2008 and 2009 (SOR ¶ 1.b). In 2010, his state also filed a \$7,213 tax lien against him (SOR ¶ 1.a).⁷

In his Answer to the SOR, Applicant stated that the state tax lien had been repaid through monthly payroll deductions. He also stated that he had a repayment plan with the IRS and the payments are automatically deducted from his pay.⁸

At the hearing, Applicant testified that the state tax lien was repaid, but he had not yet received a document from the state showing it was paid. He stated that the deductions from his pay for the state tax lien stopped over a year ago. At the hearing, he also provided IRS account transcripts for 2008 and 2009 that showed he had been consistently making monthly payments of \$375 since August 2012. As of September 2015, his IRS account balance for 2008 was \$3,961 and for 2009 was \$17,124. The account transcripts showed that his IRS debt had been cut almost in half.⁹

Besides the debts alleged in the SOR, Applicant's credit report dated March 26, 2015, reflected that he had no other delinquent debts. He also testified that he had no other delinquent debts. In 2014, he earned about \$108,000 and his wife earned about \$25,000. In his post-hearing submission, Applicant presented letters from the state that reflected he did not have an outstanding tax liability for 2008 and 2009.¹⁰

⁵ Tr. 26-29; GE 1.

⁶ Tr. 29-32; GE 1-3; AE C.

⁷ Tr. 32-36; GE 1.

⁸ Applicant's Answer to the SOR.

⁹ Tr. 32-36, 46-51; AE D-F.

¹⁰ Tr. 39-42; AE A, B, H, I; Applicant's Answer to the SOR.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, in reaching a decision.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 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 [his or 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

Guideline F, Financial Considerations

The security concern for this guideline is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The evidence established that Applicant accumulated delinquent debts that he was unable or unwilling to pay for an extended period. AG ¶¶ 19(a) and 19(c) apply in this case.

Four 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; and

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

Applicant incurred delinquent debts because he continued to receive disability benefits after his income exceeded earning limitations and because he failed to pay taxes on income earned in 2008 and 2009. These events do not constitute circumstances beyond his control. AG ¶ 20(b) does not apply.

Applicant has resolved the state tax lien in SOR ¶ 1.a and the disability overpayment in SOR ¶ 1.c. He has established a repayment plan to resolve the delinquent federal taxes in SOR ¶ 1.b. He has been consistently making payments under that plan for the past three years. The record established that his financial problems are under control and are being resolved. He has not incurred any recent delinquent debts. His financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.¹¹ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, outweigh the security concerns at issue. Applicant met his burden of persuasion to mitigate the security concerns.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

¹¹ The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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.

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.c: For Applicant

Subparagraphs 1.d-1.e: Withdrawn

Decision

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

James F. Duffy
Administrative Judge