



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-07746
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

09/24/2012

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 2, 2010. On May 22, 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 June 7, 2012; answered it on June 25, 2012; and requested a determination on the record without a hearing. Department Counsel submitted the Government's written case on July 30, 2012. On August 9, 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 August 13, 2012, and he submitted additional materials on September 5, 2012, which were included in the record without objection. The case was assigned to me on September 19, 2012.

Findings of Fact

In his answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a and 1.b and admitted the allegations in SOR ¶¶ 1.c through 1.m. His admissions are incorporated in my findings of fact.

Applicant is a 32-year-old security officer employed by a federal contractor since October 2010. He served in the U.S. Marine Corps from June 2002 to June 2006 and was honorably discharged as a corporal (pay grade E-4). He has never held a security clearance.

Applicant's security clearance application reflects two periods of unemployment, from July 2009 to September 2009 and from November 2008 and May 2009. He left both jobs after being asked to resign because of his poor performance. (Item 5 at 27-28; Item 6 at 7.)

Applicant married in December 2002 and divorced in May 2008. He had an eight-year-old daughter during his marriage and a three-year-old daughter by another woman after his divorce. He is required to pay child support of \$430 per month for his eight-year-old daughter. (Item 6 at 7.) He voluntarily pays child support to the mother of his three-year-old child.

Applicant owns a home, and his credit report reflects a mortgage of \$267,000. His mortgage payments appear to be current. (Item 5 at 10; Item 8 at 2.) He was asked in DOHA interrogatories to provide a personal financial statement and proof of monthly income, but there is nothing in the record showing compliance with this request. (Item 6 at 3.)

The SOR alleges 13 delinquent debts totaling more than \$55,000. They include a medical debt (SOR ¶ 1.a), eight credit card debts (SOR ¶¶ 1.b-1.f, 1.i, 1.j, and 1.m), a child-support arrearage (SOR ¶ 1.g), a student loan (SOR ¶ 1.h), a deficiency after a car repossession (SOR ¶ 1.k), and a cable service bill (SOR ¶ 1.l). In his answer to the SOR, Applicant claimed that the two debts alleged in SOR ¶¶ 1.a and 1.b were paid in full. He provided documentary evidence that the medical debt in SOR ¶ 1.a was paid, but he has provided no documentary showing the satisfaction of the debt alleged in SOR ¶ 1.b.

Applicant claimed that he was making monthly payments on the child support arrearage alleged in SOR ¶ 1.g, but he provided no documentation of payments. Instead, he provided documentary evidence of voluntary payments to the mother of his out-of-wedlock child. In response to the FORM, he submitted receipts for 15 payments to the mother of his three-year-old child that were made between December 2010 and September 2011 and total almost \$5,000.

Applicant claimed that the delinquent student loan alleged in SOR ¶ 1.h was his ex-wife's, but he admitted cosigning the loan. In his answer to the SOR, he stated that his ex-wife would resolve this debt, but he has provided no documentation showing that the debt is being resolved.

In his answer to the SOR, Applicant declared his intention to resolve all the debts alleged in the SOR. He has resolved the \$591 debt alleged in SOR ¶ 1.a, but the debts alleged in SOR ¶ 1.b-1.m remain unresolved.

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 admissions in response to the SOR, corroborated by his credit reports and his responses to DOHA interrogatories, establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Security concerns based on financial considerations may be mitigated by any of the following mitigating 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;

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; or

AG ¶ 20(f): the affluence resulted from a legal source of income.

AG ¶ 20(a) is not established because Applicant's delinquent debts are numerous, ongoing, and not the product of circumstances making them unlikely to recur. The first prong of AG ¶ 20(b) is established because Applicant encountered periods of unemployment and a marital breakup, which were beyond his control. However, the second prong of AG ¶ 20(b) is not established because he has not acted responsibly. AG ¶ 20(c) is not established, because there is no evidence that Applicant has sought or received financial counseling. AG ¶ 20(d) is established for the debt

alleged in SOR ¶ 1.a, but not for the remaining debts alleged in the SOR. AG ¶ 20(e) is not established because Applicant has not disputed any of the debts alleged in the SOR. AG ¶ 20(f) is not relevant.

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 served honorably in the U.S. Marine Corps for four years. However, he has accumulated numerous debts, including a substantial child-support arrearage. He has provided minimal financial information in response to DOHA interrogatories. He has not sought financial counseling and has no specific plan to resolve his financial situation. 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 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): **AGAINST APPLICANT**

Subparagraph 1.a:
Subparagraphs 1.b-1.m:

For Applicant
Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge