



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



In the matter of:)
)
) ISCR Case No. 11-08087
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

12/12/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On June 19, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On July 20, 2012, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On

August 30, 2012, Department Counsel compiled a File of Relevant Material (FORM) that contained documents identified as Items 1 through 7.

On September 5, 2012, DOHA forwarded to Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on September 11, 2012, and did not submit any objections or additional matters within the allotted time. The case was assigned to me on November 29, 2012.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He has worked for his current employer since 2006. He earned an associate's degree in 2006. He has never been married and has no children. This is the first time that he has sought a security clearance.¹

The SOR alleged that Applicant had ten delinquent debts totaling \$28,061. Those debts included nine medical accounts and one credit card account. In his Answer to the SOR, he admitted all of the alleged debts. His admissions are incorporated as findings of fact.²

During an Office of Personnel Management (OPM) interview on May 9, 2011, Applicant reportedly stated:

[He] got into a four wheeler accident in 4/07. [He] broke his wrist, shoulders, and ribs. There was no alcohol involved in the incident. [He] hit an unseen hole and flipped the four wheeler. [He] went to [N] Hospital and then was transferred to [R] Hospital. . . [He] set up a payment plan with [R] Hospital. [He] filed for a grant program at [N] Hospital to help pay his bills. [He] also filed for this at [R] Hospital. [He] was accepted at [N], but denied at [R]. [His] payment [plan] was to pay \$25 to each account and hospital. Originally [there were] only two accounts and [he] paid a total of \$50 a month. For some reason later in 2007 the two accounts were split into seven accounts each requiring \$25 a month payments. [He] attempted to find out why the accounts were split and did not pay all eight accounts while he was attempting to get information. [He] did not get an explanation from the hospital. [He] felt the hospital owed him an explanation. [He] paid two of the accounts but not the other six. A few months later the accounts were sent into collections. [He] has not been receiving bills on the accounts in collections. [He] would begin paying again now that he is able if he were receiving bills.³

¹ Item 4.

² Items 1 and 3.

³ Item 5.

During the OPM interview, Applicant also admitted “to not being responsible with his bills when he should have been better.”⁴

Applicant missed work from April to July 2007 as a result of that accident. He provided no documents showing he made the payments mentioned in his OPM interview. In his Answer to the SOR, he stated:

I set up Payment arrangements for twenty five dollars a month in the month of April, which is what I started sending in monthly in the first quarter of 2012. I did not send in a payment in April because I thought with it being the middle of the month and I elected to have my payment in by the middle of the month that the arrangement would start in May. As a result [the collection agency] cancelled my arrangement. I am still sending in twenty five dollars a month and will continue working with them to get an arrangement made.⁵

Seven of the nine medical debts (SOR ¶¶ 1.a, 1.c, 1.e, 1.f, 1.g, 1.h, and 1.i) are owed to one collection agency. Applicant provided copies of money orders showing he made three \$25 payments to that collection agency. One of those money orders is dated May 13, 2012. The dates on the other two money orders are illegible, but are presumed to be payments made in June and July 2012.⁶

In his Answer to the SOR, Applicant also stated the credit card debt alleged in SOR ¶ 1.j was charged off. He indicated that, if he knew what collection agency was handling that credit card account, he would set up payment arrangements to satisfy that debt. He indicated that he would contact the original creditor during the following week to set up those arrangements.⁷

In his security clearance application, Applicant disclosed no derogatory information other than his delinquent debts. In May 2012, he submitted a personal financial statement that reflected his net monthly income was \$1,398, that his total monthly expenses were \$1,185, that his monthly debt payments were \$180, which left him a net monthly remainder of \$33. He presented no letters of reference or other character evidence.⁸

⁴ Item 5.

⁵ Item 3.

⁶ Items 1, 6, and 7.

⁷ Item 3.

⁸ Items 4 and 5.

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, to reach his 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 Financial Considerations 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.

Applicant accumulated delinquent debts over an extended period that he was either unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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's financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In April 2007, Applicant was involved in a vehicle accident in which he broke a number of bones. As a result of that accident, he accumulated a number of medical bills and missed about three months of work. The vehicle accident was a condition beyond his control that contributed to his financial problems. Nonetheless, he has not established that he acted responsibly under the circumstances. His injuries occurred over five years ago. He has been continuously employed for almost all of that intervening period. In April 2012, he established a payment arrangement with a collection agency, but failed to submit the first payment promptly. The collection agency cancelled the payment arrangement. Thereafter, he made three \$25 payments to the collection agency, which holds seven of the delinquent medical debts. He provided no documentary proof of action taken to resolve the other three debts. In his OPM interview, he admitted that he should have acted more responsibly in the handling of his bills. He provided no proof of financial counseling and failed to establish that his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. AG ¶ 20(b) and 20(d) partially apply.

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 relevant 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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.

Besides the SOR allegations, there is no information in the FORM that would undermine Applicant's suitability for a security clearance. Nevertheless, he has failed to establish that he is financially responsible. In particular, he failed to present a meaningful track record of payments towards the delinquent debts or a realistic plan for resolving them. Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings 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: | AGAINST APPLICANT |
| Subparagraphs 1.a–1.j: | Against Applicant |

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge