



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 12-01699
)	
Applicant for Security Clearance)	

Appearances

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

06/16/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

Statement of the Case

On October 22, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 19, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken 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), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on December 12, 2013. Department Counsel was prepared to proceed on January 24, 2014. The case was assigned to me on February 24, 2014. DOHA issued a notice of hearing on March 6, 2014, scheduling the hearing for March 26, 2014. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, and Hearing Exhibit (HE) I, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were received into evidence without objection.

I held the record open until April 21, 2014, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE F, which was received into evidence without objection. On June 4, 2014, I provided the Applicant an opportunity to submit additional documents by the close of business that day. Applicant timely submitted AE G, which was received into evidence without objection. DOHA received the hearing transcript (Tr.) on April 2, 2014.

Findings of Fact

Applicant admitted all of the SOR debts with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 51-year-old flight line inspector, who has been employed by a defense contractor since October 2011. He seeks a security clearance to enhance his position within his company. (GE 1, Tr. 22-23, 64.)

Applicant graduated from high school in June 1981. (GE 1, Tr. 38.) He served in the U.S. Air Force from March 1984 to March 1988, and was honorably discharged as a sergeant (pay grade E-4). His Air Force Specialty Code was strategic aircraft maintenance specialist. (AE A, Tr. 23-24, 39.) Applicant successfully held a security clearance while he was in the Air Force and after he was discharged from the Air Force as a defense contractor from 1988 to 2005. (GE 1, Tr. 23-25.)

Applicant was married from July 1991 to May 2002, and that marriage ended by divorce. Two children were born during that marriage -- a 9-year-old daughter and a 19-year-old son. Applicant remarried in May 2004, and has three stepchildren as a result of his second marriage -- a 21-year-old stepdaughter, an 18-year-old stepson, and a 16-year-old stepson. Applicant and his wife have custody of his 9-year-old daughter and his three stepchildren. His former spouse has custody of his 19-year-old son. (GE 1, Tr. 26-27.) His current wife works part-time as a phlebotomist. (Tr. 41.) Applicant pays his former wife \$300 monthly alimony. (Tr. 43.)

Financial Considerations

The SOR alleges five debts totalling \$124,453 -- a charged-off credit card account for \$6,500, a charged-off mortgage account for \$78,606, a judgment in favor of a mortgage company for \$24,136, a past-due credit card account for \$4,975, and a past-due credit card account for \$10,236. (SOR ¶¶ 1.a – 1.e, Tr. 44-52.)

Applicant attributes his financial problems to his former spouse's poor real estate choices and spending indiscretion during his previous marriage. Applicant's former spouse managed the family budget and was primarily responsible for making or initiating all spending decisions. Applicant acknowledges his responsibility for failing to become involved as their financial situation deteriorated. By the time Applicant divorced his former spouse in 2002, he was seriously in debt. After Applicant remarried and was considering his options, he stated "I realized I was just a year or so away from everything falling off my credit report." Applicant attempted to negotiate with his creditors, but was unable to negotiate settlements or make payment arrangements with them. He added that he and his second wife have five children between them and that he cannot afford to repay the debts from his former marriage. (SOR answer, GE 2, Tr. 27-34.)

Applicant stated that he paid his bankruptcy attorney his required fees in November or December 2012. He stated that he wanted his debts to "fall off" his credit report so he "could get a better credit rating before I filed for bankruptcy." Applicant estimates that his debts "fell off" his credit report during the timeframe of March to June 2013. (Tr. 34-36, 52-54.)

Applicant indicated on his October 2011 e-QIP that he was going to file bankruptcy. He contacted his bankruptcy attorney in "probably mid-2012." (GE 1, Tr. 54.) Applicant had not filed his bankruptcy petition as of his hearing date, which was March 26, 2014. According to Applicant, his attorney requires additional creditor information from him that he has been unable to provide. Applicant testified at his hearing that he had "a lull in his schedule this week but (his attorney) went on vacation . . . so I am going to try to push him next week to try to sit down and see what it's going to take to get through these last couple of events. Hopefully we will file within the next month or two."¹ (Tr. 54-59.) Applicant's SOR debts remain unresolved.

Applicant's September 2011 budget reflects a net monthly remainder of \$3,318. It does not take into account his pay raise or his wife's \$13,000 annual salary. In any event, his budget reflects that Applicant maintains a modest lifestyle and is living within his means. (GE 2, Tr. 40-42.) On June 4, 2014, Applicant completed the mandatory financial counseling required to file Chapter 7 bankruptcy. (AE G.)

Character Evidence

Applicant submitted four work-related reference letters. The authors of these letters collectively speak very highly of Applicant and recommend him for a security clearance. They noted Applicant's superb work performance and his contribution as a defense contract employee. (AE B – AE E.)

¹As indicated, *supra*, I held the record open until April 21, 2014 to allow the Applicant an opportunity to submit additional material, in particular, proof of having filed his Chapter 7 bankruptcy petition. His petition was not filed during that timeframe. On June 4, 2014, I reopened the record and contacted Applicant to determine whether his attorney had filed his petition. Applicant informed me that his petition had not been filed as of June 4, 2014.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines 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 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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that apply and raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, e-QIP, OPM interview, and SOR response.

Five 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;

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

(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.

None of the mitigating conditions are fully established. Applicant's delinquent debts are numerous and ongoing. Despite having been put on notice of the Government's concerns regarding his finances, he has done little to address those concerns. Although he has good intentions and had a viable plan to regain financial responsibility, he has failed to follow through with his Chapter 7 bankruptcy. To receive full credit under AG ¶ 20(c), Applicant must demonstrate not only that he has completed financial counseling, but also must show his problem is under control or has been resolved.

Applicant is unable to repay his SOR debts and they remain unmitigated. A different outcome in this case may have occurred had he followed through with his Chapter 7 bankruptcy, especially after the Government made him aware of its concerns. Post-hearing, the Applicant was given an additional opportunity to follow through with his Chapter 7 bankruptcy and for reasons not entirely clear, failed to do so. Applicant has made an insufficient effort to address his debts and I am precluded from finding in his favor.²

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 the 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

²“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's military service in the Air Force from 1984 to 1988 and lengthy employment as a Government contractor weigh in his favor. He is a law-abiding citizen and contributes to the national defense. Apart from his SOR debts, there is no evidence to suggest that he is not current on his day-to-day expenses.

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. June 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).

However, Applicant's failure to address his debts in any meaningful manner since they were brought to his attention as early as 2011 precludes a favorable decision. Given his background, his failure to recognize the importance of regaining an acceptable level of financial responsibility is disappointing. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has not mitigated financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant 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 to 1.e: Against Applicant

Conclusion

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

Robert J. Tuidier
Administrative Judge