



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-03270
)	
Applicant for Security Clearance)	

Appearances

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

06/05/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on October 22, 2011. On November 26, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD 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 DOD on September 1, 2006.

Applicant received the SOR on December 6, 2013; answered it on December 24, 2013; denied all the allegations; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 14, 2014. On March 21, 2014, 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 April 14, 2014, and did not respond. The case was assigned to me on May 30, 2014.

Findings of Fact

Applicant is a 49-year-old training specialist employed by a defense contractor since September 2009. He served on active duty in the U.S. Army from May 1984 to August 2009, received an honorable discharge, and retired as a sergeant first class (pay grade E-7). His military assignments from at least June 1999 until his retirement were with Army Special Forces units. (Item 5 at 15; Item 6 at 8-9.) As a contractor, he has served with special operations forces, and he recently returned from a 15-month deployment to Afghanistan. (Answer to SOR.) He held a security clearance during his military service and retained it after he was hired by a defense contractor.

Applicant married in June 1988. He and his wife have three children, ages 26, 24, and 20.

The SOR alleges 11 unresolved delinquent debts totaling about \$21,885. All the debts alleged in the SOR except the \$2,000 federal tax debt alleged in SOR 1.a are reflected on Applicant's credit bureau reports (CBRs) dated November 9, 2011, and June 26, 2013. (Items 7 and 8.) In his response to the SOR, Applicant provided evidence that the federal tax debt and the \$1,620 debt to the commercial lender alleged in SOR ¶ 1.j had been resolved.

Applicant presented no evidence reflecting that any of nine delinquent debts in SOR ¶¶ 1.b through 1.i and 1.k were paid, resolved, included in payment plans, or disputed. In his response to the SOR, he simply stated that they were no longer on his credit report. All nine unresolved debts have been charged off, referred for collection, or purchased by another creditor. The debt in SOR ¶ 1.i was purchased by another creditor in September 2006. The debt in SOR ¶ 1.k was purchased by another creditor in October 2006. The debts in SOR ¶¶ 1.d, 1.e, 1.g, and 1.h were charged off in November 2006. The debts in SOR ¶¶ 1.c and 1.f were charged off in December 2006. The debt alleged in SOR ¶ 1.b was referred for collection in June 2011. (Items 7 and 8.)

Applicant stated during a personal subject interview (PSI) in December 2011 that he did not intend to pay the charged-off debts reflected on his CBRs. (Item 6 at 12.) He explained that the tax debt arose because insufficient taxes had been withheld from his pay. The debt was paid by deductions from his retired pay. He offered no explanation for the other delinquent debts except to state that they "snowballed" because of excessive spending. He has never sought or received financial counseling. (Item 6 at 12.)

Applicant submitted a personal financial statement dated September 12, 2013. It reflects net income, including his military retired pay, of \$5,085, monthly expenses of \$4,381, no debt payments, and a net remainder of \$704. (Item 6 at 15.)

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 and 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 individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’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 following disqualifying conditions under this guideline are potentially applicable:

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

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

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; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

AG ¶¶ 19(a), 19(c), and 19(e) are established by Applicant’s CBRs and his admission during his PSI that his delinquent debts were due to excessive spending. AG ¶ 19(g) is not established, because the evidence reflects that Applicant’s federal tax

debt was caused by insufficient withholding from his pay rather than a failure to file returns.

The following mitigating conditions are potentially applicable:

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; and

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.

None of the above mitigating conditions are established. Applicant's delinquent debts are ongoing, numerous, and did not occur under circumstances making them unlikely to recur. They arose from excessive spending and not from circumstances beyond his control. He has not sought or received counseling, and he has not disputed any of the debts.

Applicant's only response to the nine unresolved debts is that they do not appear on his CBRs. The record does not reflect why the \$42 medical debt in SOR ¶ 1.b is not listed on the most recent credit report. However, eight of the nine unresolved debts are more than seven years old. Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c. The absence of the debts on his most recent credit report proves nothing about the status of the debts except their age. Furthermore, merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g, ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

Whole-Person Analysis

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.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about his delinquent debts. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). He served honorably in the U.S. Army for more than 25 years and held a security clearance during his military service. He presented no evidence of the quality of his performance as a contractor employee. Eight of the nine delinquent debts alleged in the SOR became delinquent while he was still on active duty, and he has taken no action to resolve them in spite of his steady employment, stable income, and significant discretionary income. 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:
Subparagraphs 1.b-1.i:

For Applicant
Against Applicant

Subparagraph 1.j:
Subparagraph 1.k:

For Applicant
Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge