



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



In the matter of:)
)
) ISCR Case No. 12-10686
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2017

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On May 29, 2012, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F and detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred his case to an administrative judge to determine whether his clearance should be granted or denied.

On November 12, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 14, 2016, was provided to him by letter dated March 15, 2016. Applicant received the FORM on March 23, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the 30-day period. On December 27, 2016, the case was assigned to me.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions are accepted as findings of fact.

Background Information¹

Applicant is a 35-year-old pipefitter who seeks a security clearance in conjunction with prospective employment with a defense contractor. (Items 3, 7)

On his SF-86, Applicant reported that he attended community college for four months in 2002, but did not graduate. He never married and has no dependents. In 2000, Applicant received an entry level separation from the U.S. Navy after serving less than one month. (Items 3, 7)

Financial Considerations

Applicant's SOR lists five tax-related allegations. Two of those allegations are for delinquent federal taxes in the amounts of \$1,180.68 and \$3,689.17, for tax years 2009 and 2010, respectively. The remaining three allegations are for delinquent state taxes in the amounts of \$165; \$1,430; and \$1,400, for tax years 2009, 2010, and 2011, respectively. (SOR ¶¶ 1.a – 1.e)

In Applicant's SOR answer, he claimed that all of the debts alleged have been paid. However, as Department Counsel noted in his FORM, he provided no documentation to substantiate this claim. (Item 2) Moreover, during Applicant's July 2012 Office of Personnel Management Personal Subject Interview (OPM PSI), he stated that he had not filed or paid his 2010 and 2011 federal income taxes, nor had he filed or paid his 2009, 2010, 2011 state income taxes. (FORM; Items 2, 7) Applicant disclosed several periods of unemployment in his SF-86, the most recent being five months in 2012.

Applicant's FORM response did little to enhance his situation. There is no record evidence documenting any attempt by Applicant to contact the IRS or his state tax

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

authorities or evidence that he paid his taxes as he claimed. There is no record evidence that Applicant sought financial counseling.

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

Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*), and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). In response to the Government’s information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR or the FORM. Applicant did not show that he had paid or otherwise resolved his tax arrearages to the IRS or to his state tax authority.

In summary, Applicant did not mitigate the security concerns raised by the Government’s information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances,

articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a - 1.e:	Against Applicant
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Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge