



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-01080
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2016

Decision

HESS, Stephanie C., Administrative Judge:

Applicant has mitigated the security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 10, 2012. On November 13, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. Or.) 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 DOD on September 1, 2006.

Applicant received the SOR and answered it on December 4, 2015. He attached documents and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 24, 2016, and a

complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant the same day. He 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 6, 2016, and submitted a two-sided, single-page document as his undated Response, which I have admitted into the record as Applicant's Exhibit (AX) A. The case was assigned to me on September 13, 2016.

Findings of Fact

The SOR alleges seven delinquent debts totaling approximately \$61,962, of which \$61,178 is delinquent student loan debt. In his Answer, Applicant denied each of the debts, stating that he paid the two non-student loan debts alleged in SOR ¶¶ 1.a and 1.b, and that he consolidated the student loan debts and is currently in repayment.

Applicant is a 48-year-old electronic technician employed by a defense contractor since August 2011. He received an associate's degree in 1990. (GX 2.)

Applicant experienced a period of financial difficulties in late 2011 to early 2012, due in part to unanticipated vehicle repairs, and an unrepaid loan he made to his sister. He was living paycheck to paycheck at the time, and was unable to maintain his financial obligations with the additional expenses. He ultimately defaulted on his student loans, as alleged in SOR ¶¶ 1.c through 1.g. (GX 4; GX 5; GX 6.) Applicant incurred the \$469 medical debt alleged in SOR ¶ 1.a in 2014, and provided evidence with his Answer that he paid it in 2015. The \$315 debt alleged in SOR ¶ 1.b, owed to a utility company, was incurred in August 2011. Applicant provided evidence that he paid this debt on an unspecified date, but as of February 4, 2016, the account showed a zero balance.

Applicant provided evidence with his Answer and Response that he consolidated his student loans and is currently in repayment of those debts. He has not incurred any significant delinquent debts since 2012. (GX 5; GX 6.)

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's 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 record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

Applicant fell behind on his financial obligations due to unanticipated expenses and limited income. He has since paid the two non-student loan debts. He consolidated his student loans, and is current on his payment obligations. He has not incurred any substantial delinquent debt since 2012, and none at all since 2014. The record evidence indicates that he has made a good-faith effort to resolve his debts, and that he lives within his means.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The circumstances which led to Applicant's indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG

¶¶ 20(a) through 20(d) apply. Applicant has addressed and is repaying his debts in a responsible manner. Although his financial record is not perfect, he has clearly implemented a reasonable plan to resolve his financial issues within his means.

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 I have also considered the following:

Applicant lives within his means and is current on all his ongoing financial obligations. He has been proactive about resolving his financial issues.

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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a – 1.g:

For Applicant.

Conclusion

I conclude that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge