



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-02387
)	
Applicant for Security Clearance)	

Appearances

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

07/29/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves 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 on September 8, 2014. On October 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on November 20, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 18, 2016, and the case was assigned to me on April 5, 2016. On the same day, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 20, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on May 2, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old engine manager employed by defense contractors since January 2008. He graduated from high school in 1982 and enlisted in the U.S. Air Force. He served on active duty from June 1982 to January 2008, when he retired as a master sergeant (pay grade E-7). He received a security clearance when he enlisted in the Air Force and continued to hold it while employed by a defense contractor. (Tr. 8.) As a contractor employee, he has been recognized for his dedication, initiative, and creative management. (AX G; AX H.)

Applicant married his current spouse in March 1990. He has two sons, ages 27 and 22. Applicant cosigned with his older son on four student loans. His son graduated in May 2010 and was unable to find a job for about six months. When his son found a job, his pay was insufficient to enable him to make the payments on the student loans. In late 2010, Applicant was notified by the lender that the loan payments were past due. Applicant made the payments until October 2011, when his son told him that he finally had a good job and could make the payments. (Tr. 28-29.)

In July or August 2014, Applicant checked his credit report and noticed that his credit score had dropped dramatically. He found out that his son had not made the payments as promised, and the delinquent accounts were reflected in Applicant's credit reports. All four student loans had become delinquent in April 2012 and were charged off in the amounts of \$34,247; \$33,999; \$24,220; and \$6,556. (GX 2 at 3; GX 3 at 5.)

Applicant contacted the lender during the summer of 2014, and the lender agreed to allow Applicant to start making payments on the loans, starting with the smallest and then progressing to the larger loans. (Tr. 33-34.) The lender confirmed the balances due in August 2014. (AX B.) Applicant made three \$100 payments in 2014, a \$100 payment in January 2015, and monthly \$50 payments from March 2015 through March 2016, the month before the hearing. (AX A; AX C.)

Applicant testified that he will continue to make the loan payments until his son is earning enough to pay them. He has accepted his son's representations that he is financially unable to begin making the loan payments. He has never confronted his son

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

about the delinquent loans or required his son to justify his failure to take over the payments. (Tr. 61-62.) Applicant testified:

I guess I'm just trying to be an understanding father, you know? My dad died when I was 19 years old. So I joined the military. So my adoptive father died when I was 19, 18, not 19 years old. I never knew my biological father until, like, seven years ago. So I've always done everything for myself. And I did not want to put my son in a situation, and again, I wanted my son to have something better than I have.

(Tr. 62.)

Applicant testified that he is financially able to continue paying off the student loans. (Tr. 55.) His net monthly pay as a contractor varies from about \$3,600 to about \$3,900. (AX D; AX E.) His net military retired pay is about \$1,819 per month. (AX F.)

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).

Applicant's admissions, corroborated by his credit bureau reports, establish 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"). The following mitigating conditions under this guideline 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(a) is partially established. Applicant's debts are recent and numerous, but his sons are adults and he is not likely to cosign financial obligations for them again.

AG ¶ 20(b) is established. Applicant's son's periods of unemployment, underemployment, and failure to accept responsibility for the student loans were conditions largely beyond Applicant's control. Applicant has been soft-hearted toward his son, but he realizes that he is legally obligated to repay the loans if his son does not. Applicant has acted responsibly by contacting the creditor and making regular payments on the loans, in an amount that appears to be agreeable to both the lender and Applicant.

AG ¶ 20(c) is established. Applicant has not sought or received counseling, but there are "clear indications" that problem is under control.

AG ¶ 20(d) is established. Applicant is making a good-faith effort to repay the student loans and has established a track record of compliance with his informal payment agreement.

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 some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. He has served the DOD since he was 18 years old, first in uniform and then as a contractor employer. He has held a clearance since he was 18 years old. He has chosen to be a soft-hearted father, but that decision does not adversely reflect on his trustworthiness, reliability, and good judgment. Furthermore, there is no indication that a hard-nosed approach would relieve Applicant of the financial burden he voluntarily assumed.

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 the four delinquent student loans alleged in the SOR. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge