



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



In the matter of:)
)
) ISCR Case No. 15-02421
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2016

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

On August 20, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 17, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to 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. The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and referred his case to an administrative judge for a determination whether his clearance should be granted or denied.

Applicant answered the SOR on November 2, 2015, 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 January 14, 2016, was provided to him by letter dated that same day. Applicant received the FORM on January 25, 2016. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information after receipt of the FORM, which was received without objection from Department Counsel.¹ On March 31, 2016, DOHA assigned the case to me.

Findings of Fact

In his SOR answer, Applicant admitted all of the SOR allegations with explanations except SOR ¶¶ 1.o and 1.u. His SOR answers are incorporated in my findings of fact.

Background Information

Applicant is a 54-year-old welder, and he seeks employment as a welder with a defense contractor. (Items 3, 4) In conjunction with that employment he seeks a security clearance as a first-time applicant. He was awarded his General Education Development certificate in October 1980. (Item 3) Applicant served in the U.S. Air Force from February 1981 to March 1981 and received a medical discharge. (Item 3) He has never married. (Item 3)

Financial Considerations

Applicant's SOR contains 23 separate allegations of debts totaling approximately \$22,375 as well as an allegation of a Chapter 7 bankruptcy discharge in September 2005. (SOR ¶¶ 1.a – 1.x; Item 1) All of his SOR debts as well as his bankruptcy are documented in his August 28, 2014 and February 23, 2015 credit reports. (Items 5, 6)

In his August 20, 2014 SF-86 and October 7, 2014 Office of Personnel Management Personal Subject Interview (OPM PSI), he attributed his indebtedness to periods of unemployment from November 2008 to January 2009, November 2009 to January 2010, November 2010 to January 2011, November 2011 to January 2012, and September 2012 to November 2012. (Items 3, 4)

Applicant listed the debt in SOR ¶ 1.b, a \$5,224 charged-off account, in his SF-86, and claims in both his SF-86 and SOR answer that he has been paying this debt, and owes approximately \$4,000. However, he provided no documentation to corroborate his claim. (Items 2, 3) He discussed the debts in SOR ¶¶ 1.b, 1.e, 1.g, and 1.n in his October 2014 OPM PSI. (Item 4) He also stated in his OPM PSI that he was unaware of the details surrounding his remaining debts, he stated that he intended to

¹Applicant's additional information will be referred to as "FORM response."

pay them. (Item 4) He reasserted a similar response in his SOR answer. (Item 2) In his FORM response, Applicant claimed to have paid several creditors, but did not provide documentation corroborating his claims and it is unclear which SOR debts, if any, have been sufficiently addressed.

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

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 could 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 financial problems is documented not only in his credit reports, but also in the additional evidence contained in the FORM. The evidence establishes the validity of the allegations and the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

Considering the record evidence as a whole,² I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern. The available information shows that Applicant has taken insufficient action to resolve his delinquent debts. As noted, the additional information that Applicant submitted in his FORM response in its present form is of limited use. Department Counsel discussed the importance of submitting documentation in her FORM, yet Applicant declined or chose not to submit substantiating documentation of debt resolution or address the deficiencies that were pointed out to him.

With that said, a security clearance case is not aimed at collecting debts.³ Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

² See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

³ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that [he] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [he] has established a plan to resolve [his] financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of [his] outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.⁴

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 financial security concerns. By failing to provide such information, and in relying on a limited explanation, financial considerations security concerns remain.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,⁵ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concerns. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

Formal findings For or Against the 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 – 1.x: AGAINST APPLICANT

⁴ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

⁵ AG ¶ 2(a) (1)-(9).

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. Clearance is denied.

Robert J. Tuidor
Administrative Judge