



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-03865
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2017

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 (SCA) on June 20, 2013. On March 24, 2016, 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 (Exec. Or.) 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 April 15, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 20, 2016,

and the case was assigned to me on September 7, 2016. On September 9, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 30, 2016. On September 15, 2016, Applicant requested that the hearing be postponed due to a family medical emergency. I granted his request, and on October 21, 2016, DOHA notified him that the hearing was rescheduled for November 16, 2016. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until December 16, 2016, to enable him to submit additional documentary evidence. He timely submitted AX E through K, which were received without objection. DOHA received the transcript (Tr.) on November 29, 2016.

Findings of Fact¹

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

Applicant is a 60-year-old combat systems electrician employed by a defense contractor. He received an interim clearance shortly after submitting his SCA, but he has never held a final security clearance. (Tr. 52-53.)

Applicant married in July 1975 and divorced in May 1995. He has five daughters. He was paying child support of about \$400 per month until about two years ago. All his children are now adults. His two oldest daughters have graduated from college. One is a police officer and the other is serving as an officer on active duty in the U.S. Army. (Tr. 42, 47.)

Applicant was employed by a non-federal employer as a network security engineer from July 1996 to March 2003, and unemployed from March 2003 to January 2004. While working, he was earning \$65,000-\$70,000 per year. He moved to another state to be closer to his children, not realizing the economic consequences of his decision. (Tr. 47.) He was employed by a non-federal employer from January 2004 to November 2005, but earning only about \$1,120 to \$1,440 per month. He was unemployed from November 2005 to January 2006, and employed by a non-federal employer from January 2006 until he began his current job in February 2007. For the past two years, he has been earning about \$4,750 per month. (Tr. 31-34.)

Around 2007, Applicant decided that he needed more education to qualify for jobs that are more meaningful. He started by taking classes online and then attending classes off-duty while working full time. He obtained a bachelor's degree in December 2009 and a master's degree in 2015. (GX 2 at 1; Tr. 31-33.) The student loans alleged in the SOR initially were deferred but are now delinquent.

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

Applicant has a monthly net remainder of about \$600 after paying his living expenses. He has only about \$350 in savings. He has about \$50,000 in his retirement account. (Tr. 36-37.)

After obtaining his current job, Applicant paid off two credit-card accounts in August 2009 and August 2012. (AX D at 6; AX G.) He paid off his car loan in March 2012. (AX C at 2.) He paid off his home mortgage loan in October 2015 (AX C at 3.) He paid off a student loan not alleged in the SOR in November 2016. (AX J.) He is currently making payments totaling about \$500 per month on two other student loans not alleged in the SOR. (Tr. 49-50; AX B.)

Applicant's granddaughter recently suffered severe brain trauma in a car accident and is still recovering.² He gave her mother about \$12,000, borrowed from his retirement account, to help with medical expenses that are not covered by insurance. (Tr. 44-45.)

Applicant's credit bureau reports from July 2013 and April 2015 reflect a delinquent medical bill for \$128 and several delinquent student loans. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: medical bill, placed for collection of \$128 in January 2010. Applicant paid this bill in July 2016. (AX H; AX I.)

SOR ¶¶ 1.b-1.f: student loans, placed for collection at various times in 2012, for \$4,165; \$2,995; \$2,472; \$2,908; and \$4,044. Applicant's pay has been garnished since November 2014, at the rate of 15% of his net pay, to pay these loans. Currently, \$149 per week is being collected by garnishment. (AX A.)

SOR ¶¶ 1.g and 1.h: two student loans, one charged off for \$8,830 in November 2009 and the other charged off for \$5,466 in April 2012. Applicant has contacted the creditor for both loans, but he has not yet arranged to resolve them. He intends to pay off his other student loans before beginning to make payments on these loans. (Answer to SOR; Tr. 43-44; AX K.)

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 § 2.

² Applicant requested postponement of his hearing, originally scheduled for September 30, 2016, so that he could be with his granddaughter and assist in her care.

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." 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's drastic pay reduction in January 2004 was not a condition beyond his control, because he voluntarily decided to move to a location nearer his daughters without exploring or considering the economic impact of moving. The injury of his granddaughter was a condition beyond his control, but his decision to help defray uninsured medical expenses was voluntary. However, his periods of unemployment from March 2003 to January 2004, underemployment from January 2004 to November 2005, and unemployment from November 2005 to January 2006 were conditions beyond his control. He has acted responsibly by staying in contact with his creditors and paying off or making payment arrangements for several debts not alleged in the SOR, including student loans, several credit-card debts, his home mortgage loan, his car loan, and an old medical bill.

AG ¶ 20(c) is established. Although Applicant has not sought or obtained counseling, he has made significant progress in resolving his delinquent debts, providing "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is established. 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). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has been systematically paying his student loans and other debts not alleged in the SOR since at least August 2009, and he has made considerable progress.

Applicant's pay has been garnished since November 2014 to pay several of his student loans. Payment of a debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). However, payment of some debts by garnishment does not bar mitigation of Applicant's financial problems, because his overall approach to his financial problems reflects a reasonable plan to resolve his debts, significant actions to implement the plan, and a track record of compliance with his plan.

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 hearings. He is intensely devoted to his daughters and proud of them. He has voluntarily come to the aid of one daughter, the mother of his injured granddaughter, in spite of his limited financial resources. He has overcome significant periods of unemployment and underemployment. His delinquent debts were not the result of frivolous or extravagant spending; they were the result of his efforts to improve his qualifications for meaningful employment. I am confident that he will continue his good-faith efforts to resolve his remaining student loans.³

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

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.h:

For Applicant

³ Administrative judges do not have authority to grant conditional clearances. ISCR Case No. 01-24328, 2003 WL 21979745 at *2 (App. Bd. May 23, 2003). However, If Applicant does not continue on his path of financial responsibility, it could result in future revocation of his security clearance. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge