



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05035
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Stephen E. Campbell, Esq.

04/26/2017

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 17, 2014. On April 11, 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 replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on May 3, 2016, and requested a decision based on the written record, without a hearing before an administrative judge. On a date not reflected in the record, he changed his mind and requested a hearing. Department

Counsel was ready to proceed on October 20, 2016, and the case was assigned to me on November 10, 2016. On November 14, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2016. On November 29, 2016, I granted Applicant's request to postpone the hearing. On March 3, 2017, DOHA notified Applicant that his hearing was rescheduled for March 24, 2017. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until April 7, 2017, to enable him to submit additional documentary evidence. He timely submitted AX B, which was admitted without objection. DOHA received the transcript (Tr.) on April 4, 2017.

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 35-year-old welder employed by a defense contractor since April 2013. His SCA reflects that he has never held a security clearance, but he stated at the hearing that he has a clearance. (Tr. 6.)

Applicant married in August 2003 and divorced in April 2009. He married his current spouse in September 2011. He has a 14-year-old daughter for whom he pays child support, and a 12-year-old stepdaughter whom he has adopted. (Tr. 26.)

Applicant filed a petition for Chapter 7 bankruptcy in April 2004 and received a discharge in July 2004. (GX 5.) He testified that this bankruptcy was the result of irresponsible spending and minimum-wage jobs during his first marriage. (Tr. 27.) It is alleged in SOR ¶ 1.b.

Applicant was employed as a surveying crew chief from May 2004 to June 2010, when he was laid off due to declining business. (Tr. 27-28.) He worked in fast-food restaurants from June 2010 to March 2012, and he was employed by a home-improvement store from March 2012 until he began his welding apprenticeship with his current employer in April 2013.

Applicant attended a community college from January 2001 to June 2004 but did not receive a degree. In connection with his apprenticeship, he has attended classes from April 2013, and he received an associate's degree in February 2017. He is currently enrolled in a local university, pursuing a bachelor's degree. (Tr. 31-32.)

After Applicant's divorce in 2009, he was responsible for some of the marital debts. His current wife incurred about \$80,000 in uninsured medical bills. Since April 2013, she

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

has been covered by Applicant's medical insurance. Applicant and his wife filed a Chapter 13 bankruptcy petition in April 2013. (GX 6.) The bankruptcy is alleged in SOR ¶ 1.a. It includes a judgment for \$605, arising from a deficiency after repossession of a car (SOR ¶ 1.c); delinquent county personal property taxes of \$103, listed in the bankruptcy as his wife's debt (SOR ¶ 1.d); state income taxes totaling \$239 for tax year 2011 (SOR ¶ 1.e); and a child-support arrearage of about \$1,249 (SOR ¶ 1.f). (GX 6.) The debts included in the bankruptcy were reflected in a July 2014 credit bureau report (CBR). (GX 3.) Applicant has regularly made all the required payments to the trustee by payroll deduction. (AX A.) He will complete the five-year payment plan in May 2018.

Applicant's home-mortgage loan was not included in the bankruptcy. In July-September 2015, he fell behind on his monthly \$1,100 payments. He and his wife negotiated an agreement with the lender under which they paid about \$3,415 in six installments and resumed their regular payments. (GX 7.) The amount of the delinquent payments was added to the bankruptcy, (Tr. 47.)

Applicant testified that he and his wife are paying their state and federal taxes directly and not through the bankruptcy trustee. However, the creditors for the taxes alleged in SOR ¶¶ 1.d and 1.e are listed in the trustee's report as priority creditors. (AX A.) After the hearing, Applicant presented copies of three checks for \$795, \$306, and \$343, for tax years 2014, 2015, and 2016. All three checks were written on March 17, 2017. (AX B.) None of the documents submitted by Applicant specifically address tax year 2011, which is alleged in SOR ¶ 1.e. However, no delinquent tax debts are reflected in the December 2015 CBR. (GX 4.)

Applicant testified that the child-support arrearage occurred because his employer was deducting less than the required amount from each paycheck. His employer was deducting \$99 per week, but should have been deducting \$119. (Tr. 55.) His Chapter 13 bankruptcy petition reflected that \$377 per month was being deducted from his pay. (GX 6 at 75.) The July 2014 CBR reflected that the child-support payments were current at that time. (GX 3 at 6.) The December 2015 CBR reflected that the scheduled payment was \$423, but the actual payment was \$370. (GX 4 at 2.) Applicant testified that the arrearage has been reduced to about \$450.

Applicant and his wife have one car which is paid off. They have a net monthly remainder of about \$500 after paying all living expenses and the bankruptcy trustee (Tr. 48.) They have no credit cards. (Tr. 56.)

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.

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, 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 the documentary evidence presented at the hearing, 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) and 20(b) are established. Applicant's debts are numerous and recent, but his current financial problems were caused primarily by his wife's uninsured

medical debts, a condition largely beyond his control and which is not likely to recur, now that she is covered by Applicant's medical insurance.

AG ¶ 20(c) is established. Applicant has completed the financial counseling required by the bankruptcy court and his financial situation is under control.

AG ¶ 20(d) is established. Applicant has complied with the Chapter 13 payment plan since May 2013. When he fell behind on his home-mortgage payments, which were not covered under the Chapter 13 plan, he contacted the creditor and resolved the debt. His federal, state, and local taxes are current. He is making regular payments on his child-support obligation by payroll deduction, and he has reduced the arrearage significantly.

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 and considered the factors in AG ¶ 2(a). He has abandoned the irresponsible lifestyle that resulted in the Chapter 7 bankruptcy in 2004. He has completed an apprenticeship, improved his educational qualifications, and has become financially responsible. He was candid, sincere, and credible at the hearing.

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 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.f:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge