



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-05394
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

10/12/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties which arose under circumstances largely beyond his control, but mitigated the potential 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 October 14, 2014. On June 7, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant received the SOR and answered it on June 24, 2016, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 16, 2016. On August 17, 2016, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through

6, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 22, 2016, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days. Department Counsel made no objections to Applicant's Response and the attached documents, which I have collectively admitted as Applicant's Exhibit A (AX A.) The case was assigned to me on June 2, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017. The outcome of this case would have been the same if decided based on the former AG.

Findings of Fact

The SOR alleges 12 delinquent debts totaling approximately \$36,633. In his Answer, Applicant denies each of the allegations, however, he states that he is making payments on SOR ¶¶ 1.a, 1.b, and 1.l.

Applicant is a 42-year-old system administrator currently employed by a defense contractor since April 2011, and by the defense industry since August 2008. He earned an associate's degree in 2008. He is married and he and his wife have two children, 14 and 8. He also has two adult children from prior relationships. (GX 3; GX 4.)

Applicant's financial difficulties arose due to a number of unanticipated financial pressures. In 2004 or 2005, Applicant cosigned a vehicle loan with his wife with monthly payments of about \$400 (SOR ¶ 1.b). Applicant's wife lost her job in 2005 or 2006. She ultimately found employment, but for significantly less money. They attempted to return the vehicle to the dealership, where an employee told them about "gap insurance that would cover the amount [he] owed." Applicant did not fully understand the process or its potential financial implications, including owing a deficiency, but agreed, and the vehicle was voluntarily repossessed. He did not receive any additional information about the account from the creditor. Upon review of his December 2014 credit bureau report, he saw the account listed as delinquent. He contacted the creditor and was referred to a collection agency. He agreed to settle the account for \$8,000, with an initial payment of \$331 in January 2015, a second payment of \$250 in February 2015, and biweekly payments of \$65. (GX 4; Answer.)

In approximately March 2009, Applicant's wife's employer unexpectedly shut down without any notice and she was once again unemployed. About a week later, Applicant's second child was born. Additionally, Applicant's teenaged brother-in-law, whose mother was deployed overseas, resided with Applicant and his wife for approximately two years. With the expansion of Applicant's household, his monthly expenses increased. Also, the cost of the tolls and gasoline required for Applicant's long commute increased, and Applicant primarily used a credit card (SOR ¶ 1.c) to pay these costs. (GX 4; Response.)

In June 2011, Applicant's basement flooded, and he contacted his insurance company and a contractor. The contractor received a payment quote from the insurance company, and proceeded to complete repairs on the basement. Subsequently, an adjuster for the insurance company visited Applicant's house and determined that the repairs were not covered by insurance. In about November 2012, after some miscommunications between Applicant and the contractor, the contractor entered a judgment against Applicant for about \$9,000. Applicant settled the judgment with the contractor, and made monthly payments until October 2014, when the judgment was satisfied. These payments placed additional pressure on Applicant's finances. (GX 4.)

In 2011 or 2012, Applicant took out a personal loan to help pay off some of his bills (SOR ¶ 1.a), with monthly repayments of about \$352. At some point he fell behind on his payments, and in about April 2013, entered a consent judgment with the creditor. The terms of the judgment required Applicant to pay \$152 a month until the balance was paid in full. As of August 31, 2016, Applicant's account was in good standing, with a balance of less than \$5,000. (GX 4; AX A; Answer.)

Applicant purchased a house in approximately October 2007, and regularly maintained his mortgage payments. In June 2014, in an effort to alleviate some of the financial pressure, he contacted the lender to try to arrange for a mortgage modification to reduce his monthly payments. In about September 2014, during negotiations, the lender sold the mortgage account to another lender. Applicant started modification negotiations with the new lender, which were ultimately successful. (GX 4; GX 6.)

While experiencing ongoing financial strain, Applicant fell behind on his cellular and cable accounts, and was unable to timely pay his family's medical debts, resulting in SOR ¶¶ 1.d through 1.l. However, in late 2014, after paying off the judgment to the contractor, Applicant had the resources to pay SOR ¶¶ 1.c, 1.i, and 1.f. He subsequently paid or settled in full SOR ¶¶ 1.d through 1.h, 1.j, and 1.l. (AX A.) According to the creditor of the vehicle loan (SOR ¶ 1.b), the account has been charged off, has a zero balance, and Applicant has "satisfied [his] contractual obligation and is no longer indebted" to the creditor. (AX A.) Applicant has not incurred any recent significant delinquent debt, and has "worked extremely hard to pay off and manage [his] debts." (Response.)

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 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 or sensitive information....

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 testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

However, a person can mitigate concerns about his or her ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Applicant began experiencing financial difficulties in about 2005, when his wife lost her job, which ultimately resulted in a voluntary repossession of their vehicle and the delinquent deficiency alleged in SOR ¶ 1.b. His financial struggles were exacerbated in 2009, by a number of factors which were largely beyond his control, including another period of his wife's unemployment, the birth of another child, custodial support of his teenage brother-in-law, and overall economic changes. In 2011, Applicant's basement flooded, creating additional financial stress.

In 2011 or 2012, to alleviate some of his financial pressures, Applicant took a personal loan to pay some bills. He also opened a credit-card account to cover his commuting expenses. However, he was unable to maintain the monthly payments, which resulted in SOR ¶¶ 1.a and 1.c. He fell behind on his cellular and cable accounts, and was unable to timely pay his medical debt, as set forth in SOR ¶¶ 1.d through 1.i.

However, Applicant acted responsibly under the circumstances. He entered a repayment plan with the personal-loan creditor (SOR ¶ 1.a) in April 2013, has been making monthly payments, and owes less than \$5,000. He paid or settled SOR debts 1.c through 1.i. Upon learning of the deficiency owed for the repossessed vehicle in 2014 (SOR 1.b), he immediately contacted the creditor and entered into a repayment plan with the collection agency. He is no longer under any financial obligation to the creditor.

“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 an individual’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 an individual 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).

Applicant acted in good faith by making monthly payments to his personal-loan creditor since 2013 and by paying or otherwise resolving each of the SOR debts. He has not incurred any significant recent delinquent debt. He established a plan to resolve his delinquent debts and pay his ongoing financial obligations and has followed that plan. AG ¶ 20(b) and 20(d) apply.

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 has worked in the defense industry since 2008. He was proactive in seeking and receiving a mortgage modification and in resolving his SOR debts. He has rectified his financial troubles. Applicant lives within his means.

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

Subparagraphs 1.a – 1.l:

For Applicant.

Conclusion

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

Stephanie C. Hess
Administrative Judge