



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06802

Appearances

For Government: Carrol Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2017

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 March 6, 2015, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 23, 2016, 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 the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied.

On June 6, 2016, Applicant responded to the SOR. On August 8, 2016, Department Counsel was ready to proceed. On August 12, 2016, DOHA assigned Applicant's case to me. On August 15, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for September 15, 2016. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified, and offered Applicant Exhibits (AE) A through G, which were received into evidence without objection. On September 27, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant admitted all of the SOR allegations, with explanations. After a thorough review of the record, I make the following findings of fact.

Background Information

Applicant is a 41-year-old housekeeper and is a first-time applicant for a security clearance. He seeks a position as a janitor with a defense contractor. (Tr. 13-14; GE 1)

Applicant was born and raised in Mexico and became a naturalized U.S. citizen in July 2005. He graduated from high school in Mexico in June 1991. (Tr. 15-16; GE 1, GE 2) Applicant married in December 2000. He has four adult stepchildren. (Tr. 22-25; GE 1, GE 2)

Financial Considerations

Applicant's SOR lists 10 debts totaling \$55,212 that have been delinquent for several or more years. These debts range from a \$147 medical collection account to a \$17,432 credit card collection account and are documented in Applicant's March 2015 and March 2016 credit reports. (SOR ¶¶ 1.a - 1.j; Tr. 27-33; GE 3, GE 4)

Applicant was questioned regarding these debts during an April 2015 Office of Personnel Management Personal Subject Interview. During that interview, Applicant was unable to explain what he had done to resolve these debts or how he would resolve them in the future. (GE 2)

Applicant attributes his financial problems to a 2006 move from one state to another, his inability to find a better paying job, and money spent upgrading his new home. During this transition period, he was unemployed for three months from October 2006 to December 2006 and his wife was unable to find a job for a year. (Tr. 17-20; GE 1) Applicant incurred most, but not all of his debts, as a result of using his credit cards to upgrade his home. (Tr. 22)

Applicant testified that he seeks a higher paying job with a defense contractor to regain financial responsibility adding that he is unable to make any headway paying

down his debts because he only earns \$12.29 an hour in his current job. (Tr. 20-22; AE B) Unfortunately, at his hearing, Applicant was unable to demonstrate that he made any progress in paying or otherwise resolving any of his SOR debts. He has not sought financial counseling. To his credit, Applicant is current on his day-to-day expenses. (Tr. 26-27; 33-34; AE A-G)

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

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR that demonstrated he paid or otherwise resolved any of his debts.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings for or against 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

Subparagraph 1.a – 1.j: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge