



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-06560
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Although Applicant's financial issues arose from conditions largely beyond his control, the majority of his debt remains unresolved and his financial issues are recent and ongoing. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on March 23, 2015. On February 14, 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 (Ex. 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.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on and the April 27, 2016, and the case was assigned to me on May 18, 2016. On March 15, 2017, DOHA notified Applicant that the hearing was scheduled for March 22, 2017, by video teleconference. I convened the video teleconference hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on March 29, 2017.

Procedural Issues

During the March 22, 2017, hearing, Department Counsel moved to amend the SOR based on financial issues revealed during Applicant's testimony. Immediately following the hearing, Department Counsel emailed his proposed SOR amendment to me, which alleged that Applicant failed to timely file his state and Federal income tax returns for tax years 2014 and 2015. I responded to Department Counsel's email by granting his request to amend the SOR and forwarded the original email and my comments to both Applicant and Department Counsel. In my email, as I had done at the hearing, I instructed Applicant to respond to the new SOR allegation by close of business April 12, 2017, and that he could do so by email. I kept the record open until April 5, 2017, to enable him to submit any additional documentary evidence. Applicant did not respond to the new SOR allegation, nor did he submit any additional documentary evidence. I have appended the email correspondence to the record as Administrative Exhibit II.

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. However, Applicant was not provided with a copy of the amended AG. In light of recent Appeal Board decisions,¹ I revisited my ruling on Department Counsel's Motion to Amend the SOR, and have denied it. However, I will consider the tax-related issues that gave rise to the proposed amended SOR allegation, as appropriate.

Findings of Fact

The four SOR debts, totaling \$20,039, are comprised of a charged-off all-terrain vehicle (ATV) repossession; a credit card; child support arrearages; and, a charged-off vehicle repossession. Applicant admits these allegations. His admissions are incorporated in my findings of fact. The debts are corroborated by Applicant's April 2015 credit bureau report (CBR) (GX 2) and discussed in Applicant's May 2015 personal subject interview (PSI) (GX 3).

¹ ISCR Case No. 12-09421 (App. Bd. Nov. 15, 2017), ISCR No. 16-00517 (App. Bd. Sep. 8, 2017).

Applicant is a 38-year-old test technician employed by a federal contractor since February 2012. He was previously employed by federal contractor from June 2007 until January 2011. He was unemployed from January 2011 until February 2012, as well as from November 2006 until June 2007. Applicant served honorably on active duty in the U.S. Marine Corps from May 2000 until December 2005, and in the reserve until April 2008. Applicant married in June 2004 and divorced in October 2011. He has a nine-year-old daughter. He has held a security clearance since January 2005. (GX 1; GX 2.)

Applicant began experiencing financial difficulties in about October 2009, after he experienced severe back pain, and fell and broke his shoulder. The back pain was due to an injury he incurred while on active duty. He underwent shoulder surgery, participated in physical therapy, and was out of work for three months. (Tr. 25.) He received short-term disability, however, it was significantly less than his usual wages. At about the same time, Applicant's child support payments became due. As a result of this additional financial strain, Applicant fell behind on his truck and ATV payments (SOR ¶¶ 1.a and 1d). After returning to work, he arranged payment plans for both vehicles. However, before he made the first payments, the vehicles were repossessed in about June 2010. Applicant contacted the creditors to arrange repayment plans, but he has been unable to reach an agreement that he can afford. (Tr. 18-20.) These two accounts no longer appear on Applicant's CBR. (Tr. 40.)

After Applicant's paternity was established, his child support obligations were backdated to the date of his daughter's birth in 2008, resulting in child support arrearages of \$5,876, as alleged in SOR ¶ 1.c. Applicant currently pays \$723 a month in child support, and \$130 a month towards the arrearages. (AX A.) He has consistently paid his support payments since December 2015. His current arrearages are approximately \$3,500. (AX B; Tr. 18-19; Tr. 23.)

Applicant remarried in February 2015. (Tr. 15.) He had saved about \$2,000, and he and his wife intended to "push hard to get all of [their] bills paid and get all of [their] back bills paid." However, in about May 2015, Applicant's wife fell, was severely injured, and has been unable to return to work. She initially received short-term disability, but was laid off from her employment in November 2016. She has not had received any income for about two years, and is currently looking for a job. (Tr. 20-21; Tr. 43.)

Applicant testified that he intended to apply for 401(k) loan, as immediately as the day following the hearing. (Tr. 22.) He further stated that he would seek a second loan through his bank as soon as he completed repayment of a current loan. He is also planning to borrow money from his parents. Additionally, Applicant stated that once his wife returns to work, they will have sufficient money to repay the current and potential loans. (Tr. 24.) He intends to resolve the vehicle loans with the 401(k) loan or other borrowed funds. Applicant did not submit any documentation indicating that he had applied for or received any loans.

Applicant was contacted by a representative of the creditor of the \$446 charged-off credit-card debt (SOR ¶ 1.b), in an effort to collect the debt. Applicant disputed the 2014 debt, stating that he had paid and closed the account, and the representative abruptly ended the call. Applicant contacted the creditor and was informed that the debt had been transferred to a collection agency. Applicant contacted the collection agency and informed it that he would pay this debt in full as soon as he receives his 401(k) loan. (Tr. 22.)

Applicant's friend, who Applicant believes is an accountant, prepares and files Applicant's tax returns. Applicant's friend advised Applicant that it was more efficient to file several years' returns together, rather than file each year. Based on this advice, Applicant was scheduled to file his 2014, 2015, and 2016 returns, through his friend, in April 2017. Applicant thinks he owes about \$500 or \$600 for 2016, and nothing for 2014 and 2015. He intended to use the money from the proposed 401(k) loan to pay whatever taxes he owed for those years. (Tr. 41-42.) Applicant testified that he did not know that he is legally required to file his state and Federal tax returns each year. (Tr. 48.) Now that he understands his obligation, he will file his tax returns annually, as required. (Tr. 49-50.) He did not provide any documentary evidence that he filed and paid, if required to, his 2014 and 2015 Federal and state taxes.

Applicant has held a security clearance for over 12 years. He has not incurred any recent significant delinquent debt. Applicant's testimony was straight-forward and sincere.

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 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 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 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, 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's financial problems are recent and ongoing. While the conditions that led to Applicant's financial problems, including sustained periods of unemployment and his and his wife's medical conditions, were largely beyond his control, he did not act responsibly under the circumstances. Applicant has not resolved three of the four SOR debts. Although he has been actively repaying his child support arrearages and has been current with his ongoing child support obligation since December 2015, he remains approximately \$3,500 in arrears. Applicant plans to resolve his current financial delinquencies by borrowing money from his 401(k), his bank, and his parents. However, there is no record evidence indicating that he has taken any actions, such as applying for the 401(k) loan, in furtherance of this plan. Although Applicant intends to resolve his financial delinquencies, he has not yet made a good-faith effort to do so. None of the mitigating conditions 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 served honorably in the military for almost eight years, and continues to serve in the defense industry. He has continuously held a security clearance for more than 12 years. Applicant's reliance on his friends tax advice was misplaced and potentially detrimental, but was not an intentional disregard for tax-related requirements. He was straight-forward and sincere in his testimony.

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 not mitigated the security concerns raised by his finances. Accordingly, I conclude he has not 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): **AGAINST APPLICANT**

Subparagraphs 1.a through 1.d:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge