



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-06813
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond his control, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 14, 2014. On April 15, 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 (E.O.) 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 DOD on September 1, 2006.

Applicant answered the SOR June 12, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on July 27, 2016. On July 28, 2016, a complete copy of the file of relevant material

(FORM,) which included Government Exhibits (GX) 1 through 5, 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 3, 2016, and did not respond.¹ 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

Under Guideline F, the SOR alleges nine debts totaling approximately \$13,880. Applicant admits six of these debts, and states that he is uncertain if the other three debts are his, which I deem denials. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) dated August 2014, March 2016, and July 2016. (GX 4; GX 5.) His admissions in his Answer are incorporated in my findings of fact.

Applicant is a 56-year-old air-traffic-control specialist employed by a defense contractor since March 2004. He was previously employed in the same position by another defense contractor from August 1998 until March 2004. He was a member of the Air National Guard from September 1992 until he retired honorably in October 2008. He has held a security clearance since approximately September 1997. Applicant and his wife married in May 1997. (GX 2.)

Applicant began experiencing financial difficulties in 2012 or 2013, due to unanticipated medical expenses following his wife's heart attack. During this same time period, Applicant's wife also suffered from chronic knee pain, which required medical treatment. The April 2013 Federal Government sequestration resulted in a significant reduction in Applicant's work hours, which greatly reduced his pay. In the spring of 2014, for reasons unexplained to Applicant, between \$300 and \$1,300 was withdrawn from Applicant's bank account by an unidentified entity. The cumulative effect of these events was that Applicant was unable to meet his financial responsibilities. (GX 3.)

The \$1,113 judgment alleged in SOR ¶ 1.a is for medical account. The debts alleged in SOR ¶¶ 1.d, 1.f, and 1.g, totaling \$10,163 are payday loan debts, and the \$607 debt alleged in SOR ¶ 1.c is for a personal loan. (GX 4.) The \$1,342 debt alleged in SOR ¶ 1.e is for a delinquent credit card, the \$358 debt alleged in SOR ¶ 1.h as for a cellular telephone, and the \$297 debt alleged in SOR ¶ 1.i is for a delinquent insurance payment.

Beginning in about January 2014, Applicant borrowed money from several payday lenders in an effort to pay his living expenses, including for his wife's medical care.

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 28, 2016, and Applicant's receipt is dated August 3, 2016. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

However, he was unable to maintain the repayment requirements, and defaulted on the loans. He entered a, “vicious cycle of borrowing money to pay other loans through this list of payday lenders.” (GX 3; GX 4; Answer.) In about August 2014, a creditor of a payday loan garnished Applicant’s wages at a rate of \$400 biweekly. This contributed to Applicant’s inability to meet his other monthly financial obligations. (GX 2.)

In the spring of 2015, Applicant’s “wife was terminated from her regular employment and placed on disability, due to total knee replacement gone badly, i.e., infection.” (Answer.) This loss of household income has caused an even greater strain on Applicant’s overall financial situation.

Applicant incurred all of the SOR debts between June 2012 and December 2014, with the majority of them arising in January and February 2014. Applicant believes that he has paid several of the payday loans through wage garnishment, however he is unable to identify which of these debts is satisfied. The debts alleged in SOR ¶¶ 1.f through 1.h, which include two payday-loan debts totaling \$7,604, do not appear on Applicant’s 2015 or 2016 CBRs. He has not incurred any delinquent debt since 2014, and lives within his means.

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 or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable 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).

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”). The following mitigating condition under this guideline is potentially applicable:

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.

Applicant’s financial problems were due to conditions that were largely beyond his control. Applicant’s wife’s medical costs and her later inability to work had a devastating impact on Applicant’s finances. During the Federal Government sequestration, his hours were significantly cut, resulting in a substantial loss of income. The majority of the debt Applicant incurred is from payday loans, used to cover living costs and his wife’s significant medical expenses. Despite the ongoing financial strain of Applicant’s wife’s unemployment and medical issues, Applicant has not incurred any delinquent debt since 2014. Applicant has acted responsibly by not incurring any additional delinquent debts since 2014. The two largest SOR debts, which may have been paid through garnishment, no longer appear on his credit report, and are unlikely to be sources of vulnerability to coercion or exploitation. He is current on all of his ongoing financial obligations. The age of his debts and his established pattern of overall management of his finances since 2014 are indicative of a responsible person who can be entrusted with access to classified information. AG ¶ 20(b) applies.

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 Air National Guard for nearly 16 years, and has held a security clearance for nearly 20 years. He has not incurred any delinquent debt since 2014, and clearly lives within his means, despite his ongoing financial challenges. I am confident that Applicant will continue his efforts to maintain financial stability.

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.i:

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