



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



In the matter of:)
)
[REDACTED]) ISCR Case No. 16-00724
)
Applicant for Security Clearance)

Appearances

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

02/28/2018

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. However, Applicant has resolved the majority of his delinquent accounts and mitigated the potential financial security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 25, 2015. On June 24, 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 August 24, 2016, and the case was

assigned to me on April 25, 2017. On May 4, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 23, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. He testified, submitted Applicant's Exhibits (AX) A and B, which were admitted without objection, and called one witness. I kept the record open until June 6, 2017, to enable him to submit additional documentary evidence. DOHA received the transcript (Tr.) 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.

Findings of Fact

Applicant is a 43-year-old logistics analyst employed by a federal contractor since August 2015. He graduated from college in 1999, simultaneously earning an associate's and a bachelor's degree. While working full time, he completed a second bachelor's degree in 2011. His 2011 degree qualified him for his current employment. He has a four-year-old daughter for whom he provides monthly child support. This is his first application for a security clearance. (GX 1; GX 2.)

The SOR alleges 16 debts totaling approximately \$129,146. These debts include 10 student loans totaling \$124,778, a credit-card account, four medical accounts, and a consumer account. In his Answer, Applicant admits each of the student loans, and denies the other six debts. With his Answer, Applicant provided an explanation of the origin and status of each debt, and evidence of payment of several of the debts. The delinquent debts are reflected in Applicant's September 2015 credit bureau report (CBR), listed on his e-QIP, and discussed in his personal subject interview (PSI) summary. (GX 2; GX 1; GX 3.) Applicant's admissions are incorporated in my findings of fact.

When Applicant graduated from college in 1999, he was unable to find a job in his field of study. He began working as an aquatics instructor in 1999, and currently maintains a lifeguard position as a part-time job. He returned to college as a part-time student in 2003, with the intention of earning a more marketable degree. In 2006, while Applicant was still in college, his father suffered a debilitating medical event. Applicant became responsible for managing his parents' and his own households, and providing financial support for his parents. Later in 2006, his father passed away, and Applicant's responsibilities for his mother increased. Applicant's student loans from his 1999 degree were deferred for several years. (Tr. 18-20.)

For a period of several years, despite maintaining full-time jobs, Applicant did not earn enough money to meet his regular monthly financial obligations and make his student loan payments. He contacted the loan agencies after his deferments ended, and informed them of his difficult financial circumstances. (Tr. 26-27.) At some point prior to his current employment, a federal loan-servicing agency began garnishing Applicant's wages. (Tr. 28.) Applicant's wages are currently garnished at about \$188 per bi-weekly

paycheck. (AX A.) Applicant submitted a request for loan consolidation to a federal loan-servicing agency, which was confirmed in July 2016. In August 2016, Applicant submitted a request for an income-driven repayment plan to a federal-loan servicing agency. (AX B.) Applicant's friend, a financial-aid officer, is assisting Applicant in his efforts to consolidate his loans and enter an income-based repayment plan. Applicant will enter and maintain a repayment plan, in addition to the current payments through garnishment, as soon as he is notified by the loan-servicing agencies that his friend is contacting on Applicant's behalf. (Tr. 56-60.)

When Applicant applied for his current job, he met with the facility security officer who recommended that Applicant obtain a CBR. He obtained a CBR in August 2015, which identified several delinquent accounts. He contacted the creditors, and between August and September 2015, he paid SOR debts 1.k, 1.m, 1.n, and 1.p. SOR debts 1.l and 1.o were not listed on his CBR but he has since paid SOR ¶ 1.o. (Tr. 39-40.) Applicant learned of SOR ¶ 1.l, a collection account for a \$1,821 medical debt, from the investigator during his PSI. However, the investigator did not have any contact information for the collection agency or identifying information for the original creditor, and despite Applicant's efforts, he has been unable to find any information to resolve this debt. He is willing to satisfy this debt. (Tr. 63.)

Between Applicant's full-time and part-time employment, he is able to maintain his monthly financial obligations, which include child support, daycare, and health insurance for his daughter, as well as life insurance for his mother. (Tr. 48.) He is current with his state and Federal tax obligations, and has not incurred any recent delinquent debt. He does not have any credit-card accounts. He has a 401(k) and pension with his part-time employment. (Tr. 64-65; Tr. 50.) Applicant's testimony was straightforward, sincere, and credible.

Applicant and his witness met in 2007 as members of a fraternal organization. Applicant's witness stated that Applicant has a reputation as trustworthy, honest, and dependable. He further stated that Applicant is a hard worker who meets his financial responsibilities, is a dedicated father, and is an active and contributing member of the community. (Tr. 70-74.)

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).

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 conditions are 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, 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.

The conditions that caused Applicant to fall behind on his financial obligations were largely beyond his control. Since graduating from college in 1999 until beginning work with his current employer in August 2015, Applicant was underemployed. He began providing financial support for his parents after his father's debilitating medical event in 2006, and continues to provide financial assistance to his mother. Applicant acted responsibly under the circumstances. Despite the hardship of returning to college in 2003 to pursue a degree in a more marketable field, Applicant did so and now is employed in that field. Applicant has made a good-faith effort to pay or otherwise resolve his debts. He proactively obtained a CBR in August 2015, contacted the creditors for the listed delinquent accounts of which he had previously been unaware, and paid them. He has maintained contact with the student loan-servicing agencies, and made repeated efforts to consolidate his loans and enter repayment plans that are within his financial resources to maintain. He has been repaying a federal loan servicing agency \$376 a month through garnishment since 2015. He maintains full-time and part-time employment. Applicant

does not have any credit-card accounts, and has not incurred any recent delinquent debt. He has a 401(k) and a pension plan. He is current with his ongoing financial and tax obligations, and lives within his means. His financial situation is not due to lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations. Applicant has responsibly managed his finances within his means, and is working in good faith to resolve his debt given his limited resources. 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant sought and earned a second college degree in order to ensure a more secure financial future. He responsibly pays child support, health insurance, and daycare expenses for his daughter. He is an active member of his community. Applicant was straightforward, sincere, and credible 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 mitigated the potential security concerns raised by his past financial issues. 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 through 1.p: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge