



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-03386
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/20/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the security concerns raised under Guideline F (Financial Considerations). Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) February 23, 2016. On December 23, 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 on January 12, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 31, 2017. On April 3, 2017, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 7, 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 April 11, 2017, and

did not respond¹. The case was assigned to me on October 1, 2017. On January 24, 2018, I reopened the record to permit the parties to submit any additional documentary evidence. Neither party responded to this request.

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

Under Guideline F, the SOR alleges eight delinquent accounts, totaling approximately \$23,139. Applicant admits four of the debts, states that he is attempting settlement on three of the debts, and states that one of the debts is paid in full. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) dated March 2017 and February 2016. (GX 6; GX 5.) His admissions in his Answer are incorporated in my findings of fact.

Applicant is a 36-year-old material loader currently working for a defense contractor since June 2015. He and his wife married in 2015. Applicant has a child from a previous relationship for whom he pays \$180 a month in child support. (GX 4; GX 7.)

The SOR debts are comprised of: a \$17,186 charged-off vehicle loan for a vehicle that was repossessed (SOR ¶ 1.b); two personal loans totaling \$1,890 (SOR ¶¶ 1.a and 1.c); three cellular telephone accounts totaling \$3,379 (SOR ¶¶ 1.c, 1.e, and 1.f); a \$514 credit-card account (SOR ¶ 1.g); and a \$170 medical debt (SOR ¶ 1.h).

In his Answer, Applicant stated that the 2012 judgment of \$1,879 for a delinquent personal loan alleged in SOR ¶ 1.a is current and being paid. The March 2017 CBR shows a remaining balance of \$235 with the current and past due amount of \$0. (GX 6.) This debt is being resolved.

The delinquent \$17,186 vehicle-loan account (SOR ¶ 1.b) was for a vehicle that Applicant purchased with a friend in 2010. After several years of payments by Applicant, he and the friend agreed that the friend would take over driving the vehicle and making the payments. Applicant left the vehicle in a parking lot for the friend to pick up. Applicant was later informed that the vehicle had been repossessed from the parking lot, and that he owed the balance of the vehicle loan. He has not made any payments on this account since he relinquished the vehicle to his friend. (GX 7.) This account is unresolved.

Although Applicant indicated that he was contacting the creditors of the delinquent cellular accounts (SOR ¶¶ 1.e, 1.c, and 1.g) about entering settlement

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 3, 2017, and Applicant's receipt is dated April 11, 2017. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

agreements, he did not provide any documentation in support of this assertion. These accounts remain on the March 2017 CBR. These debts are unresolved.

The \$514 credit-card account (SOR ¶ 1.g), and the \$170 delinquent medical account (SOR ¶ 1.h) are unresolved. Applicant states that he has paid the \$11 personal-loan debt (SOR ¶ 1.d), but did not provide supporting documentation. This debt remains unresolved.

Applicant states that he began falling behind on his financial obligations in about March 2005, due to a period of unemployment, changing jobs, periods of part-time and underemployment, and having to support other family members. (GX 7.) He considers himself to be an honest, hard-working person, and intends to resolve his debts.

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 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 troubles arose from conditions largely beyond his control, specifically, beginning in 2005, he experienced a period of unemployment followed by periods of low-paying work. However, he did not act responsibly under the circumstances. Although Applicant is current on the repayment of the 2012 judgment for \$1,879 (SOR 1.a), and the balance was only \$235 as of March 2017, there is no record evidence that any of the remaining \$21,260 of SOR debt is being resolved. He has not initiated a good-faith effort to repay his creditors or otherwise resolve these debts. His financial issues are recent, ongoing, and raise questions about his current reliability, trustworthiness, and good judgment. 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, and considered the factors listed in AG ¶ 2(a). 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 delinquent debts. 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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b through 1.h: Against Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge