



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-03844
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2018

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) on November 4, 2015. On February 3, 2017, 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 March 15, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 14, 2017. On April 19, 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 25, 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 22 delinquent accounts, totaling approximately \$17,261. Applicant admits 14 of the debts, and denies the remaining 8. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) dated April 2017, November 2016, and March 2016. (GX 5; GX 4; GX 3.) His admissions in his Answer are incorporated in my findings of fact.

Applicant is a 40-year-old master tradesperson currently working for a defense contractor since October 2011. He served honorably on active duty in the U.S. Navy from April 1999 until August 2011, and in the Navy Reserve from August 2011 to the present. He served on two combat tours while on active duty. He has held a security clearance since approximately March 2007. He and his wife married in 2001, and they have a 16-year-old daughter. (GX 2.)

Applicant lived in a leased house with nine other family members. Applicant's brother-in-law made monthly contributions to the rent. However in 2013, Applicant's niece suffered from a severe medical condition and ultimately died. Applicant's brother-in-law missed a significant amount of work due to his daughter's illness and was terminated from his employment in May 2013. Applicant's brother-in-law was no longer able to contribute to the rent, Applicant was the only working adult living in the household, and he fell behind on his rent and other financial obligations. During this time, Applicant's wife was also unemployed. Additionally, Applicant paid approximately \$11,000 for his niece's funeral. Applicant moved from the residence in September 2013.

The debts alleged in SOR ¶¶ 1.i through 1.r, totaling \$11,721, are for unpaid judgments owed to Applicant's former landlord for unpaid rent. Applicant denies these allegations, stating that he paid the full amount of all unpaid rent, around \$4,000, in February 2014. However, Applicant did not provide any documentation supporting his denials. These debts remain unresolved.

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 19, 2017, and Applicant's receipt is dated April 25, 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.

Applicant admits SOR ¶¶ 1.a through 1.h and 1.s through 1.v. The \$10,160 debt alleged in SOR ¶ 1.a is for a charged-off vehicle loan. Applicant states that in August 2012 his vehicle was stolen from his driveway and damaged at a total loss. He made a claim with the insurance company, which stated that Applicant's insurance had lapsed and denied his claim. (GX 6.) The \$200 debt alleged in SOR ¶ 1.u is owed to the insurance company, which referred it to collections in January 2013. These debts are unresolved.

The remaining debts are comprised of a charged-off account for a vehicle loan (SOR ¶ 1.a); a \$4,057 charged-off credit card (SOR ¶ 1.b); four cable accounts totaling \$1,995 (SOR ¶¶ 1.c, 1.s, and 1.t); a \$934 cellular telephone account (SOR ¶ 1.d); a \$620 charged-off credit card (SOR ¶ 1.e); three medical accounts totaling \$437; and a vehicle insurance account in collections for \$200 (SOR ¶ 1.u.) These accounts are not resolved.

Applicant stated that he was unaware of the financial delinquencies prior to undergoing his background investigation because his wife handled the finances. He further stated that he would come up with a plan to resolve his outstanding financial issues, and would either settle any outstanding rent, or take steps to ensure that the judgments were properly reported as paid. Applicant characterized his financial circumstances as fair. His wife began working part-time in April 2015, his brother-in-law returned to full-time employment in December 2015, and both are contributing to the household expenses. (GX 6.)

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 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;

AG ¶ 20(d): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial troubles arose from conditions largely beyond his control, however, he did not act responsibly under the circumstances. He has been aware of the debts since at least September 2016, but 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 reliability, trustworthiness, and good judgment. Although Applicant claims that he has resolved his debts owed to his prior landlord, he did not provide any evidence supporting this contention, and there is no evidence that he has taken any action to ensure that the judgments are reported as paid or dispute the accuracy of his credit reports. 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 on active duty in the U.S. Navy, including two combat deployments, and continues to serve in the Navy Reserve. He has held a security clearance since 2007. Although his financial circumstances are not due to irresponsible spending, his failure to take responsible action to resolve his debts remains a concern.

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**

Subparagraphs 1.a through 1.v:

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