



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 17-00613
)
 Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

10/11/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 26, 2016. On March 28, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations). 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 DOD on September 1, 2006.

Applicant submitted his Answer to the SOR April 12, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 3, 2017, and the case was assigned to me on May 26, 2017. On November 13, 2017,

the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 30, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant, represented by counsel, testified and Applicant's Exhibits (AX) A through E were admitted without objection. I left the record open until December 13, 2017, to enable Applicant to submit additional documentary evidence. He timely submitted AX F through I, which I have admitted without objection. DOHA received the transcript (Tr.) on December 11, 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 case was pending. This decision is based on the amended AG effective June 8, 2017.

Findings of Fact

Applicant is a 41-year-old systems analyst currently employed by a defense contractor since November 2015. He served honorably in the U.S. Marine Corps, including combat tours in Iraq and Afghanistan, from December 1996 until January 2006, when he was medically retired as a result of a combat injury in 2005. He received numerous medals and commendations for his service, including the Purple Heart. (AX E.) He married in October 2009 and divorced in October 2016. His ex-wife has custody of their two children. Applicant has held a security clearance since 1999. (GX 1; Answer.)

Under Guideline F, the SOR alleges nine past-due accounts totaling \$23,622, and a 2013 foreclosure. Applicant denies each of the accounts, states that he has paid several of the debts, and states that his wife is liable for several of the other debts. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from February 2017 and February 2016. (GX 5; GX 4.)

Throughout their relationship, Applicant's wife was responsible for handling the family finances, in large measure because Applicant frequently traveled for work. In 2009, Applicant moved back to his home state with his wife and their two children due to a family emergency. Applicant was able to maintain his employment through remote teleworking. He purchased a house with the mortgage loan in his name and the deed in his wife's name. In 2012, the contractor Applicant was employed by closed and Applicant was briefly unemployed. He found employment in another state across the country and he and his family were necessarily required to relocate. When Applicant suggested they put the house on the market, his wife informed him that the house was in foreclosure. Due to the logistics and cost of getting the house out of foreclosure, Applicant let the house go. Unbeknownst to Applicant, his wife had been using the money that she was not applying to the mortgage-loan payments for other expenses, including furnishing the new house and assisting her parents and sister financially. (Tr. 50-52.)

Applicant's wife continued to manage their finances, despite the foreclosure. Between 2012 in 2015, Applicant was laid off three times. Each layoff caused financial hardship, and one of which required Applicant to move to another state for employment.

While Applicant was generally aware that he and his wife were experiencing financial difficulties, his wife did not disclose to Applicant the full extent of their delinquent accounts. In 2012, Applicant first learned that the payments on a joint account for a truck were delinquent when the truck was repossessed. (Tr. 23; Answer.) On the several occasions that Applicant offered to help manage the finances, his wife was offended and not receptive to his overtures. (Tr. 52.)

In 2015, Applicant and his wife separated. In February 2016, Applicant and his wife entered a separation agreement, notarized in the state of their residence. The separation agreement specified that Applicant and his wife would have joint custody of the children, would equally divide the costs of transporting the children for visitation, and would remain jointly liable for their vehicle loans, except for one loan, for which Applicant would be solely liable. (AX G.)

However, when Applicant's wife filed for divorce in another state, the separation agreement was not incorporated in the divorce decree. The relationship became acrimonious, and Applicant's ex-wife did not honor the terms of their previous agreement. In order for Applicant to share custody of the children, he paid child support and for all the transportation costs between states. Ultimately, Applicant's ex-wife filed for emergency sole custody of the children. Applicant hired an attorney to fight for joint custody. However, Applicant became emotionally and financially exhausted by the process, and consented to his ex-wife's having sole custody of the children. (Tr. 31-34.)

While Applicant trusted his wife to manage the finances and was not fully aware of his financial delinquencies prior to his 2016 background investigation, he accepts responsibility for the debts. (Tr. 35.) Applicant has paid SOR ¶¶ 1.a, a \$187 cellular account, 1.d, a \$241 cellular account, and 1.h, a \$402 credit-card account. The foreclosed mortgage-loan (SOR ¶ 1.f) was guaranteed through a Veterans Affairs (VA) loan and Applicant does not owe a delinquency balance. He has entered repayment plans for SOR ¶¶ 1.c (\$8,058), 1.e (\$3,429) and 1.g (5,758), owed for three repossessed vehicles. (AX I.)

The \$5,243 debt alleged in SOR ¶ 1.b is for the balance due on repossessed vehicle. Applicant denies this debt as his ex-wife's. However, Applicant will pay this debt if it is his responsibility to do so. (Tr. 48-49.) Applicant disputes the \$304 debt alleged in SOR ¶ 1.h, stating that this debt was incurred by the car dealership that repossessed one of Applicant's vehicles due to its failure to turn in the license plates as required. This debt does not appear on Applicant's recent CBRs. (GX 5; AX E.)

Applicant now earns approximately \$120,000 annually in salary, and receives retirement pay and disability compensation. (Tr. 39-40.) He lives within his means and has not incurred any significant recent delinquent debt. Applicant recently completed an online credit-counseling course. (AX H.) He paid his substantial legal costs incurred from the divorce and custody dispute. (Tr. 32; Tr. 62.) Applicant was candid, sincere, and credible while testifying.

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).

The following disqualifying conditions apply:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The relevant mitigating conditions in this case are:

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(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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 difficulties arose due to conditions largely beyond his control. Specifically, Applicant had periods of unemployment, and was required to relocate for new employment, which caused financial strain. Because of Applicant's work duties, Applicant's wife was responsible for managing the household finances. Applicant's wife did not disclose to Applicant that she was not maintaining their financial obligations. Their house was foreclosed and they had several vehicles repossessed. Applicant incurred significant expenses as a result of his separation, divorce, and custody dispute. Applicant acted responsibly by paying his legal expenses and several SOR debts, and entering repayment plans for most of the remaining debts. He has addressed all but one of the SOR debts and will pay the remaining debt if he is liable for it. He completed credit counseling, has not incurred any significant recent debts, and lives within his means.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's financial difficulties did not arise under circumstances that cast doubt on his current reliability, trustworthiness, or good judgment. By addressing his debts in a responsible manner and by participating in counseling, Applicant has taken proactive steps to ensure ongoing financial stability. Although his financial record is not perfect, he has implemented a reasonable plan to resolve his financial issues within his means, and to avoid future financial difficulties. AG ¶¶ 20(b) through 20(e) 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 in light of the nine adjudicative process factors listed at AG ¶ 2(d).

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but I have also considered the following:

Applicant served honorably in the U.S. Marine Corps for 10 years, including two combat tours. He has held a security clearance since 1999. He was sincere and credible during 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 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