



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



In the matter of:)
)
) ISCR Case No. 17-00804
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 8, 2016. On April 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ Applicant responded to the SOR on May 15, 2017, and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals issued a notice of hearing on October 13, 2017, and the hearing was convened on November 15, 2017. Government Exhibits

¹ The DOD CAF acted under Executive Order (Exec. 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.

(GE) 1 through 4 were admitted in evidence. Applicant testified. The record was held open so that Applicant could submit additional evidence. He submitted additional documents marked together as AE A, and they were admitted without objection. DOHA received the hearing transcript (Tr.) on November 22, 2017.

Findings of Fact

Applicant is a 31-year-old security officer employed by a defense contractor since 2010. He graduated from high school in 2004, and attended some college. He married in October 2016 and has two children; five and seven years old. He served in the Army from 2005 to 2010, and was honorably discharged. He previously held a security clearance while in the Army. In March 2015, Applicant was temporarily suspended without pay from employment pending resolution of a criminal charge for assault on a family member. The charge was dismissed and he returned to work in October 2015.

The SOR alleges eight delinquent debts totaling over \$24,000. Applicant admits the SOR debts. Two debts, totaling about \$14,000, involve vehicles that were repossessed in 2014 because payments were stopped. After Applicant was discharged from the Army, he purchased two vehicles with loans. One vehicle was purchased for a friend with Applicant as a co-signer on the loan. The friend defaulted on the loan, and Applicant did not assume responsibility for the payments. Applicant purchased the other vehicle for himself, but defaulted on the loan after the vehicle had mechanical trouble. One creditor filed suit against Applicant to recover the debt. That lawsuit is currently pending. Other delinquent debts resulted from a broken apartment lease while he was unemployed, an unpaid telephone account, a defaulted payday loan, and a student loan. Applicant claimed that debts listed as SOR ¶¶ 1.c, 1.f, 1.g, and 1.h were paid after he returned to work in October 2015, but he did not provide documentary evidence to support his contention.

Applicant testified that he consulted a debt relief company from 2015 to 2017. It is unclear what, if anything, was resolved through that process. On November 17, 2017, two days after his DOHA hearing, Applicant entered into a debt negotiation agreement with another debt relief company that included some of the SOR debts. He submitted the contract in his post-hearing submission, but he did not submit evidence of payments or other resolution efforts for any of the SOR debts.

Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

“[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 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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.” 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 ¶ 1(d).

Analysis

Financial Considerations

The security 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;
- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 delinquent debts may have been incurred under circumstances that were beyond his control, however, he has not shown sufficient evidence of payments of debts that he claimed were resolved, or of progress toward resolution of the remaining debts. Despite an opportunity to provide additional documentary evidence after the hearing, Applicant failed to provide records of payments on debts or progress made with his first debt resolution company. Although he may have paid some debts, and made payments under a debt relief plan, I am unable to verify the amount and regularity of such payments. I am not convinced that Applicant has control of his finances and that delinquencies are unlikely to recur.

Applicant has a history of financial irresponsibility that dates back to at least 2010. Despite relatively steady employment, he did not responsibly address his delinquent debts in a good faith or timely manner. He obtained financial advice from a debt relief company, but did not show progress in management of his debts. He has now hired a new debt relief company, but has not shown a track record of debt resolution. There is insufficient evidence of debt resolution or financial responsibility that makes a similar situation unlikely to recur in the future. No mitigating condition fully applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant has not shown that he is now financially stable and able to adequately address his past financial delinquencies in a timely manner. Despite his relatively steady employment, he has not shown adequate effort, due diligence, or financial responsibility in addressing his debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

Against Applicant

Subparagraphs 1.a – 1.h:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge