



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



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| In the matter of: |) | |
| |) | |
| [REDACTED] |) | ISCR Case No. 17-00964 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2018

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 May 3, 2016. On June 16, 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) effective on June 8, 2017.

Applicant submitted his Answer to the SOR on July 10, 2017, and requested a hearing before an administrative judge. Applicant submitted additional information in response to the SOR on August 9, 2017. Department Counsel was ready to proceed on August 30, 2017, and the case was assigned to me on December 14, 2017. On February

13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant's attorney that the hearing was scheduled for March 7, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A and B were admitted without objection. I left the record open until March 22, 2018, to enable him to submit additional documentary evidence. Applicant timely submitted AX C through F, which were admitted without objection. DOHA received the transcript (Tr.) on March 16, 2018.

Findings of Fact

Applicant is a 38-year-old assembly test mechanic currently employed by a defense contractor since May 2015. He served honorably in the U.S. Air Force from August 1999 until August 2005. He and his wife married in 2006 and have two minor children. Applicant held a security clearance while on active duty. (GX 1; AX D.)

Under Guideline F, the SOR alleges 15 past-due accounts totaling \$22,992. Applicant admits nine of the debts, and states that remaining six debts have been removed from his credit bureau report (CBR). His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's CBRs from February 2017 and June 2016. (GX 3; GX 2.)

Applicant began struggling financially after leaving active duty in 2005. He and his wife experienced difficulties finding stable employment and housing. By 2007, they had two small children. Applicant was unemployed or periodically worked part-time jobs between June 2009 and January 2013 while attending college full time. This period of unemployment or underemployment also had a negative impact on Applicant's finances. (GX 2; GX 1; Tr. 14-15.)

After graduating from college, Applicant moved to another state for employment with a telecommunications company where he worked for approximately one year. He was offered a higher-paying job in aviation in his home state, which he accepted. He pursued and earned professional certification as a mechanic and went to work for his current employer. (Tr. 27.)

With the stability of a better paying job, Applicant began researching his credit with the long-term goal of purchasing a house, and discovered a number of delinquent accounts. Prior to receiving the SOR, he met with the manager of his credit union for credit counseling. Applicant and the manager reviewed Applicant's credit report and developed a plan to resolve his debts. The first step of the plan was for Applicant to pay as many of the smaller debts as he was able and to raise his credit score by at least 50 points, which Applicant did. Once this was accomplished, the credit union loaned Applicant approximately \$10,000, secured by his vehicle, and made payments directly to several of the SOR creditors in July 2017. Applicant also disputed a number of the accounts on his credit bureau report as not his or as duplicates. (Tr. 29-33; AX A; GX 4.)

Applicant has paid or settled SOR ¶¶ 1.a, 1.b, 1.d, 1.h, 1.i, 1.k, and 1.m. (AX A; GX 4; Tr. 15-18; Tr. 39-42.) These accounts total \$11,634. He successfully disputed SOR ¶¶ 1.c, 1.e, 1.j, 1.l, and 1.o. (AX B; AX C; Tr. 17-20.) These debts total \$9,606. Only three SOR debts remain on Applicant's current credit bureau report: SOR ¶¶ 1.f, 1.g, and 1.n. These debts total \$1,752. (AX B; AX C; Tr. 18.) Applicant intends to resolve the remaining outstanding accounts. (Tr. 46-47.)

Applicant now earns approximately \$75,000 annually in salary, and receives an additional 10% for his once-a-year 90-day deployments. In his three years with his current employer, Applicant has been promoted and received a raise three times. (Tr. 48-49; Applicant's wife returned to the workforce about a year ago and is netting approximately \$2,500 a month. Applicant continues to participate in credit counseling through his credit union, and regularly checks his credit bureau report. Following the advice of his credit counselor, Applicant has two secured credit-card accounts with limits of \$500 and \$300, and maintains a low balance. Applicant's credit score has increased by approximately 150 to 200 points since he began addressing his delinquent accounts. Applicant lives within his means, is current on all his ongoing financial obligations, and does not have any recent delinquent debt. He considers his financial status to be the strongest it has ever been. (AX B; AX C; Tr. 46-51.) Applicant received an excellent 2017 performance appraisal. (AX E.) His current supervisor of nearly two years considers Applicant to be highly skilled, professional, and trustworthy. (AX F.) 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 following mitigating conditions potentially apply:

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, both Applicant and his wife had periods of unemployment, and Applicant also experienced periods of underemployment after leaving the military in 2005. Once Applicant began earning a steady income, he acted responsibly under the circumstances by seeking credit counseling prior to receiving the SOR. He established and implemented a plan to address his delinquent accounts, and has paid, settled, or successfully disputed all but three of the SOR accounts, and Applicant is actively working on their resolution.

“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 suggest reckless or irresponsible behavior. Overall, he has addressed his debts in a responsible manner, and will continue to do so. 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. Air Force for six years. He was proactive about resolving his debts and improving his credit score. 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.o:

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