



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



In the matter of:)
)
) ISCR Case No. 17-01362
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, 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) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 3, 2016. On July 31, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E.¹ Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on September 22, 2017.

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 revised adjudicative guidelines (AG) implemented on June 8, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 12, 2017, but did not submit a response. The Government's exhibits included in the FORM (Items 1 to 8) are admitted into evidence. The case was assigned to me on March 5, 2018.

Findings of Fact

Applicant is a 56-year-old shift lead employed by a defense contractor since 2014. He graduated from high school in 1979 and attended college. He has been married since 1999. He was previously married in 1998 and divorced in 1999. He has two children and has not previously held a DOD security clearance.

The SOR alleges Applicant incurred fifteen delinquent debts, totaling \$51,581, including three federal tax liens totaling \$49,602, and twelve debts of which the majority are from medical providers. In addition, the SOR alleges Applicant has a history of consuming alcohol to intoxication; three alcohol-related arrests in 2013, 2012, and 1991; resigning from a job in lieu of being fired in 2014; using cocaine from 1981 to 2008; failing a random drug test in 2008; using marijuana from 1981 to 2007; an arrest for felony possession of marijuana and cocaine with intent to sell; and a 1985 arrest for assault with a deadly weapon on a law enforcement officer. Applicant admitted all of the SOR allegations with explanations, except he denied a small debt detailed in SOR ¶ 1.e, which he claimed to have paid. However, his credit report shows the debt was charged off and therefore remains unresolved.

In Applicant's answer to the SOR, he stated his intent to consolidate his medical debts and negotiate a resolution. Applicant also stated that he relied on a family member to file tax returns, but they were not filed when due. He was contacted by the IRS and filed the delinquent returns, but liens were filed against him for unpaid taxes. Applicant noted his delinquent taxes will be paid by garnishment of his pay and withholding of any refunds. He also admitted to "consuming alcohol," and the other criminal offenses and employment actions. He noted that he entered voluntary treatment as a result of his 2013 driving under the influence (DUI) arrest, and stated that the program helped him change his lifestyle and was a "powerful lesson." He admitted to having "done some things in my past that were not good. I have grown with age and realized this type of behavior will destroy my life. I have a happy family and love myself and my country."

No documentary evidence of his change in lifestyle, counseling, tax status, payments on taxes or medical debts, or current financial status was submitted.

Law and 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 § 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions. I reviewed the mitigating conditions under AG ¶ 20. None fully apply to this case.

Applicant has not provided satisfactory evidence establishing an inability to pay debts or pay federal taxes when due. He has not shown sufficient evidence of actions taken to resolve his taxes or other debts. Applicant's financial history raises serious questions about his judgment and willingness to comply with rules and regulations.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

The relevant disqualifying conditions under AG ¶16 are:

- (c) credible adverse information in several adjudicative issues areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack

of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

Applicant's history of criminal conduct and alcohol and illegal drug abuse as noted in the findings of fact, invokes an assessment of questionable judgment and personal conduct that creates a vulnerability to exploitation, manipulation, or duress. AG ¶¶ 16(c) and (e) apply. SOR ¶ 2.c alleges the same conduct as alleged in ¶ 2.a, and SOR ¶ 2.g alleges the same conduct as alleged in ¶ 2.f.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's criminal history and acknowledged alcohol and drug abuse, taken as a whole, show a pattern of unmitigated misconduct. Based on the totality of the allegations and recurring inappropriate conduct up to 2014, I find Applicant's judgment continues to be questionable. He has not submitted sufficient evidence to alleviate those concerns. The allegations are not minor, nor did they occur in unique circumstances where they are not likely to recur. Although he received counseling as a result of his 2013 DUI arrest, he has not convinced me that continued criminal behavior or alcohol or drug abuse have ceased and are unlikely to recur in the future. I find no mitigating condition is fully applicable.

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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

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 Guidelines F and E in my whole-person analysis. Applicant has not shown sufficient effort to resolve his debts or that his personal conduct issues are behind him and under control.

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.o:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a–2.b; 2.d-2.f; 2.h-2.j:	Against Applicant
Subparagraphs 2.c and 2.g:	For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge