



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-01873
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on May 18, 2016. On June 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on July 6, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 25, 2017, and the case was assigned to me on January 16, 2018. On February 6, 2018, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 26, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibit (AX) A, a memorandum with 14 attachments, which was admitted without objection. I kept the record open until March 12, 2018, to enable him to submit additional documentary evidence. He timely submitted AX B through D, which were received without objection. DOHA received the transcript (Tr.) on March 5, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.g and 1.i through 1.n. He denied the allegation in SOR ¶ 1.h. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer since September 2015. He served in the U.S. Air Force from September 1994 to October 2014, when he retired. His retirement was mandatory under the Air Force high-tenure rules because he was not selected for promotion to master sergeant. (Tr. 19.) He held a security clearance during his Air Force service.

Applicant was unemployed for about a year after his retirement, except for a part-time coaching job for which he was paid \$1,800 for the season. (Tr. 21.) He was entitled to retirement pay of about \$1,700 per month, but he received only \$1,400 per month for six months, because he initially was not receiving disability pay to which he was entitled. After his disability pay was corrected in April 2015, he received \$11,000 in back pay. He currently earns about \$45,000 per year, plus his retired pay and disability pay. (Tr. 15.)

Applicant married in August 2001. He and his wife have four children, ages 23, 15, and 3-year-old twins. The birth of the twins was unexpected. In addition to normal living expenses, they are paying about \$1,600 per month for the twins' day care. (Tr. 62-63.)

Applicant's wife also served on active duty in the U.S. Air Force. She earned about \$75,000 per year while on active duty. She retired in August 2017 and was hired by a defense contractor. She now earns about \$85,000 per year plus her retired pay. (Tr. 63; Enclosure to SOR answer.)

The SOR alleges 14 delinquent debts totaling about \$65,000, which are reflected in credit reports from May 2016 and April 2017. (GX 2; GX 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: delinquent car loan past due for \$568, with a balance of \$17,831. Applicant refinanced the loan, with payments of \$766 per month, with the past-due \$568

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

added to the end of the loan. The payments are current and the loan balance is now about \$11,520. (AX A, Attachment 1.)

SOR ¶ 1.b: delinquent home-improvement loan charged off for \$5,994. Pursuant to a payment agreement, Applicant made a payment of \$198.87 in September 2017 and monthly payments of \$435.93 from October 2017 through February 2018. (AX B, Attachments 1-6.)

SOR ¶ 1.c: jewelry-store account charged off for \$3,306. Pursuant to a payment agreement, Applicant has made monthly \$210 payments from September 2017 through March 2018. (AX B, Attachments 7-13.)

SOR ¶ 1.d: credit-card account placed for collection of \$3,221. Applicant made a payment agreement in May 2017 providing for monthly payments of \$115.04 by direct debit, and he has made payments through February 2018. (AX B, Attachments 14-22.)

SOR ¶ 1.e: delinquent store account charged off for \$1,114. Applicant paid the debt in full in August 2017. (Tr. 36; AX A, Attachment 9.)

SOR ¶¶ 1.f and 1.g: pet hospital bills placed for collection of \$633 and \$445. Applicant paid these bills in full in February 2018. (AX A, Attachments 10 and 11.)

SOR ¶ 1.h: medical bill placed for collection of \$46. Applicant was unable to identify the original creditor, but he paid the collection agency in full in February 2018. (Tr. 37; AX C; AX D.)

SOR ¶¶ 1.i-1.m: delinquent student loans charged off for \$9,179; \$8,370; \$8,340; \$5,551; and \$389. Applicant and his wife co-signed for some of his son's student loans. Applicant's wife, then on active duty in the U.S. Air Force, used her GI Bill to finance their son's college expenses for four years. Their son required a fifth year to obtain his degree and a sixth year to complete his certification requirements. The fifth and sixth years were not covered by the GI Bill. Applicant and his wife were unaware that the loans required monthly payments and were not aware that the loans were delinquent until Applicant submitted his SCA. (Tr. 51-53.) They also obtained loans to cover their sons' living expenses when those expenses exceeded the amount of the stipend he received. (Tr. 56-57.) The loans have been consolidated, and Applicant's son has made the required monthly payments of \$397 since October 2017. (Tr. 41; AX B, Attachment 23.)

SOR ¶ 1.n: delinquent time-share homeowners' association fees charged off for \$1,028. Applicant has paid the past-due maintenance fees and is trying to sell the property. (Tr. 42; AX A, Attachments 13 and 14.)

Applicant and his wife obtained financial counseling from an Air Force financial counseling office, who assisted them in creating a family budget and to prioritize which debts should be resolved first. They also hired a financial counselor, who contacted the creditors and negotiated payment plans. (Tr. 46-47, 53-55.) The budgets prepared by

their financial counselor in June 2017 reflected that they had a monthly shortfall of about \$1,821 before Applicant and his wife found civilian employment. After they both found civilian employment and their son graduated from college, their monthly budget changed from a monthly shortfall to a monthly surplus of about \$12,628. (Attachments to SOR Answer.)

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.

Eligibility for a security clearance 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 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.” 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

Analysis

Guideline F, 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions and the evidence submitted at the hearing establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); 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(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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts were numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶¶ 20(b), 20(c) and 20(d) are established. Applicant's mandatory retirement and unemployment for a year were conditions beyond his control. Until he and his wife obtained financial counseling in June 2017, they were not acting responsibly and their financial situation was not under control. However, since June 2017, they have gained control of their finances and there are "clear indications" that their financial problems are being resolved. They have paid off several debts and are complying with all their payment agreements.

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 and applying the adjudicative factors in AG ¶ 2(d).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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.

² The factors are: (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.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.n:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge