



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-01947
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application on February 4, 2016. On August 17, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 decisions on or after June 8, 2017.

Applicant answered the SOR on September 6, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 20, 2017. On September 21, 2017, a complete copy of the file of

relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 5, 2017, and did not submit a response. The case was assigned to me on February 12, 2018.

The FORM included Item 4, a summary of an enhanced subject interview (ESI) conducted on March 28, 2017. The ESI was not authenticated as required by Directive ¶E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the ESI summary; make any corrections, additions, deletions or updates; or object to consideration of the ESI on the ground that it was not authenticated. Applicant submitted a response to the FORM but did not comment on the accuracy or completeness of the ESI summary, nor did he object to it. I conclude that he waived any objections to the ESI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.¹

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a. through 1.cc. His admissions are incorporated into my findings of fact.

Applicant is a 28-year-old medical support assistant employed by a defense contractor since January 2016, and he requires a security clearance for this employment. He has been married since October 2009 and is the stepfather of one son. Applicant has attended some community college.

In approximately July 2011, Applicant was diagnosed with a chronic autoimmune disease, which directly affects his ability to keep gainful employment. He was unemployed from March 2007 to October 2007, July 2011 to September 2014, and from June 2015 to January 2016. During these periods of unemployment, he also lost his health insurance coverage. Eventually, he received Social Security disability payments.

The SOR alleged 29 debts totaling \$36,206. SOR ¶¶ 1.a., 1.b., 1.d. to 1.f., 1.j. to 1.m., 1.q. to 1.t., and 1.w. to 1.bb. are all medical bills. SOR ¶ 1.c. is a debt related to a rental property. SOR ¶¶ 1.g., 1.h., 1.i., 1.k., 1.n., 1.o., 1.p., and 1.v. are all delinquent credit card or personal loan debts. SOR ¶¶ 1.u. and 1.c. are delinquent utility bills (Items 5 and 6).

In March 2017, Applicant told the Government investigator that over the years he had lost track of all of his debts and was unable to attempt to pay them. At that time, he was working on resolving some of his debts, and he would set up payment arrangements by April or May 2017 for other debts (Item 4 at 8 and 12). In his Answer (Item 2), Applicant

¹ ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

² Applicant's personal information is extracted from his security application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

indicated he had started to take action toward his delinquent debts, and he intended to continue to make payment arrangements with his debt collectors.

Policies

“[N]o one has a ‘right’ to a security clearance.”³ 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.”⁴ 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.”⁵

Eligibility for a security clearance is predicated upon the applicant 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.”⁶ 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.⁷ “Substantial evidence” is “more than

³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴ *Egan* at 527.S

⁵ EO 10865 § 2.

⁶ EO 10865 § 7.

⁷ See *Egan*, 484 U.S. at 531.

a scintilla but less than a preponderance.”⁸ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁰ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹¹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹² “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹³

Analysis

The concern under Guideline F (Financial Considerations) 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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.¹⁴

⁸ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁹ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁰ Directive ¶ E3.1.15.

¹¹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹² ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹³ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

¹⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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; 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 fully established. Many of Applicant's debts became delinquent between 2011 and 2012; however, the debt alleged in SOR ¶¶ 1.c. and 1.u. became delinquent in 2015.

AG ¶ 20(b) is not fully established. Despite the lack of details in the record, I find that Applicant's periods of unemployment and medical expenses were circumstances beyond his control. However, Applicant did not meet his burden to establish that he acted responsibly to address his unpaid debts.

AG ¶ 20(d) is not established. There is no evidence that Applicant has made payments toward the alleged debts.

I considered that Applicant has experienced financial and medical setbacks, and that he is not required to be debt-free in order to qualify for a security clearance.¹⁵ However, Applicant has not provided proof of payments made toward his delinquent debts. Moreover, he failed to provide sufficient evidence to establish that he acted responsibly to address his debt, especially during the periods when he was gainfully employed. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

¹⁵ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the 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 that Applicant has not mitigated the security concerns raised by his failure to pay his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national security interest of the United States to grant him eligibility for access to classified information.

Formal Findings

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

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

Subparagraphs 1.a. – 1.cc.: Against Applicant

Conclusion

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

Caroline E. Heintzelman
Administrative Judge