



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-02886
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin Dorsey, 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 August 27, 2014. On August 30, 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 26, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on October 12, 2017. On October 13, 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 18, 2017, and submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on February 12, 2018.

The FORM included Item 4, a summary of enhanced subject interviews (ESI) conducted on November 5, 2014 and December 1, 2014. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact¹

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

Applicant is a 48-year-old senior analyst employed by a defense contractor since May 2017, and he requires a security clearance for this employment. Between May 2009 and February 2017, Applicant was employed by his former employer, which was also a defense contractor. He was unemployed from February 2017 until May 2017. He served on active duty in the U.S. Navy from August 1987 to August 2008 and received an honorable discharge. He held a secret clearance on active duty (Item 3 at 35; Item 4 at 2). He received an associate's degree in July 2014.

The SOR alleged two Chapter 13 bankruptcy dismissals, a home foreclosure, and five delinquent debts totaling \$15,990. In 2008, Applicant transitioned from the military to civilian life. In September 2009, when he filed for Chapter 13 bankruptcy protection, he had approximately \$60,000 in liabilities (SOR ¶ 1.a.). These debts were related to home improvement projects and credit cards. He made payments for almost two years, but in July 2011, his wife was fired for insubordination from a job she had held for 16 years. They were unable to continue to make payments with just one income (Item 4 at 3-4).

Applicant's wife sued her former employer for wrongful termination. They used approximately \$30,000 in savings to hire an attorney, but her case was unsuccessful. Applicant's wife suffered from depression following her employment issues and had a difficult time finding employment; therefore, they filed for Chapter 13 bankruptcy protection in June 2013 (SOR ¶ 1.b.). By November 2013, his wife was late in making two

¹ Applicant's personal information is extracted from his security application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

payments and for several months the bankruptcy payments were withheld from his paychecks. Applicant's wife was unable to catch up with the payments and in February 2014, the bankruptcy trustee stopped the payroll deductions. The case was dismissed in June 2014 (Item 4 at 4).

Items 5 and 6 show that Applicant made his last payment toward the mortgage account alleged in SOR ¶ 1.c., in approximately March 2012, and the home was foreclosed on in 2014.

SOR ¶ 1.d. and SOR ¶ 1.e. are both utility bills that became delinquent in 2016. They appear in Item 5, Applicant's most recent credit bureau report.

SOR ¶ 1.f. is a debt that Applicant incurred to pay for home improvements. In his Answer (Item 2), he indicated that if he gets a statement from this collector he will make payment arrangements, but he does not intend to initiate contact or payments.

SOR ¶ 1.g. is a credit-card debt that Applicant believes he made payments toward in one of his bankruptcies. SOR ¶ 1.h. is an account that Applicant does not recognize.

Policies

"[N]o one has a 'right' to a security clearance."² 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."³ 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."⁴

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

² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³ *Egan* at 527.

⁴ EO 10865 § 2.

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.”⁵ 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.⁶ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁷ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁸ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁰

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹¹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹²

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

⁵ EO 10865 § 7.

⁶ See *Egan*, 484 U.S. at 531.

⁷ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁸ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

⁹ Directive ¶ E3.1.15.

¹⁰ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹¹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹² *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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.¹³

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;

AG ¶ 20(d): the 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.

AG ¶ 20(a) is not fully established. Many of Applicant's debts became delinquent between 2008 and 2012; however, the debt alleged in SOR ¶¶ 1.d and 1.e. became delinquent in 2016.

¹³ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 20(b) is not fully established. Despite the lack of details in the record, I find that Applicant's 2017 layoff and the unexpected expenses associated with his wife's unemployment 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 fully established. Applicant made payments toward two separate Chapter 13 bankruptcies, but both were dismissed for failure to make payments. There is no evidence that Applicant has made any payments toward any of the alleged debts in the past several years.

AG ¶ 20(e) is not established. While Applicant claims that in one of his bankruptcies he made payments toward the debt alleged in SOR ¶ 1.g., he did not provide documentary proof to substantiate his dispute or sufficient evidence of actions taken to resolve the issue.

I considered that Applicant has made efforts in the past to resolve his delinquent debts, and the fact that he is not required to be debt-free in order to qualify for a security clearance.¹⁴ I also considered that Applicant and his wife have experienced employment issues. However, Applicant has not made payments toward his delinquent debts in approximately four years. Moreover, he failed to provide sufficient evidence to establish that he acted responsibly to address his debt, especially during the period when he was gainfully employed. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

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.

¹⁴ 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).

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.h.: 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