



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



In the matter of:)
)
) ISCR Case No. 17-03626
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2018

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has not mitigated the security concerns raised in this case. Eligibility for access to classified information is denied.

Statement of the Case

On November 8, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); 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 responded to the SOR on January 16, 2018. He requested a hearing before an administrative judge. The case was originally assigned to another

administrative judge. It was reassigned to me on July 27, 2018 for scheduling reasons. On the same date, DOHA issued a Notice of Hearing, scheduling the hearing on August 9, 2018. I convened the hearing as scheduled. Applicant appeared and represented himself at the hearing. Department Counsel offered five documents into evidence, which I marked as Government Exhibits (GE) 1-5. These exhibits were admitted into evidence without objection. Applicant offered one document, which I marked as Applicant Exhibit (AE) A and was admitted without objection. I held the record open until October 12, 2018, for Applicant to submit post-hearing evidence. I advised Applicant that any requests for additional time would only be granted upon a showing of good cause, accompanied by supporting documentation, justifying the need for any additional time. (Tr. 65.)

Procedural Ruling

Applicant failed to offer any additional evidence by the October 12, 2018 deadline. Department Counsel had requested at the hearing an opportunity to submit a written closing statement. On October 12, 2018, she provided her closing argument, which I have marked as Hearing Exhibit 1. I advised Applicant in an email, dated October 15, 2018, that the record was closed, but that he could submit a written closing argument on or before October 18, 2018. Applicant responded by email the same day advising that he was deployed overseas and wrote that he was “getting the last of my documentation put together and will have it you asap . . . I will get it done immediately.” Department Counsel responded by email objecting to the reopening of the record. This email correspondence is included in the record as Hearing Exhibit 2.

At the hearing, I clearly explained to Applicant that if he needed additional time beyond the two-month period provided because he was about to deploy overseas, he would need to provide documentation evidencing his progress with his debts to justify an extension beyond the October 12, 2018 deadline. (Tr. 64, 66.) He accepted this arrangement at the hearing knowing he would be overseas. He has made no attempt during the last two months to provide any documentation. He also failed to produce anything after representing that he was in the process of collecting “the last of my documentation” and would be “immediately” forwarding it to me for consideration.

I have deferred for one week ruling on Applicant’s request so I could assess what documents he produced in support of his request for a brief period of additional time. Applicant did not respond further. As a result of his failure to submit anything further, he has not shown good cause for an extension of the two-month period I granted to him for the purpose of producing mitigating evidence.¹ Therefore, I deny Applicant’s untimely request to reopen the record to give him more time to provide evidence in mitigation of the government’s security concerns.

¹ Also, he has not submitted a written closing argument.

Findings of Fact²

On April 16, 2015, Applicant submitted a security clearance application (SCA) to renew his clearance. He disclosed three delinquent debts. The SOR alleges these debts and several additional delinquent debts, as of November 2017. In his response to the SOR, Applicant admitted each of the 13 SOR allegations. His admissions are incorporated in my findings of fact.

Applicant is a 32-year-old employee of a defense contractor. In 2003, he joined the Air National Guard. Over the past 15 years, he has been called up to active duty on multiple occasions and deployed overseas in war zones. He has never married and has no children.

In September 2009, Applicant received his bachelor's degree in aviation science. He applied seven times to be admitted into flight school for training to be an Air National Guard pilot. (Tr. 30.) He was finally selected in about 2011. He attended officer training in early 2012 and was commissioned as an officer. After completing 75% of his flight school program, he was diagnosed with "manifestations of apprehensions," or extreme anxiety, and was terminated in 2013. (Tr. 35, 37-38, 51.) He submitted multiple applications for other flight school programs without success. He finally realized that he was not going to become a pilot. Being a pilot was "pretty much the only thing [he] wanted to do [his] entire life. (Tr. 38.) He continued with the Air National Guard, and at times, he served overseas. When he was not on active duty during the 2014-2016 period, he was unemployed and incurred significant debts. (Tr. 41, 50-51.) He was discharged from the Air National Guard in October 2016. (Tr. 43.)

During the period 2014-2016, Applicant had decided that when he ran out of money, he would commit suicide. (Tr. 37-38.) He subsequently decided, instead, to seek professional help when he was discharged. He received therapy through the Department of Veterans Affairs (VA) from spring 2017 through early 2018. (Tr. 52.) In January or February 2017, Applicant was diagnosed with PTSD. (Tr. 39.) Effective February 2017, the VA gave him a 100% disability evaluation. (AE A.) At about the same time, he was hired by a defense contractor to provide support overseas to the U.S. military. In October 2017, he was hired by another defense contractor and was deployed to a war zone in February 2018. (Tr. 44-45.) He returned in May 2018. (Tr. 45.) He deployed overseas again shortly after the conclusion of the hearing. (Tr. 54.)

Applicant testified that his mental health has improved a lot over the past 18 months. (Tr. 63.) He is in a lot better place today than he was after he was terminated from flight school in 2013. (Tr. 45, 64.) He had been in the military since age 17 and has been financially independent of his family all of his adult life. He reported that his mental

² Applicant's personal information is extracted from his security clearance application, dated April 16, 2015 (GE 4), unless otherwise indicated by a parenthetical citation to the record.

health was better when he worked in a structured environment like when he was deployed. (Tr. 45-46.)

After Applicant received the SOR, he thought about extinguishing his debts through bankruptcy. (Tr. 46.) In May 2018, he sought the advice of a bankruptcy attorney, who advised him that he would qualify for a Chapter 7 discharge of his debts if his income dropped to \$36,000 or less. This would require him to cease working and earning any income beyond his disability pay for six months. (Tr. 46-47.) He had been on unpaid leave for about four months preceding the hearing and would need to remain unemployed for the next two months to qualify, according to the legal advice he received. (Tr. 47-48.) Based upon this legal advice, Applicant decided to travel and backpack in Europe where it was cheaper for him to live with little income. (Tr. 48-49.)

Applicant testified that he was not comfortable with the idea of discharging his debts in bankruptcy and would prefer to pay them. (Tr. 55, 61-62.) He testified that he could pay all of his SOR debts, which total about \$75,000, if he deployed again and used his overseas income to pay off his debts. (Tr. 55.) He testified that he had passed a flight physical, and his employer was ready to deploy him immediately. (Tr. 54.) He requested additional time to submit evidence of his progress paying his debts. As written above, I held the record open after the hearing to allow Applicant the opportunity to submit additional documentation. (Tr. 65.)

The 13 delinquent debts alleged in the SOR consist of two private student loans (SOR ¶¶ 1.a and 1.d) totaling about \$30,000, a charged-off auto loan (SOR ¶ 1.b) in the amount of about \$14,000, four credit card debts (SOR ¶¶ 1.c, 1.e, 1.f, and 1.g) totaling about \$27,000, and six miscellaneous and medical debts (SOR ¶¶ 1.h-1.m) totaling about \$2,300. At the hearing and in his response to the SOR, Applicant acknowledged that the SOR allegations were correct. (Tr. 50; response to the SOR.) Applicant testified that he is current on his federally guaranteed student loans. They are not alleged in the SOR.

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 documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); 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;

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

AG ¶ 20(a) is not established. His debts are ongoing and unresolved. The circumstances that gave rise to Applicant's financial difficulties may recur. His failure to provide documentation showing that he had a plan to pay his debts and was executing his plan, even though he was given two months to take these necessary steps, supports a conclusion that he is not responsibly handling his financial affairs at this time.

AG ¶ 20(b) is partially established. The record reflects that Applicant's periodic unemployment following the termination of his flight school training contributed to his

financial problems. Applicant has not, however, taken any steps to evidence that he has acted responsibly under the circumstances.

AG ¶ 20(c) is partially established. Applicant testified without any supporting documentation or other corroboration that he had consulted a bankruptcy attorney. To his credit, he decided at the hearing not to pursue a Chapter 7 bankruptcy discharge solution to his financial problems. The record evidence, however, does not reflect that Applicant's financial problems are being resolved or are otherwise under control.

AG ¶ 20(d) is not established. Applicant has made no efforts to repay his creditors.

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).³

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have considered Applicant's age and his unique circumstances at the time the debts alleged in the SOR became delinquent. I have also weighed his many years of military service and the serious damages he has suffered as a result of that service, including the termination of his life's ambition to become a military pilot. I respect his desire to continue to serve our country in areas of extreme danger.

On the other hand, Applicant has a number of unresolved delinquent debts. While the debts arose due to periods of unemployment, he did not document his plan to repay them, nor did he establish good-faith efforts to do so. 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 not mitigated the security concerns raised by his past actions.

³ 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: AGAINST APPLICANT

Subparagraphs 1.a-1.m: Against 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.

John Bayard Glendon
Administrative Judge