



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



In the matter of:)
)
) ISCR Case No. 17-03732
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) Applicant failed to mitigate security concerns raised by his unresolved delinquent debts. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on February 1, 2017. On November 8, 2017, the Department of Defense (DOD) issued 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 issued on or after June 8, 2017.

Applicant answered the SOR on November 29, 2017, and requested a decision on the record without a hearing. On January 17, 2018, a complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant. He received

the FORM on January 22, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Items 1 through 7 are admitted into evidence without objection. The case was assigned to me on June 7, 2018.

Findings of Fact

Applicant is 50 years old and works as a bonding mechanic for a defense contractor. He has worked for his employer since 2008 and requires a clearance for his employment. He has been married since 1997, and he has three adult stepchildren. Applicant enlisted in the Army National Guard immediately upon graduation from high school in 1986, and honorably served until 1994.

Applicant attributed his financial issues to two separate layoffs by his employer. He was laid off between January 2012 and May 2013 and between May 2015 and October 2016. He did not seek other employment during these periods because he anticipated going back to work in a more timely manner. Applicant and his wife were supported during these periods by state unemployment benefits and savings. (Item 7 at 2) Additionally, one of his stepchildren has a debilitating medical condition, which has contributed to their financial strains. (Item 4 at 9)

The fifteen debts listed in SOR ¶¶ 1.a through 1.o total \$117,544. Applicant denied all but six of the debts. In his Answer to the SOR, he claimed he made payment arrangements for SOR ¶ 1.h, paid SOR ¶ 1.m, paid ¶ 1.n through garnishment, and paid a portion of the property tax debt alleged SOR ¶ 1.o. He also claimed he is disputing the large debt alleged in SOR ¶ 1.j. (Item 4 at 7-8) Applicant did not provide any documentary proof in support of these claims.

Applicant provided no explanation as to why he denied SOR ¶¶ 1.a, 1.b, 1.e, 1.g, and 1.i. Each of the alleged debts are supported by the record evidence. (Items 3, 4, 5, 6, and 7)

Policies

“[N]o one has a ‘right’ to a security clearance.”¹ 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.”² 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.”³

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

² *Egan* at 527.

³ EO 10865 § 2.

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.

Adverse 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."⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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

⁴ EO 10865 § 7.

⁵ Directive ¶ E3.1.14.

⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

⁸ Directive ¶ E3.1.15.

⁹ 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.”¹⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹¹

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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.¹²

Applicant's admissions and his credit reports establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(f) (“failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required”).

AG ¶ 20 describes conditions that could mitigate security concerns. Five are potentially applicable in this case:

(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;

(b) the conditions that resulted in the financial problem were largely beyond

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.¹³ Applicant was unemployed for two periods of time in the past six years; however, he did not meet his burden to establish that he acted responsibly to address his unpaid debts in a timely manner. Additionally, he failed to provide documentation showing he has resolved or disputed any of the debts alleged in the SOR. Mitigation under AG ¶ 20(a), 20(b), 20(d), 20(e), and 20(g) was not established.

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.

¹³ 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 the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.o: Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge