



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 11-10366
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

06/05/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond his control, Applicant experienced financial difficulties. However, Applicant has resolved all his delinquent accounts and mitigated the potential financial security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on March 13, 2015. On January 4, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 4, 2016, and the case was assigned to me on January 24, 2017. On May 5, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 25, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. He testified and submitted Applicant's Exhibit (AX) A through N, which were admitted without objection. I kept the record open until June 8, 2017, to enable him to submit additional documentary evidence. He timely submitted AX O through AX R, which I have admitted without objection. DOHA received the transcript (Tr.) on June 5, 2017.

While this decision was pending, the DOD implemented the amended AG on June 8, 2017. This decision will be decided based on the amended AG.

Findings of Fact

Applicant is a 36-year-old field services representative employed by a federal contractor since June 2011. He has held a security clearance since 2001. He served honorably in the U.S. Army from February 2001 until April 2009, including a combat deployment. He and his former wife married in 2008, divorced in 2015, and have shared custody of their nine-year-old son. (GX 1; Tr. 35-36.)

The SOR alleges eight debts totaling approximately \$27,628. These debts include a delinquent mortgage account of \$14,615, several credit-card accounts, and two medical accounts. In his Answer, Applicant admits that each of the debts is his, and provides the status of each debt. The delinquent debts are reflected in Applicant's April 2016, April 2015 and December 2010 credit bureau reports (CBR). Applicant's admissions are incorporated in my findings of fact.

Applicant and his former wife had a tumultuous relationship. In July 2014, Applicant and his wife got into an altercation during which Applicant's wife struck Applicant. He restrained her, called the police, and left the premises to wait for their arrival. In the interim, Applicant's wife called the police and stated that Applicant choked her. Applicant was arrested and charged with felony domestic violence. As a result of this charge, Applicant was court ordered to complete an anger management course, and the charges were not prosecuted. Applicant and his wife did not reconcile.

After Applicant was arrested, he hired an attorney to represent him on the criminal charge. He also moved out of the marital home, and became financially responsible for two households. He also incurred the expenses of a divorce attorney. The increased

monthly expenses caused Applicant to fall behind on his ongoing monthly financial obligations, including his mortgage-loan payments. He inquired about selling his house, but the realtor required a \$10,000 fee. Because Applicant was upside down on the mortgage and there would be no proceeds from a sale, Applicant would be required to pay the fee out-of-pocket, and could not afford to do so. He then attempted to dispense of the house through the process of deed-in-lieu of foreclosure, but his wife refused to vacate the house, and he was unable to avail himself of this process. Ultimately, the house was foreclosed in about March 2015. (Tr. 53- 57; AX M.) The foreclosure initially resulted in a deficiency balance of \$14,615, as alleged in SOR ¶ 1.f.

Applicant intended to satisfy the deficiency balance when he received payment from his insurance for a totaled vehicle. He called the mortgage lender at least five times during the foreclosure process in an effort to gain information on how to pay the debt. Eventually, Applicant was informed that he has no liability for the deficiency balance because the loan was guaranteed through the Department of Veterans Affairs. This debt is resolved. (GX 6; Tr. 53-54; AX A.)

Applicant's other SOR accounts total approximately \$13,000. Applicant and his wife finalized their divorce in April 2015, and Applicant began resolving his debts shortly thereafter. In December 2015, Applicant paid SOR ¶¶ 1.a through 1.e, and settled SOR ¶ 1.g. He has also paid SOR ¶ 1.h. (GX 6; AX C; AX O; AX P).

Applicant's current job requires him to deploy to the Middle East every other year for a period of one year. Applicant's immediate supervisor, who trained and mentored Applicant when he entered the military in 2001, considers Applicant to be his top performer, and considers him to be trustworthy and worthy of holding a security clearance. Applicant's supervisor further stated that Applicant's reputation while deployed is beyond reproach. Applicant's facility security officer (FSO) testified that Applicant self-reported his delinquent accounts. The FSO further stated that Applicant is honest, trustworthy, has integrity, and has outstanding character. (Tr. 20-29.)

Applicant completed a financial counseling course in May 2017. Applicant has not incurred any recent delinquent debt and lives within his means. He has approximately \$35,000 in his 401(k) account. He provides financial support as needed to his mother and is current on his child support obligations. Applicant's testimony was straightforward, sincere, and credible. (GX 6; Tr. 64; AX H; AX I.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The 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.

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

The record establishes that Applicant has “a history of not meeting financial obligations.” (AG ¶ 19(c)). 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): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

However, the conditions that resulted in Applicant's financial delinquencies were largely beyond his control and are unlikely to recur. Applicant's difficult relationship with his wife resulted in his arrest, their divorce, and associated costs, that caused Applicant to fall behind on his mortgage-loan payments and other financial obligations. However, Applicant acted responsibly under the circumstances and in good faith by attempting other avenues of resolution before the foreclosure. He intended to pay the deficiency balance, and repeatedly contacted the mortgage lender in an effort to do so. He paid the majority of his debts in December 2015 before the SOR was issued, and has since resolved all his delinquent accounts. He participated in financial counseling. He has not incurred any recent delinquent debt, is current on all his ongoing financial obligations, and contributes to his 401(k). Applicant's past financial difficulties do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(d) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant has served on active duty in the Army for over seven years, and continues to support the military as a civilian. He has held a security clearance since 2001, and is a highly regarded employee. He was straightforward, sincere, and credible in his testimony.

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 potential security concerns raised by his past financial issues. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a through will 1.h: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge