



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 18-00330

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on January 15, 2016. On February 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on March 26, 2018, and requested a decision on the record without a hearing. On April 24, 2018, a complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant. He received the FORM on May 21, 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 September 14, 2018.

Findings of Fact

Applicant is 41 years old and has worked as a statistician for a defense contractor since December 2013. He was married from 2002 until 2011, and he and his ex-wife have

two minor children. Applicant received an associate's degree in 2010. He served on active duty in the U.S. Navy from 1997 until 2011, and honorably retired from the U.S. Navy Reserve in 2017. He held a clearance while he served on active duty; however, in 2007, while he was experiencing financial difficulties, continuation of his security clearance was denied. In 2010, Applicant was granted a conditional security clearance. (Item 2 at 35; Item 3 at 3-5).

Applicant's 2007 financial issues, were the result of significant marital issues related to his ex-wife's infidelity, and they ultimately divorced. Applicant claims his current financial issues are the result of his 2011 transition from active duty to civilian life. (Item 2 at 13-14, 35; Item 3 at 3)

The SOR alleged that Applicant has fifteen delinquent debts, totaling over \$23,000. The debts became delinquent between 2011 and 2017. (Item 4; Item 5; Item 6; Item 7) In his Answer, he claimed several debts were resolved, should have been resolved, or were not his responsibility. He did not provide documentation to support his assertions that he is not responsible for the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, 1.h, 1.k, 1.m, and 1.n. (Item 1)

The most recent credit bureau report (CBR) in the record shows that the student loan debts alleged in SOR ¶¶ 1.a and 1.b, totaling \$11,139, had decreased to \$8,552 as of December 2017. Applicant asserted in his Answer that he is participating in a rehabilitation program and has been making payments for an unspecified period of time. (Item 1; Item 7)

In his 2016 SCA, Applicant indicated that he intended to contact a financial specialist¹ to help him create a budget and address delinquent debts. In his August 2017 personal subject interview (PSI), he admitted that he had not met with the command financial specialist.

Applicant's most recent credit report indicates he has a new \$700 delinquent debt. (Item 7) Additionally, Applicant's neighbor received a \$1,000 judgment against him on an unknown date, due to a tree in Applicant's yard falling onto the neighbor's property. During his August 2017 PSI, Applicant admitted that he has not yet paid this debt. He also owes approximately \$2,000 in delinquent property taxes.² (Item 3 at 1-2)

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

¹ Applicant claimed he intended to meet with a "command" specialist, but he did not specify if the specialist was associated with his U.S. Navy Reserve command or his civilian command.

² None of these issues were alleged in the SOR, and they will only be considered in assessing whether mitigation was established under applicable guideline conditions or the whole-person concept.

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

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 National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (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.”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 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.⁷ “Substantial evidence” is “more than 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

⁴ *Egan* at 527.

⁵ EO 10865 § 2.

⁶ EO 10865 § 7.

⁷ Directive ¶ E3.1.14.

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).

condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁰ An applicant has the burden of proving a potential 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

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. . . .

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”).

AG ¶ 20 describes conditions that could mitigate those security concerns. The following are potentially applicable:

(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 the person's control (e.g., loss of employment, a business downturn,

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); Directive ¶ E3.1.15.

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

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;

(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;

(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.

Applicant has numerous debts that have been delinquent for a number of years. He has other debts that became delinquent in the past two years, and the most recent CBR reflects at least one new delinquency, demonstrating that Applicant's financial issues are ongoing and have not occurred under unusual circumstances.

Although Applicant is making rehabilitation payments toward his student loans, it is insufficient evidence to show that his finances are in good standing and he acted responsibly to address numerous delinquent debts. Applicant provided no evidence of credit counseling. Nor did he provide evidence to substantiate that he has a reasonable basis to dispute his responsibility for some of the debts alleged in the SOR. There is no evidence that he has resolved the outstanding property taxes. Mitigation under AG ¶ 20(a), 20(b), 20(c), 20(d), and 20(e) 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 applicable 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 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, including his long military service, I conclude that Applicant has not mitigated the security concerns at issue. Other than his student loans, he has not resolved, nor is he resolving, the alleged delinquent debts. 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.b: For Applicant

Subparagraphs 1.c – 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 is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge