



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No. 18-00950 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

10/22/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on February 18, 2016. On April 30, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ The DOD CAF acted under Executive Order (Exec. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

¹ The SOR also alleged security concerns under Guideline E (Personal Conduct). At the hearing, I granted Department Counsel's motion to withdraw the allegations under Guideline E.

Applicant answered the SOR on May 16, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 25, 2018, and the case was assigned to me on August 15, 2018. On August 27, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 24, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant had submitted several documents with his answer to the SOR. At the hearing, he testified but did not present any additional evidence. I kept the record open until October 12, 2018, to enable him to submit additional documentary evidence. He timely submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on October 3, 2018.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d. He denied the allegations in SOR ¶¶ 1.c and 1.e-1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old product trainer employed by a defense contractor. He first received a security clearance in November 1998. He attended apprentice school in 1998 and worked for a defense contractor until January 2010, when he was fired for missing deadlines. (Tr. 23.) He was unemployed from January to April 2010. He worked in the private sector from April 2010 to January 2011. He was employed by another defense contractor as a designer from January 2011 to May 2013, was laid off from May to August 2013, and was hired by his current employer in August 2013. He worked part time as a pizza delivery driver while he was laid off. (Tr. 24.)

Applicant married in January 1997. He and his wife have three children, ages 30, 21, and 17. The two youngest children live with Applicant and are financially supported by him. (Tr. 20.)

Applicant and his wife filed a joint Chapter 7 bankruptcy petition in May 1998 and received a discharge in August 1998. His petition listed assets of \$15,930 and liabilities of \$34,768. (GX 4.) They filed the bankruptcy petition because Applicant's wife was seriously injured in a multi-vehicle automobile accident before they were married, and she incurred significant uninsured and unreimbursed medical expenses. (Tr. 29.)

Applicant's wife was unemployed between 2000 and 2002 and from 2006 to 2012, while she was in school. She received her bachelor's degree in 2012.

The SOR alleges the 1998 Chapter 7 bankruptcy (SOR ¶ 1.a) as well as seven delinquent debts incurred after the bankruptcy discharge (SOR ¶¶ 1.b-1.h). The debts are

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

reflected in credit reports from May 2016 (GX 2) and February 2018 (GX 3). The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.b: judgment for \$8,729 filed in 2015 for private school tuition. Applicant's son attended a private school where the tuition was about \$12,000 per year. He received scholarships and financial aid that reduced the cost to about \$4,000 per year. (Tr. 46.) Applicant fell behind on the tuition payments after he was laid off in May 2013. His pay was garnished to pay this judgment in November 2016. (GX 5.) He made monthly \$150 payments from February 2017 through September 2018. As of October 1, 2018, he had reduced the balance due to \$1,426. (Answer to SOR; AX B; AX C.)

SOR ¶ 1.c: judgment for \$222 in unpaid utilities filed in 2013. Applicant testified that this was a final bill that was unpaid when they moved from one rental home to another. He was unaware of it until they purchased their home in July 2017 and saw the bill on the credit report when they were arranging financing for the home purchase. (Tr. 34.) He paid this debt in installments of \$50 in February 2016 and \$172 in May 2016. (AX A; AX F.)

SOR ¶ 1.d: student loan placed for collection of \$31,282. Applicant took college courses between 1989 and 1996, before he enrolled in the apprentice school, but he did not receive a degree. Both he and his wife incurred student loans, which were eventually consolidated in his name. (Tr. 48-49.) Applicant's pay was garnished to collect this debt in November 2011, January 2013, and March 2018. (GX 5.) He made 13 voluntary monthly payments of \$414 by direct debit from his bank account from November 2016 through November 2017. (Answer to SOR.) In September 2018, Applicant resumed paying \$414 per month by direct debit from his bank account. (AX D; AX E.)

SOR ¶ 1.e: delinquent payments on a home-mortgage loan placed for collection of \$20,897. This loan was for renovations on the family home, which was a 95-year-old house that was structurally sound but badly in need of repairs. He obtained the loan in August 2006, and it was secured by a second mortgage. The delinquent payments were resolved by a short sale of the home in June 2012 and the creditor's forgiveness of the balance due after the short sale. (Answer to SOR.)

SOR ¶¶ 1.f-1.h: medical bills placed for collection of \$299, \$100, and \$55. In a post-hearing statement, Applicant stated that he had made a payment agreement for \$30 per month, but that the collection agency would not provide documentation of the payment agreement until six consecutive payments were made or one-half of the balance is paid. (AX A.)

In 1998, Applicant and his wife were required by the bankruptcy court to obtain financial counseling. They completed additional financial counseling before the short sale of their residence in 2012. (Tr. 42-43.)

Applicant's take-home pay is about \$2,900 per month. His wife has returned to the workforce, and her monthly take-home pay is about \$4,000. He and his wife purchased a

house in July 2017, and he borrowed about \$7,000 from his 401(k) retirement account to finance the purchase. He is paying back the loan at \$120 per month. His monthly mortgage payment is about \$1,632, and he has one car loan on which he pays \$250 per month. His net monthly remainder after paying all expenses is about \$300. (Tr. 25-28.)

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 submitted by the parties establish two 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 relevant:

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

AG ¶ 20(a) is established for Applicant's Chapter 7 bankruptcy. It is not recent and it occurred because of circumstances that make recurrence unlikely. This mitigating condition is not established for the delinquent debts incurred after the bankruptcy discharge, which are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's bankruptcy in 1998 was precipitated by his wife's unreimbursed medical expenses after being injured in an automobile accident. His unemployment for four months in 2010 was due to his substandard job performance and was not a condition beyond his control. However, his unemployment from May to August 2013 was a condition largely beyond his control, and he acted responsibly by finding part-time employment, staying in contact with his creditors, negotiating payment agreements for the debts alleged in SOR ¶¶ 1.b and 1.d, and resolving the debts alleged in SOR ¶¶ 1.c and 1.e.

AG ¶¶ 20(c) and 20(d) are established. Applicant obtained financial counseling, negotiated payment agreements for the debts alleged in SOR ¶¶ 1.b and 1.d, and resolved the debts alleged in SOR ¶¶ 1.c and 1.e. He was unable to produce documentation of his payment agreement for the three small medical debts alleged in SOR ¶¶ 1.f-1.h, but the amounts involved pose a minimal security concern, and his track record for resolving the other debts alleged in the SOR satisfies me that he will resolve these three debts as well. His financial situation is under control.

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

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

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under this guideline, but some warrant additional comment. Applicant has a long record of employment by defense contractors. He held a security clearance for many years, apparently without incident. He was candid, sincere, and credible at the hearing. He and his wife lived on a tight budget for several years, and they were pushed over the edge when he was laid off in May 2013. However, their largest debts were not for extravagant purchases, but were for necessary repairs to the family home, his wife's education, and their son's education. They have systematically resolved their delinquent debts and were able to purchase a home in July 2017 and qualify for a new mortgage loan. Their financial situation is under control.

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 security concerns raised by his bankruptcy and subsequent delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.h:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge

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.