



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



In the matter of:)	
)	
)	ISCR Case No. 14-03133
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/20/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On August 20, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. In an undated document, Applicant

answered the SOR and requested a hearing. This case was assigned to me on November 5, 2014. On November 24, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 11, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 and 2, while Applicant testified and offered Applicant's Exhibits (AE) A through H. All other proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on December 23, 2014.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has been working for that employer since January 2013. He graduated from high school in 1998 and earned a bachelor's degree in 2002. He participated in a ROTC program in college and served on active duty in the Army from December 2002 to February 2012. He attained the grade of captain (O-3) in the Army and received an honorable discharge. He has been married twice. His first marriage was from 2005 to 2008 and resulted in one child, age nine. He has two children, ages four and ten months, with his current wife. From about 2001 to 2011, he held a security clearance without incident.¹

The SOR set forth a single allegation asserting that Applicant had child support arrearages amounting to approximately \$20,956. These arrearages are for his oldest child. In his Answer to the SOR, he denied that allegation.²

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated April 26, 2013, Applicant disclosed that he was approximately \$10,000 behind on his child support payments. He attributed those arrearages to being unemployed for ten months after his discharge from the military in 2012. He indicated that he collected unemployment compensation for seven of those months, that he was currently working for a government contractor, and that he was in the process of hiring an attorney to resolve the child support arrearages.³

In an interview with an Office of Personnel Management (OPM) investigator on September 18, 2013, Applicant indicated that his monthly child support payment obligation was \$1,084 for his oldest child. The child support payments were paid through a military pay allotment while he was on active duty, but those payments stopped when he left the military. He stated that he was unable to make the payments while unemployed from February 2012 to January 2013. During the interview, he indicated that he was in the process of obtaining a lawyer to begin making the payments

¹ Tr. 5-7, 13-14, 26-27, 32-37, 42-43; GE 1, 2; AE E.

² Applicant's Answer to the SOR.

³ GE 1.

and attempting to reduce them because his income has been dramatically decreased since his discharge from the military. At the time of the interview, he noted that he was behind about \$20,956 in those payments.⁴

While in the military, Applicant was processed for a show cause proceeding to determine whether he should be retained on active duty. He was detailed a JAG Corps officer to represent him during that proceeding. He indicated the JAG Corps officer was inexperienced. After consulting with the JAG Corps officer, Applicant waived the show-cause board and submitted a "resignation in lieu of elimination." Prior to submitting that resignation, he had made arrangements to join the National Guard. In submitting such a resignation, he did not realize that he would become ineligible to serve in the Army Reserve or National Guard. He later learned that such a resignation made him ineligible for National Guard service. As noted above, his discharge from the Army resulted in him being unemployed for almost a year. He indicated that he is planning to submit a petition to correct his military records so that he may become eligible for service in the National Guard.⁵

At time of this hearing, Applicant testified that he was not making the monthly child support payments and the arrearages had increased to about \$36,000. He noted that he does not have a good line of communication with his ex-wife and has had virtually no contact with her. This lack of communication also resulted in him having no contact with his oldest child. In November 2014, he met with a lawyer to discuss the steps that needed to be taken to modify the child support obligation in his divorce decree and to institute child visitation arrangements. He testified that he still had not retained the lawyer, but was planning to do so the week after the hearing. He indicated the lawyer recommended that he first contact his ex-wife to see if he could reach a mutual agreement with her on the child support and visitation issues. When he contacted her, he offered to pay \$5,000 toward the child support arrearages. She refused the offer and indicated that she wanted the total amount due. He also indicated that she now refused to return his phone calls. Since his ex-wife was not communicating with him, the lawyer advised him to set aside money for the child support payments. He indicated that his parents would pay the lawyer's retainer and that he had saved \$5,000 for the child support arrearages.⁶

While in the military, Applicant deployed to Iraq from about January to December 2007. The deployment along with pre-deployment training resulted in Applicant being away from his family for about 14 or 15 months. He attributed this separation as a factor in the breakup of his first marriage, although he indicated that he separated from his wife before the deployment. At the time of his discharge, he was earning about \$91,000

⁴ GE 2; AE F. Applicant's divorce decree, AE F, indicated that his child support payments are \$1,180 per month.

⁵ Tr. 26-32, 41-42; AE E, H.

⁶ Tr. 23-26, 32-54, 58-59.

a year in the military. In his current job, he began earning about \$35,000 per year. At the time of the hearing, he was earning \$52,000 annually. Although no credit reports were offered into evidence, Department Counsel represented that Applicant's credit report reflected no other delinquent debts. Applicant's current wife recently started a job in which she earns about \$24,000 per year.⁷

Applicant submitted a number of character reference letters – including from managers, coworkers, and military members – that attest to his professionalism, honesty, dedication, and work ethic. Many of the letters were written to support his petition to become a member of the National Guard. In the Army, he was awarded the Army Commendation Medal, Iraq Campaign Medal, and other personal and unit decorations.⁸

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

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 of potential, rather than actual, risk of compromise of classified

⁷ Tr. 32-45, 54-57; AE B, C, D. Applicant was promoted to his current position in March 2013. See AE H.

⁸ Tr. 60-62; AE A, E.

information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has failed to make child support payments since about February 2012. His child support arrearages amount to about \$36,000. This evidence is sufficient to raise the above disqualifying conditions.

Five mitigating conditions under AG ¶ 20 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, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(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's child support arrearages are ongoing and significant. After his discharge from the military in February 2012, he was unemployed for about a year. While that period of unemployment was a condition beyond his control, Applicant has failed to act responsibly in making his child support payment since obtaining his current job in January 2013. Since at least April 2013, he has been indicating that he intends to hire an attorney to attempt to modify his child support obligation, but still has not retained the attorney. He has taken no meaningful steps to resolve this financial problem since obtaining his current job. He has failed to show that his financial problems are being resolved and will not recur. None of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a valued employee. He is highly thought of by his managers and a number of military members. He served in the Army for about ten years, including in a combat zone. Nevertheless, his financial problems are ongoing. In the past two years, he has talked about resolving his child support arrearage, but has taken no meaningful steps to do so.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant failed mitigate the financial considerations security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge