



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-04405
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/23/2015

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 November 13, 2012. On September 29, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant received the SOR on October 29, 2014; answered it on November 17, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015, and the case was assigned to me on January 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2015, scheduling the hearing for February 24, 2015. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but presented no witnesses or documents. I kept the record open until March 13, 2015, to enable him to present documentary evidence. DOHA received the transcript (Tr.) on March 10, 2015.

At Applicant's request, I extended the deadline for submitting documentary evidence until March 25, 2015. He timely submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. Department Counsel's comments regarding AX A through M are attached to the record as Hearing Exhibits I, II, and III.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old applications engineer employed by a federal contractor since October 2002. He has held a security clearance since 1998.

Applicant graduated from college with a bachelor's degree in May 1994. He married in April 1995 and divorced in February 1997. He married his current wife in November 2004. He and his wife have an eight-year-old daughter. His wife has three children from a previous relationship, ages 17, 15, and 11, who live with them.

The SOR alleges seven delinquent debts totaling about \$37,250. The evidence concerning these debts is summarized below.

SOR ¶ 1.a, delinquent home mortgage loan (\$11,024). This debt arose when Applicant's car broke down and required expensive repairs. The cost of repairs caused Applicant to fall behind on his mortgage loan payments. His December 2012 credit bureau report (CBR) reflected that he was 180 days past due, in the amount of \$15,106. (GX 3 at 10.) He and his wife sold the home for less than the balance due on the mortgage loan. He testified that they began making monthly payments of \$97 on the deficiency immediately. (GX 2 at 19; Tr. 30.) In February 2015, he made a formal agreement with the lender to repay the balance in monthly installments. (AX A.) The document submitted by Applicant does not set out the amount of the monthly installments. However, his personal financial statement (PFS), submitted in response to financial interrogatories from the DOD CAF in June 2014, reflects monthly \$97 payments. (GX 2 at 10.)

SOR ¶ 1.b, medical bill (\$460). This debt has been paid. (GX 2 at 13.)

SOR ¶¶ 1.c and 1.d (\$346) and (\$295). These debts arose when Applicant stopped using a credit union checking account and deposited his paychecks with another institution. However, several automatic payments continued to be deducted from the credit union account, resulting in overdrafts. The debt in SOR ¶ 1.d is an

unsecured loan for the amount of the overdrafts, and the debt in SOR ¶ 1.c is the collection account for the unsecured loan. (GX 4 at 2.) The debts are resolved. (AX L.)

SOR ¶ 1.e, medical bill (\$82). This debt has been paid. (AX M.)

SOR ¶ 1.f, delinquent federal taxes for tax year 2008 (\$24,415). This debt arose when Applicant's wife sued a former employer for wrongful termination and received a settlement of about \$60,000 in 2004 or 2005. Her attorney told her that the settlement was not taxable. Relying on that advice, she paid off a car loan and some student loans. They later discovered that the settlement was taxable because some of it was for back wages. (Tr. 25-27, 36.) They were unable to pay the taxes due when they filed their return. The IRS filed a tax lien in February 2008. (GX 3 at 5.) In his response to the DOD CAF financial interrogatories, Applicant submitted evidence of an installment agreement with the IRS, providing for monthly \$150 payments. As of May 14, 2014, the combination of seized tax refunds and monthly payments had reduced the federal tax debt to \$10,809. (GX 2 at 14.)

SOR ¶ 1.g, judgment on delinquent payday loan (\$628). Applicant satisfied this judgment in March 2015. (AX K.)

Applicant's June 2014 PFS reflected net monthly income of \$9,465, expenses of \$5,858, debt payments of \$277, and a net remainder of about \$3,330. Applicant's net monthly income includes child support payments received by his wife for her three children. The PFS reflects the monthly mortgage loan payments and the IRS payments. Applicant has about \$32,248 in his retirement account. (GX 2 at 10.)

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 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 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.

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).

Applicant's admissions, corroborated by the documentary evidence submitted at the hearing, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for the delinquent mortgage loan payments and federal income tax debt. The unexpected car repairs, bad tax advice Applicant's wife received from her attorney, and medical needs of his family were circumstances largely beyond his control. Applicant has acted responsibly by remaining in contact with the mortgage loan lender, making payments under an informal agreement, and negotiating a payment to resolve the delinquent mortgage loan. He has acted responsibly toward his tax debt by negotiating a payment agreement and complying with it. He paid the other debts alleged in the SOR.

AG ¶ 20(c) is partially established. Applicant has not sought or obtained financial counseling, but his financial problems are under control.

AG ¶ 20(d) is established. Applicant has paid or made payment arrangements for all the debts alleged in the SOR.

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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and considered the factors in AG ¶ 2(a). Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid, sincere, and credible at the hearing. He has held a security clearance for many years, apparently without incident. He has worked diligently to resolve his debts, and I am satisfied that he will comply with the payment agreements he has negotiated.

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 financial problems. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant continue his eligibility for access to classified information.

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.g:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge