



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



In the matter of:)
)
) ISCR Case No. 14-05963
)
Applicant for Security Clearance)

Appearances

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

09/11/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On October 24, 2013, Applicant submitted a security clearance application (SCA). Based on a review of Applicant’s SCA and the ensuing investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on December 16, 2014, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD 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 alleged security concerns under the financial considerations guideline.

On January 30, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On May 20, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 7. On June 18, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. Applicant did not submit a response to the FORM. The case was assigned to me on September 1, 2015.

Findings of Fact

The SOR alleged that Applicant had 14 delinquent debts totaling \$29,328 (SOR ¶¶ 1.a-1.n). In his Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.a through 1.h and 1.k through 1.n. He indicated that he was unaware of the debts in SOR ¶¶ 1.i and 1.j, which is interpreted as a denial of those debts. His admissions are incorporated as findings of fact. A credit report in the FORM contains substantial evidence of the debts in SOR ¶¶ 1.i and 1.j and indicated those debts arose from returned checks.¹

Applicant is a 34-year-old employee who has been working for a federal contractor since July 2013. He graduated from high school in 1999. He served on active duty in the U.S. Marine Corps from June 2003 to April 2013 and received an honorable discharge. He was unemployed from April 2013 to July 2013. He has been married twice. His first marriage began in April 2005 and ended in divorce in January 2006. He married his current wife in November 2007. He listed no children in his SCA. In June 2008, he applied for a security clearance and was issued an SOR setting forth security concerns under the financial considerations and personal conduct guidelines. His security clearance application was denied when he failed to respond to a request from the Department of the Navy Central Adjudications Facility.²

Applicant's credit reports reflected that some of the alleged debts had dates of last activity going back as far as 2008. In his Answer to the SOR, Applicant indicated that he was making \$100 payments every two weeks on a \$2,699 vehicle loan in SOR ¶ 1.c. A credit report dated May 20, 2015, supports his claim that he is making payments on that debt because its balance has been reduced to \$1,489. In his Answer to the SOR, he also indicated that he was unable to make payment arrangements for the other admitted debts, but would make such arrangements when the debt in SOR ¶ 1.c was paid.³

Applicant provided no evidence that he received financial counseling. He did not provide a monthly budget. It is unknown whether he has any discretionary income remaining each month after payment of his expenses.

¹ Items 1, 5.

² Items 2-4.

³ Items 2, 5-7.

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, in reaching a 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 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 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.

Applicant’s admissions and the record evidence established two disqualifying conditions in AG ¶ 19:

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

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.

None of the mitigating conditions are established. Applicant's delinquent debts are ongoing. Although he is making payments on the debt in SOR ¶ 1.c, he failed to show that he has acted responsibly under the circumstance in addressing his other delinquent debts. Insufficient evidence was presented to conclude his financial problems are being resolved, are under control, and are unlikely to recur. No evidence was presented that he received financial counseling. He provided no documentation showing he has a legitimate basis for disputing any debts. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁴ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. His financial problems raise doubts as to his current eligibility to access classified information. Following the *Egan* decision and the "clearly consistent with the national interest" standard, doubts about granting Applicant's eligibility for a security clearance must be resolved in favor of national security.

⁴ The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.n:	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 eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge