



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-03137
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guidelines F (financial considerations) and E (personal conduct). Clearance is granted.

Statement of the Case

On February 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant, 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and E. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it

recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

Applicant answered the SOR on August 29, 2014, and submitted an undated supplemental answer. He elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM), dated October 17, 2014, was provided to him by letter dated September 10, 2013. Applicant received the FORM on October 29, 2014. He was given 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information, and by separate memorandum dated December 1, 2014, Department Counsel did not object to the additional information. The case was assigned to me on December 5, 2014.

Findings of Fact

Applicant admitted all of the SOR allegations under Guideline F, SOR ¶¶ 1.a through 1.h; and denied the sole allegation under Guideline E, SOR ¶ 2.a. After a thorough review of the record, I make the following findings of fact.

Background Information

Applicant is a 31-year-old software engineer, who has worked for a defense contractor since February 2013. He seeks a security clearance in conjunction with his current employment. (Items 6 and 7.)

Applicant was awarded an associate's degree in December 2008 and a bachelor's degree in December 2012. He married in July 2012. According to the FORM, he does not have any children. Applicant did not serve in the armed forces. (Items 6 and 7.)

Financial Considerations

The SOR alleged eight allegations under this concern. The debts and status of those debts are:

(1) August 2013 judgment in the amount \$4,813 for a credit card debt. Applicant contacted the creditor, made payment arrangements, and has been making \$200 monthly payments since September 2013. **ACCOUNT BEING RESOLVED**; (2) collection account for medical service in the amount of \$1,209. Applicant contacted the creditor, made payment arrangements, and has been making \$40 monthly payments since September 2014. **ACCOUNT BEING RESOLVED**; (3) charged-off student loan in the amount of \$26,839. This is Applicant's largest debt and one that he will begin paying off as soon as he has

honored his commitments to his other creditors and has available funds. As discussed, *supra* and *infra*, all of Applicant's debts except for this one have been resolved or are being resolved; (4) collection account for a credit card in the amount of \$4,294. This is the same account alleged in SOR ¶ 1.a that resulted in a judgment against Applicant and is discussed *supra*. **DUPLICATE DEBT – ACCOUNT BEING RESOLVED**; (5) collection account for a cell phone in the amount of \$752. **ACCOUNT PAID IN FULL – RESOLVED**; (6) collection account for a utility bill in the amount of \$369. Applicant successfully disputed this bill and the creditor acknowledged the debt was listed in error. The debt was deleted from Applicant's credit report. **ACCOUNT RESOLVED**; (7) collection account for medical service in the amount of \$150. **ACCOUNT PAID IN FULL – RESOLVED**; and (8) collection account for medical service in the amount of \$57. **ACCOUNT PAID IN FULL – RESOLVED**. Applicant provided documentation substantiating payments discussed *supra*. (Items 4 and 5.)

Applicant's financial difficulties stem from being a full-time student and unemployed from February 2009 to February 2013. He lacked the necessary income to pay his debts. During Applicant's March 2013, Office of Personnel Management Personal Subject Interview (OPM PSI), he stated that he would satisfy his debts and avoid future delinquencies. He has followed through on that promise. As noted *supra*, Applicant has addressed all of his debts except for his student loan. His plan is to clear up all of his other debts and as funds become available, he will be able to pay off his student loan. (SOR answer; Items 6 and 7.) In her FORM, Department Counsel noted that Applicant "provided proof of payment or resolution for all but one of his debts." There is no evidence of financial counseling.

Personal Conduct

One allegation is alleged under this concern, that Applicant deliberately failed to disclose his delinquent debts that are alleged under financial considerations when completing his February 2013 e-QIP. (SOR ¶ 2.a.)

Applicant explained that when he completed his e-QIP he was in the process of moving and did not have his financial files with him. Accordingly, he estimated when his debts arose and incorrectly concluded that they were outside the seven-year timeframe posed. He stated that he was not attempting to deceive or hide anything and if he were to answer the financial questions again, he would answer them differently. (SOR answer.)

In reviewing Applicant's February 2013 e-QIP and March 2013 OPM PSI, I note that he failed to list a previous employer, his older brother, and that he was awarded a GED. Also, he listed other items incorrectly such as his unemployment,

and several dates of previous employment. These additional shortcomings add credence to Applicant's explanation that he was careless. It is clear that Applicant did not exercise due diligence when he completed his February 2013 e-QIP. He readily provided the correct information during his March 2013 OPM PSI. Taking into consideration the facts as a whole, I accept Applicant's explanation that his failure to list adverse financial information was due to oversight and carelessness, and was not deliberate. (Items 6 and 7.)

Character Evidence

In his Response to FORM, Applicant submitted a personal reference letter (PR). PR is a retired Air Force veteran and currently employed as a police officer. PR is familiar with Applicant and his financial difficulties and how he is overcoming those challenges. In sum, PR provided a very favorable assessment of Applicant's character and suitability for a security clearance. (Response to FORM.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 adjudicative guidelines. These guidelines 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 overarching 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.

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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five financial considerations 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 conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances

that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Full application of AG ¶ 20(b) is warranted. Applicant experienced a lengthy period of unemployment. Once he began earning income and had the means to pay his debts, he systematically paid or is in the process of paying his creditors. As noted *supra*, Applicant's debts are resolved or are being resolved and he has made substantial progress in regaining financial responsibility.¹

AG ¶ 20(c) is not applicable. AG ¶¶ 20(d) and 20(e) are fully applicable. Applicant made a good-faith effort to address financial concerns alleged. He successfully resolved all of his debts except for his student loan and successfully disputed his \$369 utility bill.

Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government's evidence does not establish that Applicant deliberately falsified his February 2013 e-QIP. As noted, Applicant was forthcoming during his OPM PSI one month after he completed his e-QIP. It is clear from the record that he was less than attentive in completing his e-QIP. While he should have shown greater diligence in accurately completing a document as important as an e-QIP, his negligence does not establish that he was attempting to conceal his financial situation from the Government. Based on Applicant's denial and explanation, I find that Applicant did not deliberately attempt to deceive the Government or security officials on his security clearance application.

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

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 the 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). The discussion in the Analysis section under Guidelines F and E is incorporated in this whole-person section. However, further comments are warranted.

Applicant's employment with a defense contractor weighs heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan

provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant's debts have been paid or are being resolved except for his student loan. He has a systematic plan in place. Due to circumstances beyond his control, his debts became delinquent. Despite his financial setback as a result of being unemployed, it is clear from Applicant's actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guidelines F and E and the whole-person analysis support a favorable decision. I specifically considered the circumstances that led to his financial difficulties, his financial recovery, the steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his situation, and his reference letter. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations and personal conduct security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

Formal findings for or against Applicant 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:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge