



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 14-05115
)
 Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on November 1, 2013. On December 13, 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; Department of Defense 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 and answered it on January 13, 2015, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 24, 2015, and a complete copy of the file of relevant

material (FORM,) which included Government Exhibits (GX) 1 through 7, was sent to Applicant on May 8, 2015. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 13, 2015, and did not respond.¹ The case was assigned to me on March 3, 2016.

Findings of Fact

The SOR alleges two delinquent debts: A charged-off account for a voluntary vehicle repossession for \$22,463 (SOR ¶ 1.a) and a collection account for a cellular company for \$936 (SOR ¶ 1.b). Applicant admits that the account in SOR ¶ 1.a was his account and that it was charged off, but denies that he owes any balance. He denies the account in SOR ¶ 1.b, stating that it was opened in his name by his ex-wife while he was deployed and that he has disputed it. The 2013 credit bureau report (CBR) (GX 5) shows that the debt was disputed. The debt does not appear on the 2014 and 2015 CBRs. (GX 6; GX 7.) Applicant's admissions are incorporated in my findings of fact.

The account referenced in SOR ¶ 1.a is reflected in Applicant's 2013, 2014, and 2015 credit bureau reports (CBR) (GX 5; GX 6; GX 7.) The account referenced in SOR ¶ 1.b is reflected on Applicant's 2013 CBR. (GX 7.) Applicant explained the vehicle loan on his e-QIP (GX 3) and in his responses to interrogatories. (GX 4.)

Applicant is a 36-year-old networker administrator employed by a defense contractor since February 2013. He served honorably on active duty in the U.S. Army from August 1998 until August 2006, to include four deployments. He held a security clearance during part of his enlistment. He attended community college from January 2010 until he graduated with an associate's degree in May 2013. Applicant and his current wife married in October 2008, and she brought her son, now 13, and daughter, now 12, into their family. They also have a ten-year-old son and a three-year-old son. (GX 3.)

In about March 2006, Applicant acquired a vehicle loan for approximately \$22,463, and made monthly payments of \$516 until about October 2008. (GX 4; GX 7.) From August 2006 until mid-2008, Applicant worked full time for a company that sold products used in residential construction. At the downturn of the housing market in 2008, his work hours were decreased to part time, drastically reducing his income. As a result of this loss of income, he was concerned that he would default on his vehicle loan. While still current on his payments, he preemptively contacted the loan creditor, which agreed to accept the voluntary surrender of the vehicle. (GX 2; GX 3.) It was Applicant's understanding that the creditor would sell the vehicle at auction for the approximate loan balance, about \$10,000, apply the resale amount to the loan, and close the account. (GX 2; GX 4.) There is no record evidence of a deficiency balance or

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated May 8, 2015, and Applicant's receipt is dated May 13, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

that the original or a subsequent creditor attempted to collect any payments from Applicant following the resale of the vehicle.

The 2013 CBR (GX 5) lists the original loan amount of the vehicle loan (SOR ¶ 1.a) as charged off in December 2008 with \$0 balance and a \$0 past-due amount. The status of “charged off” indicates that the vehicle-loan account is no longer included in the lender’s accounts receivable. The 2014 CBR (GX 6) lists the same information and a date of last activity as October 2008. The 2015 CBR shows a \$0 balance and \$0 past due, but also shows a scheduled payment of \$516 and an actual payment of \$9,850. Applicant made about 31 payments that total approximately \$15,996. In 2012, Applicant sought financing from a lender for the purchase of a house. He states that the lender confirmed that Applicant did not owe a balance on the vehicle loan. (GX 2; GX 4.) His 2015 CBR also shows that he is current on all his ongoing financial obligations. (GX 7.)

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’s 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 his CBRs, e-QIP, and interrogatory responses establish two potentially 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 under this guideline are potentially applicable:

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;

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

AG ¶ 20(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.

AG ¶ 20(a) is established. Applicant experienced a loss of income in 2008 under unusual circumstances and his resulting inability to satisfy his financial obligations is unlikely to recur. His behavior in 2008 does not cast doubt on his “current reliability, trustworthiness, or good judgment.”

AG ¶ 20(b) is established. Applicant experienced a downturn in employment that resulted in his inability to afford his vehicle-loan payments. He acted responsibly by contacting the creditor and returning the vehicle. He also successfully disputed the debt alleged in SOR 1.b.

AG ¶ 20(c) is established. Applicant has not received financial counseling; however, he has resolved his debts and is current on all his ongoing financial obligations. There is a “clear indication” that his financial problems are under control.

AG ¶ 20(d) is established. Applicant acted in good faith in resolving his debts. He paid his vehicle loan for approximately 31 months, for about \$15,996. Unable to sustain the payments, he contacted his vehicle-loan creditor, which agreed to accept the voluntary surrender of the vehicle. The lender resold the vehicle and Applicant’s CBRs have reflected a \$0 balance due since at least 2013. The 2015 CBR shows an actual payment of \$9,850, which is likely the amount applied to the loan from the resale of the vehicle. Applicant understood that the balance would be satisfied by the proceeds from

the resale. He has not been contacted by any creditor attempting to collect a balance. Applicant successfully disputed the other debt alleged in the SOR. He maintains his current financial obligations. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant took reasonable actions to meet his financial obligations.

AG ¶ 20(e) is established. Applicant disputed the debt alleged in SOR 1.b and it has not appeared on his CBRs since 2013.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the U.S. Army for eight years, where he was first granted a security clearance. He was deployed on four separate occasions. He is married with four dependent children. He lives within his means and is current on all his ongoing financial obligations.

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

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a and 1.b: For Applicant.

Conclusion

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

Stephanie C. Hess
Administrative Judge