



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



In the matter of:)
)
) ISCR Case No. 14-05556
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

DUFFY, James F., Administrative Judge:

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

Statement of the Case

On February 27, 2014, Applicant submitted a security clearance application (SCA). Based on a review of Applicant's SCA and the ensuing background investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on March 23, 2015, under 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 by DOD in September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

On June 4, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On July 27, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 7. On August 28, 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 November 10, 2015.

Findings of Fact

The SOR alleged that Applicant had eight delinquent debts totaling about \$54,000. The largest debt (SOR ¶ 1.a) was a \$29,760 charged-off home equity loan. In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.¹

Applicant is a 49-year-old employee of a defense contractor. He has been working for that contractor since July 2004. He graduated from high school in 1983. He served on active duty in the Navy from 1984 to 2004 and retired honorably in the grade of petty officer first class (E-6). He married in 1993 and divorced in 2008. He has a six-year-old son. He was granted a security clearance in 1986.²

In 2007, Applicant and his wife separated. He took out a home equity loan to buy out her interest in the property. After they separated, he encountered financial problems going from two incomes to one. At some point, his girlfriend became pregnant, and she was unemployed. He provided his girlfriend financial support and later made child support payments. He fell behind on his bills. His home was foreclosed. In his SCA, Applicant indicated that he was preparing to file bankruptcy. During an Office of Personnel Management interview in May 2014, Applicant reportedly indicated that he intended to contact his creditors and figure out if he could afford to pay them without declaring bankruptcy. He also indicated that he was paying his current bills and intended to clear up the delinquent debts.³

Applicant provided no proof of payments toward the delinquent debts. No proof was provided that he filed bankruptcy or has taken any other steps to resolve the delinquent debts.⁴

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

¹ Items 1 and 2.

² Item 3.

³ Item 4.

⁴ Item 1-4.

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.

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

None of the mitigating conditions are fully established. Applicant’s delinquent debts are ongoing and significant. He went through a divorce that contributed to his

financial problems. However, he failed to show that he has acted responsibly in addressing his delinquent debts since his divorce. Insufficient evidence was presented to conclude his financial problems are being resolved, are under control, and are unlikely to recur. From the evidence presented, 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.⁵ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion, and the alleged security concerns have not been mitigated. 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.

Formal Findings

Formal findings as required under the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.h:	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

⁵ 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.