



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-06241
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on June 26, 2014. On January 26, 2015, 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 the DOD on September 1, 2006.

Applicant answered the SOR on May 5, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 30, 2015, and the case was assigned to me on July 13, 2015. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 24, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1

through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until September 9, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX B, which was admitted without objection. DOHA received the transcript (Tr.) on September 1, 2015.

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 35-year-old deck electrician employed by a defense contractor at a naval shipyard since April 2012. He graduated from high school in June 1999. He worked as an electrician in the private sector from June 1999 until he began his current job. He took online courses from a design and technology school from August 2007 to January 2008 but did not receive a degree. He received an employee recognition award from his current employer in July 2015. (AX A.) He has never held a security clearance.

Applicant married in April 2003. He and his wife have two children, ages 10 and 2. He has a 16-year-old daughter from a previous relationship. He pays \$350 per month in child support for his daughter, and his payments are current. (Tr. 39, 69.)

Applicant's wife was employed as a business administrator in a nursing home until she was laid off in April 2015. She has been offered a job as a certified nursing assistant, and she has accepted the offer. (Tr. 41-42.)

Applicant took a substantial pay cut in 2010, when his hours were reduced from 40 hours a week to 30-35 hours. He found a job in another state in August 2011, hoping to earn more, but he earned about \$600 less per month than in his previous job. In April 2012, he returned to his home state when he was offered his current job. (GX 1 at 10; Tr. 58-61.)

The SOR alleges 11 delinquent debts totaling about \$22,000. The SOR is based on Applicant's credit bureau reports (CBR) from July 2014 (GX 3) and June 2015 (GX 4). The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a and 1.b: judgments for unpaid rent filed in December 2009 and December 2008 for \$997 and \$1,948. Applicant paid \$500 on August 24, 2015, and agreed to pay the balance in 49 monthly installments of \$50. (AX B.) He testified that he and his wife terminated their lease early and incurred a penalty because they could not afford the rent. (Tr. 44-45.)

SOR ¶ 1.c: deficiency after repossession of car, charged off for \$8,127 (alleged as \$7,877 in SOR). Applicant testified that he has contacted the creditor regarding a settlement of this debt, but has not yet reached an agreement. (Tr. 48.) He presented no documentation of his negotiations.

SOR ¶ 1.d: delinquent car loan, charged off for \$4,308. Applicant testified that he voluntarily surrendered this car because he could not afford the payments. He has not made any efforts to resolve this debt. (Tr. 50.)

SOR ¶ 1.e: delinquent loan, charged off for \$1,969. In a personal subject interview (PSI) in September 2014, Applicant stated that this loan was for furniture. (GX 2.) His July 2014 CBR reflects that the debt was for “household goods.” At the hearing, he testified that this debt was for Christmas presents and he was making payments on it. He submitted no documentation of payments. (Tr. 51-52.) His June 2015 CBR reflects four accounts with this lender, one of which is current and one of which was sold to another lender. (GX 4 at 5-6.) It appears that Applicant is making payments on another account with the same lender, but not the account alleged in the SOR. This debt is not resolved.

SOR ¶ 1.f: collection account for unpaid rent for \$1,758. Applicant testified that he terminated this lease early when he moved from another state to accept his current job. He testified that he is making payments on this debt, but he submitted no documentation to support his testimony. (Tr. 53.)

SOR ¶ 1.g: delinquent credit-card account charged off for \$1,002. Applicant testified that he has made no efforts to resolve this debt. (Tr. 54.)

SOR ¶ 1.h: delinquent utility bill charged off for \$39. Applicant was unable to identify this debt at the hearing. (Tr. 54-55.) It is unresolved.

SOR ¶ 1.i: delinquent telecommunications bill for \$1,292. Applicant testified that this debt was incurred while he was living in the apartment involved in SOR ¶ 1.f. He testified that he contacted the creditor but had made no payments on this debt. (Tr. 55.) Part of the debt was for unreturned equipment. Applicant returned the equipment, but he does not know how much of the debt was for unreturned equipment and early termination fees. (Tr. 75-77.)

SOR ¶¶ 1.j and 1.k: collection accounts for medical debt \$662 and \$244. Applicant testified that he did not recognize either debt. Both debts are for activity in 2009. He testified that he and his family have not received medical care since 2006. (Tr. 55-57.) He has not investigated the basis for the CBR entries. He has not disputed the debts with the original creditors, the collection agencies, or the credit reporting bureaus. (Tr. 73.) The debts are unresolved.

Applicant’s current take-home pay is about \$3,300 per month. When his wife was working, her take-home pay was about \$1,500 per month. Their net monthly remainder was about \$1,000. Applicant has no savings. His current bills for living expenses are current. (Tr. 64-66.) He has not sought financial counseling or considered hiring a debt-consolidation or debt-resolution company. (Tr. 63-64, 71.)

Applicant's father testified that Applicant was raised in a good home, has been a good son, and knows the value of hard work. He believes that Applicant made some bad financial decisions, but has learned that you need to pay yourself out of debt and not try to borrow your way out of debt. He believes that Applicant has learned from his mistakes. (Tr. 28-33.)

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 his CBRs, 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 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 not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's income reduction in 2010 was a circumstance largely beyond his control. His wife's loss of employment also was largely beyond his control, but it occurred after the debts alleged in the SOR already were delinquent. He has not acted responsibly, because he took no significant actions to resolve his delinquent debts until he realized that they were an impediment to obtaining a security clearance.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling.

AG ¶ 20(d) is established for the judgments alleged in SOR ¶¶ 1.a and 1.b. Although Applicant began making payments on these debts after the hearing, his testimony reflected his intention to make a good-faith effort resolve his debts, and his payment plan for the two judgments is a first step in the right direction. This mitigating condition is not established for the remaining debts in the SOR, because Applicant has made no payments or payment agreements regarding them.

AG ¶ 20(e) is not established. At the hearing, Applicant questioned the validity of the medical debts alleged in SOR ¶¶ 1.j and 1.k. However, he had taken no action to verify them or dispute them.

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 some warrant additional comment.

Applicant began working as an electrician in high school and has worked continuously to the present. He was recently recognized for his accomplishments by his current employer. He was candid and sincere at the hearing. However, he is just beginning to resolve his financial problems, and he has not yet established a track record of financial responsibility.

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 not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not 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

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b: For Applicant

Subparagraphs 1.c-1.k: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge