



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-03769
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On March 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant 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.

On December 22, 2014, Applicant responded to the SOR. On January 15, 2015, Department Counsel was ready to proceed on Applicant's case. On January 23, 2015, DOHA assigned Applicant's case to me. On January 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for February 11, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through F, which were received into evidence without objection. On February 23, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In his SOR answer, Applicant denied all of the SOR allegations with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 51-year-old systems engineer employed by a defense contractor since 2006. He seeks a secret security clearance to comply with company job requirements. (GE 1; Tr. 19-20, 64)

Applicant was awarded a bachelor's degree in economics in May 1988, and a master's degree in computer information systems in June 2011. He is also taking courses towards a second master's degree in project management. (GE 1; Tr. 21-3) Applicant married in 2004. He has an eight-year-old daughter. Applicant's wife is employed as a senior claims adjuster for an insurance company. Applicant did not serve in the armed forces. (GE 1; Tr. 24-25)

Financial Considerations

Applicant's SOR lists six debts consisting of a charged-off bank debt for \$6,125, a past-due mortgage debt of \$57,917 on a loan balance of \$138,025, a collection account for \$701, a collection account for \$65, and a collection account for \$73. (SOR ¶¶ 1.a – 1.f)

Applicant's financial problems began in 2007 when his wife's company was bought out and she lost her job as a senior claims adjuster paying her \$65,000 a year, about a year after their daughter was born. Applicant and his wife made the decision for Applicant's wife to stay home to care for their daughter who had developed a significant learning disability stemming from a neural deficiency in her hearing. They were able to meet their obligations from Applicant's salary and their savings from 2007 to 2008. However, when their savings ran out, they were unable to remain current on

their mortgage, Applicant attempted to refinance his mortgage in early 2010. (GE 2; Tr. 25-34)

Applicant's wife bought their home in 1994 before they married for approximately \$95,000. They refinanced the home in 2007 for \$138,000, with an additional line of credit. Their current mortgage balance is \$184,798. Applicant and his wife have fought hard to keep their house since 2010. They filed Chapter 7 bankruptcy one time and Chapter 13 bankruptcy three times to stay foreclosure proceedings, all of which were dismissed. It was not Applicant's intent to default on his mortgage, but rather a means to save his home. Over a three-year period he filed several refinance applications with no success. However, in November 2012, he was able to refinance with his mortgage lender and began making monthly mortgage payments of \$1,135. In 2013, his lender foreclosed while he was making payments and transferred his mortgage to the Federal Home Loan Mortgage Corporation (FHLMC) in 2013, without his knowledge. Applicant's mortgage company has promised to correct the situation, but as of the hearing date, that had not occurred. (GE 1 – GE 4; AE B; Tr. 26-28, 35-48, 59.)

Applicant is uncertain whether his mortgage lender will reinstate his loan and regain title, but holds "some hope" that the lender will do so as promised. He stated that his financial situation has much improved now that his wife has returned to work and he has advanced within his company. Applicant fears that FHLMC will sell his home before his mortgage lender is able to reinstate his loan, and at that point, Applicant will have to relocate. (Tr. 48-49, 59)

The following summarizes the status of each SOR debt:

SOR ¶ 1.a – Charged-off home equity line of credit for \$6,125 owed to the same mortgage lender in SOR ¶1.b. This amount has merged into a single amount owed to the mortgage lender. See SOR ¶ 1.b. This debt is not reflected in Applicant's February 2015 credit report. **DEBT BEING RESOLVED.** (SOR answer; GE 3; AE C; Tr. 37, 55)

SOR ¶1.b – Past-due mortgage account for \$57,917 on a total loan balance of \$138,025. (SOR answer, GE 2, GE 3; Tr. 53-55.) See discussion above. **DEBT BEING RESOLVED.**

SOR ¶ 1.c – Collection account for a medical bill for \$701. Applicant contacted creditor and has been making \$100 monthly payments since December 2014. As of his hearing date, Applicant had reduced the debt to \$450 and anticipated this debt would be paid in full by June 2015. **DEBT BEING RESOLVED.** (SOR answer; AE C; Tr. 52-54, 56)

SOR ¶ 1.d – Collection account for a medical co-pay bill for \$65. Paid in full in December 2014. **DEBT RESOLVED.** (SOR answer; AE C; Tr. 51, 57)

SOR ¶ 1.e – Collection account for a medical co-pay bill for \$73. Paid in full in December 2014. **DEBT RESOLVED.** (SOR answer; AE C; Tr. 51, 57)

SOR ¶ 1.f – Collection account for \$446. Applicant contacted the creditor using the contact information listed on the credit report provided by Department Counsel and was unable to verify the debt. Applicant pulled his February 2015 credit report and paid the only other unpaid debt listed on that credit report. This debt does not appear on Applicant's February 2015 credit report. **DEBT RESOLVED.** (SOR answer; GE 3; AE C; Tr. 54-55)

Applicant took a money management course through his church. The purpose of the course was to eliminate debt. (Tr. 58) Applicant's family income stream has improved dramatically since his wife returned to work in February 2015 and he has advanced in the company. For example, in 2007 Applicant's annual salary was \$28,000 and in 2014, his annual salary was \$59,000. His wife's salary is approximately \$40,000 per year. Applicant maintains a modest lifestyle and lives within his means. His wife drives an 8-year-old car and he drives a 12-year-old car. (AE D, AE E, AE F; Tr. 25-26, 28-29, 31, 44-45, 49-51)

Character Evidence

Applicant submitted a reference letter from his pastor. His pastor stated that Applicant is very involved in their church, that he was a member of the men's small group bible study group, that he was a caring father and devoted husband, and that his character is beyond reproach. (AE A)

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

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. After Applicant’s wife lost her job, the family income decreased significantly. Additionally, and around the time Applicant’s wife lost their job, they discovered their daughter had a learning disability that required a significant amount of extra parental attention. Neither of these could be

anticipated. During this time, Applicant remained in contact with his mortgage lender and attempted to lower his monthly payments through refinancing.

AG ¶¶ 20(c), 20(d), and 20(e) are fully applicable. Applicant took a money management course through his church. Apart from his mortgage dilemma, he is current on all of his other debts. When Applicant realized that he could not make his mortgage payments, he contacted his mortgage lender and tried to refinance several times. After successfully refinancing his home in 2013 following numerous challenges, his mortgage lender foreclosed after he refinanced and was making payments. Apparently, the refinancing section had been not coordinating with the foreclosure section. Applicant hopes for a favorable resolution, but is uncertain of the future. He has either sufficiently explained, resolved or refuted his remaining debts.¹

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 Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's nine years of 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

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 she maintained contact with her creditors and attempted to negotiate partial payments to keep her debts current.

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 explained, paid or are being resolved. Due to circumstances beyond his control, his debts became delinquent. Despite his financial setback, 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 Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant’s years of financial responsibility before falling into debt, 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, his reference letter, and his testimony and demeanor. 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 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 to 1.f: For Applicant

Conclusion

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

Robert J. Tuidor
Administrative Judge