



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



In the matter of:)
)
) ISCR Case No. 14-05450
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Clearance is granted.

Statement of the Case

On December 8, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action 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 on September 1, 2006.

The SOR detailed reasons why DOD CAF adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On December 23, 2014, Applicant answered the SOR and elected to have his case decided on the written record in lieu of

a hearing. On March 20, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On March 30, 2015, a copy of the FORM was mailed to Applicant, giving him 30 days from its receipt to submit objections or provide additional information. He timely submitted a Response to the FORM that has been marked as Item 6. No objections were made to Items 1-6. The case was assigned to me on May 4, 2015.

Findings of Fact

Applicant is a 30-year-old painter who has been working for a defense contractor since March 2014. He earned a general educational development (GED) certificate in 2011. He has been serving in the Army National Guard since February 2011. He married in 2005 and divorced in 2013. He has two children, ages 5 and 9. In his Electronic Questionnaire for Investigations Processing (e-QIP) of March 21, 2014, Applicant indicated that he had a security clearance denied, revoked, or suspended in March 2013 due to failure to cooperate and financial problems. No prior security clearance decision or citation to such a decision was presented in the FORM.¹

The SOR alleged that Applicant had ten delinquent debts totaling about \$28,696 (SOR ¶¶ 1.a-1.j). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.²

Applicant's e-QIP reflected that he was unemployed from September 2009 to October 2011 and from July 2013 to March 2014. In October 2011, he left his job because he had a disagreement with a coworker and chose to leave.³

Credit reports reflected that the debt in SOR ¶ 1.a (\$6,816) involved an involuntary repossession of a vehicle. The judgment (\$839) in SOR ¶ 1.e was filed in September 2009. The dates of last activity on the alleged debts range from November 2007 to March 2014.⁴

In his Answer to the SOR, Applicant acknowledged that he neglected to pay his debts, stated he always planned on paying them, and indicated he would soon start paying some of them. He also indicated that his first priority had been caring for his two children. In his Response to the FORM, Applicant provided documentation showing that he had been making payments on the \$13,306 debt alleged in SOR ¶ 1.i since June 2012. While he apparently missed some payments, he has generally been making consistent monthly payments of about \$340 on that debt. As of April 1, 2015, the

¹ Item 3.

² Items 1 and 2.

³ Item 2.

⁴ Items 4 and 5.

balance of that debt has been reduced from \$14,846 to \$3,701. He provided no documentation showing payments toward, or settlement agreements for, the other alleged debts. Because no budgetary information was provided, the amount of his monthly income, expenses, debt payments, and discretionary income are unknown.⁵

In July 2012, Applicant left a job for an 11-month military deployment to Afghanistan. He served there as a member of the military police.⁶

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 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

⁵ Items 2 and 6.

⁶ Item 3.

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 for financial considerations is set out in AG ¶ 18 as follows:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Because Applicant accumulated debts that he was unable or unwilling to satisfy for an extended period, the following disqualifying conditions under AG ¶ 19 are applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Four 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; and

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

Security clearance adjudications are not debt-collection procedures, but proceedings to evaluate an individual's judgment, reliability, and trustworthiness. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant experienced periods of unemployment. One period of unemployment followed a military deployment to Afghanistan. This latter period of unemployment was a condition beyond his control that contributed to his financial problems. Since June 2012, Applicant has been making regular monthly payments of about \$340 on the debt in SOR ¶ 1.i, his largest debt. Over that period, he reduced the balance of that debt from \$14,846 to \$3,701. He continued making those payments while deployed to Afghanistan. He has established a meaningful track record of payments and debt reduction. The payments on the debt in SOR ¶ 1.i have reduced his total outstanding debt by more than one-third. He stated that he intends to pay the remaining debts. While little is known about his overall financial situation, he has shown that he takes his debts seriously and is attempting to resolve them. AG ¶ 20(a) does not apply. AG ¶¶ 20(b), 20(c), and 20(d) apply in varying degrees.

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.⁷ In this case, I gave due consideration to the information about Applicant in the record, including his military service, and concluded the favorable information outweighed the security concerns at issue. Applicant met his burden of persuasion and mitigated the security concerns. Overall, the record evidence leaves me with no questions or doubts as to his eligibility for a security clearance.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a – 1.j: For Applicant

Decision

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

James F. Duffy
Administrative Judge

⁷ The administrative judge should consider the 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.