



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



In the matter of:)
)
) ISCR Case No. 14-05597
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On March 25, 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 January 31, 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) for Determining Eligibility For Access to Classified Information*, implemented by DOD on September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

In an undated letter, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On September 2, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained exhibits marked as Items 3 through 6. On November 10, 2015, Applicant received a copy of the FORM and submitted additional information, which has been marked as Item 7. Items 3 through 7 are admitted into evidence without objection. The case was assigned to me on December 1, 2015.

Findings of Fact

The SOR alleged that Applicant had five debts with past-due amounts totaling \$107,038 and balances totaling \$607,581. The two largest debts were real estate mortgage accounts. In his Answer to the SOR, Applicant denied each allegation by indicating four accounts were resolved and one was disputed. A credit report dated March 20, 2014, substantiated each of the alleged debts.¹

Applicant is a 45-year-old supervisory mechanic who has been working for a defense contractor since March 2013. He graduated from high school in 1988. He served in the U.S. Marine Corps for 22 years, served a tour of duty in Afghanistan in 2009, and honorably retired in the grade of master sergeant (E-8) in 2011. He has been married twice. He married his current wife in 1992. He has three children, ages 15, 19, and 21. He was granted a security clearance in 2004.²

In his SCA dated March 3, 2014, Applicant disclosed that he had two past-due mortgage loans. He attributed his financial problems to a downturn in the economy. During the economic downturn, his wife's annual salary decreased from about \$87,000 to about \$40,000, and the value of their home fell approximately \$150,000. He indicated that he was working with the mortgage lender to combine the two mortgages into one loan and thought the restructuring of the loans was accomplished. He later learned the second mortgage was transferred to another lender. He first became aware of the transfer of the second mortgage about two years after the loan restructuring when he was contacted by personnel from the collections department of the second mortgage holder. He stated that he was working with the first and second mortgage holders to resolve the delinquent mortgages through a short sale of the property.³

During an interview with an Office of Personnel Management (OPM) investigator on April 21, 2014, Applicant is reported to have stated:

¹ Items 1, 2, and 4. The credit report, however, reflected the debt in SOR ¶ 1.c was \$4,158 instead of \$4,407 as listed in the SOR.

² Item 3.

³ Items 3 and 7.

[Applicant] volunteered that he has been delinquent in his mortgage payments since 7/2011 for a residence at [a specific location]. [He] indicates he purchased the home in 9/2003 in the amount of \$550,000.00. His monthly payments were \$3,018.00. He made the payments on time until 7/2011. [He] indicates that he had retired from the military and opened up a coffee shop. He had applied for disability and tried to refinance his home though loan modification with [the lender] since he was retiring. [He] indicates the modification process has gone through denial three different times. Each time he reapplied, his case was transferred to several different loan officers until he could not support the monthly payments due to limited income. [He] indicates his coffee shop business was breaking even on finances. [He] indicates his home was in active foreclosure in [the local county] but had been brought out of foreclosure due to home being purchased on short sale 5/28/2014. [He] indicates the home has been sold for \$349,000.00. [He] indicated [the first mortgage lender] told him they would charge off \$150,000.⁴

In the OPM interview, Applicant further indicated that, when the home was refinanced in 2009, the lender claimed the insurance on the second mortgage loan. The insurance company later tried to collect the insurance payment (\$50,000) from him. He indicated he disputed this debt because his closing documents reflected the \$50,000 was included in the refinancing.⁵

In his Answer to the SOR, Applicant provided a Settlement Statement (HUD-1) for the short sale that reflected the first mortgage holder received \$315,363 from the sale and the second mortgage holder received \$8,500. He also provided a letter from the second mortgage holder that reflected they offered to settle the debt for \$11,000 including the money received from the short sale.⁶

In his Answer to the SOR, Applicant also provided a receipt showing that the debt in SOR ¶ 1.c (\$4,407) had been paid. He stated that he paid the debt in SOR ¶ 1.d (\$817) and referenced an Attachment D that apparently showed it was paid. However, Attachment D was not appended to his Answer. He further indicated that he was disputing the traffic citation (\$60) in SOR ¶ 1.e. He provided no documentation supporting that dispute.⁷

In his Response to the FORM, Applicant provided documentation confirming that the first and second mortgages (SOR ¶¶ 1.a and 1.b) had been paid or settled in full. A

⁴ Item 5.

⁵ Item 5.

⁶ Item 2.

⁷ Item 2.

credit report dated September 2, 2015, reflected that Applicant had no past-due accounts.⁸

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 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.*

⁸ Items 6 and 7.

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.

A credit report established two disqualifying conditions in AG ¶ 19:

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

Five 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.

During an economic downturn, Applicant's wife's salary was cut in half and the value of their home plummeted. He eventually resolved the first mortgage (SOR ¶ 1.a) through a short sale and the second mortgage (SOR ¶ 1.b) through a settlement agreement. He provide proof of paying the debt in SOR ¶ 1.c. He indicated that he paid the debt in SOR ¶ 1.d and referenced a document showing the payment; however, that documentation was not included in the record. He disputes the \$60 debt in SOR ¶ 1.e, and provided no documentation supporting that dispute. Despite failing to provide documentation showing resolution of two relatively small debts, he provided sufficient proof that he has acted responsibly in addressing his delinquent debts. His financial problems are being resolved and are under control. His past financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) apply. AG ¶¶ 20(a), 20(d), and 20(e) partially apply.

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.⁹ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, outweighs the security concerns at issue. Applicant met his burden of persuasion and mitigated the financial considerations security concerns. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for a security clearance.

⁹ 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.

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.e: 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