



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 14-05769
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Roger Mills, Esq.

02/29/2016

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 28, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 16, 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 granted or denied.

On January 2, 2015, Applicant responded to the SOR. On June 1, 2015, Department Counsel was ready to proceed on Applicant's case. On June 5, 2015, DOHA assigned Applicant's case to me. On June 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for July 9, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, which were received into evidence without objection. Applicant testified, did not call any witnesses, and offered Applicant Exhibits (AE) A through E, which were received into evidence without objection. I held the record open until July 24, 2015 to afford the Applicant an opportunity to offer additional evidence. Applicant timely submitted AE F and G, which were received into evidence without objection. On July 17, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In his SOR answer, Applicant admitted 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 32-year-old product design engineer employed by a defense contractor since June 2013. He seeks a secret security clearance to enhance his position within his company. (GE 1; Tr. 31, 34-35, 49-50)

Applicant was awarded an associate of science degree in engineering in July 2005, and a bachelor of science degree in aerospace engineering in May 2013. (GE 1; Tr. 32-33) At the time of hearing, Applicant was unmarried and living with his fiancée, who is employed as a pharmacy technician. His wedding date was scheduled for October 25, 2015. Applicant did not serve in the U.S. armed forces. (Tr. 33-34, 36, 41; GE 1)

Financial Considerations

Applicant's SOR lists four debts totaling \$25,808. (SOR ¶¶ 1.a – 1.d) He sustained an injury in 2010 while in college and was required to undergo reconstruction surgery. Applicant was never billed for medical services received. Applicant's father advised him that his medical treatment was likely subsidized because of his low income. When Applicant applied for student loans, the issue of past-due medical bills never came up and he was under the mistaken impression that he did not have any credit problems. (SOR response; Tr. 24-29; GE 2)

Applicant first became aware of these debts during his April 2014 Office of Personnel Management Personal Subject Interview (OPM PSI). (Tr. 18, 21-22; GE 2) Following his OPM PSI, Applicant pulled his credit report for the first time and began investigating his credit history. It was never his intent to avoid paying his just debts.

(Tr. 29-31, 43) A summary of Applicant's four SOR debts and their current status follows:

SOR ¶ 1.a - a \$24,438 medical collection account. This account was paid in full on July 22, 2015. **ACCOUNT RESOLVED.** (Tr. 18-20, 22-24, 41-42; GE 3; AE F)

SOR ¶ 1.b - a \$195 medical collection account. This account was paid in full on July 7, 2015. **ACCOUNT RESOLVED.** (Tr. 20-22, AE A)

SOR ¶ 1.c - a \$260 past-due medical account. Applicant was unable to determine who the creditor was for this debt. A review of Applicant's April 16, 2014 credit report submitted by the Government does not provide any identifying creditor information. This debt does not appear on Applicant's July 9, 2015 credit report. **DEBT NOT SUBSTANTIATED.** (Tr. 20-21, 44-46; GE 3; AE C)

SOR ¶ 1.d - \$195 medical collection account. This account was paid in full on January 14, 2015. **ACCOUNT RESOLVED.** (Tr. 20-22, AE B)

Applicant has resolved all of his known debts. His budget reflects that he leads a modest lifestyle, lives within his means, and is current on all of his debts. Applicant's annual salary is approximately \$78,000 and his budget reflects a net monthly remainder of \$1,818. (Tr. 36-42; AE C, AE G)

Character Evidence

Applicant submitted two reference letters: (1) from a company engineering fellow and hiring manager; and (2) fellow employee and long-time friend. The collective sense of these documents describes Applicant as hard working, a team player, honest, and trustworthy. Both of the individuals support Applicant for a security clearance. (AE D, AE E)

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 *a/so* Executive Order 12968 (Aug. 2, 1995), § 3.1.

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.

Partial credit is warranted under AG ¶ 20(a) because his medical debts occurred under such circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Full application of AG ¶ 20(b) is warranted. Applicant could not have anticipated that he would be injured requiring ACL reconstructive surgery. When he became aware of his debts following his OPM PSI, he contacted his creditors and paid his known creditors in full.

AG ¶¶ 20(c) is partially applicable and 20 (d) is fully applicable. Although Applicant did not receive financial counseling, there are clear indications that his debts are resolved and all of his known debts are paid in full. AG ¶ 20(e) is not relevant because he did not dispute his responsibility for any SOR debts.

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 had the misfortune of having an injury while in college at a time when he did not have adequate health care insurance. For reasons not entirely clear, he did not receive any bills for his constructive surgery. When he became aware of his medical bills following his OPM PSI, he paid three of the four bills in full. The available information for the fourth bill does not identify the creditor, making it impossible for Applicant to pay this debt.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's 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, his reference letters, 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.d: 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