



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



In the matter of:)
)
-----) ISCR Case No. 14-05838
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges seven delinquent, charged-off, or collection accounts totaling \$42,860. His delinquent SOR debts were the result of divorce and his fiancé’s illness. He provided documentation establishing resolution of all SOR debts. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 8, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Item 3) On December 8, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 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 4, 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). (Item 1) The SOR detailed reasons why the DOD CAF could not make the finding under the Directive that it is clearly consistent with the national interest to grant or continue a

security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On January 12, 2015, Applicant responded to the SOR allegations and did not request a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated July 9, 2015, was provided to him on July 24, 2015.¹ On July 28, 2015, Applicant responded to the FORM. Department Counsel did not object to Applicant's submission. The case was assigned to me on August 13, 2015.

Findings of Fact²

In Applicant's SOR response, he admitted SOR debts ¶¶ 1.a through 1.c, and 1.e through 1.g, and he denied the state tax lien in SOR ¶ 1.d for \$1,857.³ He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 51-year-old aircraft mechanic, who has worked for a defense contractor since December 2010.⁴ Applicant's only unemployment in the last eight years was from October through November 2010. He honorably retired after 24 years of active Navy service on September 30, 2007.

In 1987, Applicant married, and in 1991, he divorced. In 2004, he married, and in 2008, he divorced. He has no children. Applicant is a high school graduate; however, he has not attended college.

Financial Considerations

Applicant explained that his financial problems originated from two circumstances. In 2008, he went through an expensive, acrimonious divorce. (FORM response) After 2009, his fiancé needed major surgery, and he provided financial support to her for two years. (FORM response)

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 17, 2015, and Applicant's receipt is dated July 24, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³The source for the information in this paragraph is Applicant's SOR response. (Item 2)

⁴Unless stated otherwise, Applicant's May 8, 2013 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) is the source for the facts in this paragraph and the next paragraph. (Item 3)

Applicant's credit reports, SOR response, and FORM response allege and discuss seven delinquent, charged-off, or collection accounts totaling \$42,860. The status of the seven SOR debts is described in the following paragraphs.

SOR ¶ 1.a alleges a charged-off credit union debt for \$16,553. (Items 1, 2) On August 26, 2014, Applicant "settled in full" this debt with a payment of \$6,401. (Item 2)

SOR ¶ 1.b alleges a delinquent debt for \$30. (Items 1, 2) On January 7, 2015, the creditor wrote that this debt was paid in full. (FORM response)

SOR ¶ 1.c alleges a \$5,870 bank debt, which was placed for collection. (Item 1, 2) On July 27, 2015, the collection agent for the bank acknowledged receipt of \$2,896, and indicated the status of this bank debt is "settled in full." (FORM response)

SOR ¶ 1.d alleges a state tax lien filed in 2008 for \$1,857. (Items 1, 2) Applicant said the state tax lien was erroneously filed. (Item 2) On March 7, 2012, the state wrote that the lien was "recorded in error" and the lien was released. (Item 2)

SOR ¶ 1.e alleges a charged-off credit account for \$2,014. (Items 1, 2) On January 6, 2015, the creditor wrote that the debt was settled, and Applicant is "released from all obligations." (FORM response)

SOR ¶ 1.f alleges a bank-collection debt for \$12,018. (Items 1, 2) On July 27, 2015, the law firm representing the creditor wrote that the debt was "settled in full." (FORM response)

SOR ¶ 1.g alleges a bank-collection debt for \$4,538. (Items 1, 2) On February 13, 2015, the collection company for the bank debt wrote that the debt was "settled in full." (FORM response)

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.

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. 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 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

Financial Considerations

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 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 documented in his credit reports, SF 86, SOR response, and FORM response. His SOR alleges seven delinquent, charged-off, or collection accounts totaling \$42,860. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

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;⁵ 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.

⁵The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) through 20(d). Applicant's divorce and his fiancé's medical problems are circumstances largely beyond his control that caused his financial problems. He acted responsibly by negotiating and settling all of his SOR debts.

Applicant's delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [his] current reliability, trustworthiness, or good judgment." Applicant has learned from his experiences; there are clear indications that the problem is resolved; his finances are under control; and he showed good faith in the resolution of his financial problems.

AG ¶ 20(e) applies to Applicant's state tax debt. He disputed the debt; the state agreed the debt was erroneous; and the state released the debt.

Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts. He resolved all seven of his SOR debts. He does not have debts that are currently delinquent. His efforts are sufficient to mitigate financial considerations security concerns.

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). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 51-year-old aircraft mechanic, who has worked for a defense contractor since December 2010. He honorably retired after 24 years of active Navy service on September 30, 2007. He is sufficiently mature to understand and comply with his security responsibilities. His divorce and his fiancé's medical problems caused his financial woes. I give Applicant substantial credit for maintaining contact with his creditors and either paying, settling, or successfully disputing, all of his SOR debts.

Applicant understands what he needs to do to maintain his financial responsibility. I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

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.g: For Applicant

Conclusion

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

Mark Harvey
Administrative Judge