



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



In the matter of:)
)
) ISCR Case No. 14-06467
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

12/24/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant refuted the security concern under Guideline E (personal conduct), but failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On April 4, 2014, Applicant submitted a security clearance application (SCA). Based on a review of Applicant’s SCA and the ensuing investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) in February 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) implemented by DOD in September 1, 2006. The SOR alleged security concerns under the financial considerations and personal conduct guidelines.

Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On July 17, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On August 10, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and provide additional information. Applicant did not submit a response to the FORM. The case was assigned to me on December 10, 2015.

Findings of Fact

The SOR alleged that Applicant had three delinquent debts totaling \$66,141 and falsified his SCA by failing to disclose those debts were turned over to collection agencies. In his Answer to the SOR, Applicant admitted the delinquent debts and failed to address the falsification allegation. His admissions are incorporated as findings of fact.¹

Applicant is a 76-year-old engineer who has been working for a defense contractor since 1996. He reported no military service. He has been married twice. He married his current wife in 1989. He listed no children in his SCA, but indicated in his Office of Personnel Management (OPM) interview that he had six adult children. This is the first time that he is seeking a security clearance.²

In his SCA dated April 4, 2015, Applicant responded “no” to all of the financial record questions in Section 26, including the question that asked if he had bills or debts turned over to a collection agency in the past seven years. This question directed that he include financial obligations for which he was the sole debtor as well as those for which he was a cosigner. In his OPM interview, Applicant indicated that he failed to list the delinquent debts on his SCA due to oversight.³

In his Answer to the SOR, Applicant indicated the debt in SOR ¶ 1.a (\$4,660) was for a two-hour ambulance ride from a hospital to his hometown. He referred to this debt as a “ridiculous amount.” This debt had a date of last activity of November 2013. He provided no evidence that this debt has been, or is being, resolved.⁴

In his Answer to the SOR, Applicant indicated the debt in SOR ¶ 1.b (\$1,855) was charged to him by his grandson without his knowledge. He also stated that it had

¹ Item 1.

² Items 2 and 5. In his SCA, Applicant listed that he was self-employed. In his OPM interview, he indicated that he worked for a company.

³ Items 2 and 5.

⁴ Items 1 and 3. This debt is not reflected on the Applicant’s most recent credit report dated July 15, 2015. See Item 4.

been paid. This debt had a date of last activity of July 2013. A credit report dated July 15, 2015, reflected this debt had been paid off for less than the full balance.⁵

In his Answer to the SOR, Applicant indicated the debt in SOR ¶ 1.c (\$49,626) was for a loan that his son obtained in his name. He also stated, “I did not pay attention if he informed me,” apparently implying that he was not aware of the loan. He further noted that he did not know that his son was not paying the debt and would speak to him about it. This debt had a date of last activity of April 2014. He provided no evidence that this debt has been, or is being, resolved. His credit report dated July 15, 2015, reflected that the balance of this delinquent debt had increased to \$62,879.⁶

No evidence was presented that Applicant has received financial counseling or disputed any of the debts. Information about Applicant’s income and expenses is unknown.⁷

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

⁵ Items 1, 3, and 4.

⁶ Items 1, 3, and 4.

⁷ Items 1-5.

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. 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.

Applicant’s admissions and the record evidence 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.

None of the mitigating conditions are fully established. He paid the debt in SOR ¶ 1.b. The status of the debt in SOR ¶ 1.a is unknown. Although he stated that he did not know of the debt in SOR ¶ 1.c, he failed to establish that he has acted responsibly in addressing that debt. No proof was presented that he disputed any of the debts. In general, insufficient evidence was presented to show that his financial problems are being resolved. Those problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(d) applies to SOR ¶ 1.b. AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise security concerns and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In his OPM interview, Applicant indicated that he failed to list his delinquent debts in his SCA due to oversight. He also failed to list his children and made mistakes in reporting his employment. His explanation for omitting the debts is believable. Although his carelessness in completing his SCA is troubling, it does not amount to a deliberate falsification. I find in favor of Applicant on the Guideline E allegation.

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.⁸ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. His financial problems leave me with doubts as to his current eligibility to access classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

⁸ 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.

Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge