



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 15-00191
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 2, 2014. On July 9, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on July 29, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 23, 2015, and the case was assigned to me on October 23, 2015. On October 29, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for November 18, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until December 7, 2015, to enable him to submit additional documentary evidence. He did not submit any further evidence. DOHA received the transcript (Tr.) on November 30, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶ 1.b and denied SOR ¶¶ 1.a and 1.c-1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old employee of a federal contractor. He has worked for his current employer since September 2013.¹ He has never held a security clearance.

Applicant graduated from high school in May 1983. He attended college from September 2003 to August 2006 but did not receive a degree. He worked as a hotel maintenance engineer from April 2003 to January 2006. He worked as an assembler for a federal contractor from January 2006 to July 2010, when he was fired for missing more than three days of work while he was incarcerated for driving on a suspended license. He testified that he was unable to work for about four months in 2007, due to a work-related injury, but this period of unemployment is not reflected in the work history in his SCA. (Tr. 24, 36.) He was unemployed from July to September 2010. He worked for a community services company from September 2010 to May 2013, when he was fired for reasons not reflected in the record. He was unemployed from May 2013 until September 2013, when he began working for a federal contractor. He has never married and has no children.²

Applicant's April 2014 credit bureau report (CBR) reflected the six delinquent debts alleged in the SOR. (GX 2.) The status of these debts is set out below.

SOR ¶ 1.a, credit-card account charged off for \$438 in May 2009. Applicant disputed this debt, and it was deleted from his credit record. (AX A at 5.)

SOR ¶ 1.b, unsatisfied judgment filed in 2009 for \$13,483. The debt arose from a repossession of an automobile. Applicant testified that he had received no information about the difference between what he owed and the amount for which the

¹ At the hearing, Applicant testified that he worked for a community services agency from June 2015 until the date of the hearing. He testified that he takes short-term jobs between contract jobs with his primary employer, who is sponsoring him for a security clearance. (Tr. 33-34.) His receipt for the hearing notice, dated November 5, 2015, reflected that he was still on the rolls of a federal contractor. (Hearing Exhibit (HX) II.) (HX I is a letter from Department Counsel to Applicant, providing him with copies of the government exhibits.)

² Applicant's work history and biographical data are reflected in his SCA, except where another source is indicated by a citation to the transcript or exhibits.

automobile was sold. (Tr. 29-31.) Applicant disputed this debt, and it was deleted from his credit record. (AX A at 1; Tr. 43.)

SOR ¶ 1.c, unsatisfied judgment for medical debt, filed in 2010 for \$656.

This judgment is reflected in Applicant's June 2015 CBR dated June 9, 2015. (GX 3 at 1.) It is reflected as disputed in his November 2015 CBR. (AX B.) Applicant testified that he had not made any attempts to contact the creditor and did not know the basis for the judgment. (Tr. 31.)

SOR ¶¶ 1.d and 1.e, unsatisfied judgments for \$795 and \$943, filed by the same creditor in 2007 for unpaid rent. These unsatisfied judgments are not reflected in the June 2015 and November 2015 CBRs, but they are reflected in court records. (GX 4 and 5.) They predate the June 2015 and November 2015 CBRs by more than seven years and may have been deleted from his CBRs in accordance with the Fair Credit Reporting Act.³ Applicant testified that he called this creditor several times about a month before the hearing but never made contact. He has not visited the creditor's offices or made any other attempts to resolve the debt. (Tr. 37-38.)

SOR ¶ 1.f, unpaid rent, referred for collection of \$734 in October 2007. I granted Department Counsel's motion to withdraw this allegation. (Tr. 14-15.)

In his SCA, Applicant disclosed that he did not file his federal and state income tax returns for 2010, 2011, and 2012. (GX 1 at 39-40.) He filed the federal returns in April 2014. His tax debt for the years he did not file was about \$5,000, but it has been satisfied by interception of his tax refunds. He has not yet filed his state tax returns for 2010, 2011, and 2012. (Tr. 39-42.)

Applicant has about \$58,000 in student loans that are deferred until January 2016. They were incurred while he was a college student in 2006-2009. (Tr. 38.) He pays rent of \$850 per month. He has no car payment and no credit-card debts other than those alleged in the SOR. He used his unemployment benefits and his savings of about \$1,500 to pay his living expenses during his periods of unemployment. He receives some financial help from his family. At the time of the hearing, he had about \$50 in his checking account and no savings. (Tr. 34-35.)

Policies

"[N]o 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

³ Under the Fair Credit Reporting Act, a credit report may not list civil judgments, accounts placed for collection, or charged-off accounts that antedate the credit report by more than seven years or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to these judgments. 10 U.S.C. § 1681c.

President has authorized the Secretary of Defense or his designee to grant applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No.

01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions in his answer to the SOR and at the hearing, corroborated by his CBRs, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).⁴ The following mitigating conditions are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business

⁴ Applicant’s disclosure that he did not timely file his federal and state income tax returns implicates AG ¶ 16(g) (“failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same”). However, since his failures to timely file his returns were not alleged in the SOR, they may not be an independent basis for denying his application for a security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the unalleged conduct for these limited purposes.

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous. Several are ongoing and unresolved, and they were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Some of Applicant's delinquent debts were due to periods of unemployment. However, the two periods of unemployment due to being fired were due to his own misconduct. He has not documented his work-related injury in 2007, which would be a condition beyond his control. He has successfully disputed the debts in SOR ¶¶ 1.a and 1.b, but he has not acted responsibly regarding the debts in SOR ¶¶ 1.c, 1.d, and 1.e. He has made no contact with the creditor in SOR ¶¶ 1.c, and he did not attempt to contact the creditor in SOR ¶¶ 1.d and 1.e until shortly before the hearing.

AG ¶ 20(c) is not established. Applicant has not sought or obtained financial counseling, and the record does not reflect "clear indications" that his financial problems are under control.

AG ¶ 20(d) is not established. Applicant has not made payments on any of the debts alleged in the SOR. The debts in SOR ¶¶ 1.d and 1.e are no longer reflected in his CBRs, possibly due to the passage of time and the requirements of the Fair Credit Reporting Act. Merely waiting for a debt to drop off a credit report by the passage of time is not a mitigating factor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

AG ¶ 20(e) is established for the debts in SOR ¶¶ 1.a and 1.b, which were successfully disputed. It is not established for the debt is SOR ¶ 1.c, which is reflected in his SCA as disputed, because he provided no documentation of the basis for the dispute. He has not disputed the debts in SOR ¶¶ 1.d and 1.e.

Whole-Person Concept

Under AG ¶ 2(c), 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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

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

Applicant was candid and sincere at the hearing. However he has exhibited a casual attitude toward his financial obligations, including his federal and state tax obligations. Thus far, his efforts have been directed to removing debts from his CBRs rather than resolving them. He provided little information about his financial situation, but he appears to be living paycheck to paycheck.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b: For Applicant

Subparagraphs 1.c-1.e: Against Applicant

Subparagraph 1.f: Withdrawn

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge