



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 15-00301
)
 Applicant for Security Clearance)

Appearances

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

02/16/2016

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

On June 5, 2012, Applicant submitted a security clearance application (SCA). On July 25, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD 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 DOD on September 1, 2006.

Applicant answered the SOR on August 18, 2015, and he 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. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2015, scheduling the hearing for November 19, 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 11, 2015, to enable Applicant to submit additional evidence. He did not submit anything further. DOHA received the transcript (Tr.) on December 3, 2015.

Findings of Fact¹

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.j, 1.l, and 1.s. He denied SOR ¶¶ 1.k and 1.m-1.r. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old shipyard insulator employed by a defense contractor since May 2008. He graduated from high school in June 2002 and worked for private-sector employers as a theater manager, painter, and medical recorder until he began his current job. He attended a community college from August 2002 to May 2004, but he did not receive a degree. He has never married and has no children. He has never held a security clearance.

When Applicant submitted his SCA in June 2012, he disclosed that he failed to file his federal and state income tax returns for 2005 and that he was making payments on a \$1,300 tax debt. He also disclosed that had not filed his federal and state tax returns for 2011. His failures to file his federal and state income tax returns for 2011 are alleged in SOR ¶¶ 1.c and 1.d. He testified that he filed his federal and state returns for 2012 and 2013, but not for 2014. (Tr. 50.) He owes about \$6,000 in unpaid federal income taxes.² (GX 5 at 19.)

Applicant filed a Chapter 7 bankruptcy petition in November 2007. His debts were discharged in February 2008. (GX 4.) Applicant testified that he was in a relationship and incurred more credit-card debt than he could afford. Debts totaling about \$29,000 were discharged. (Tr. 39-40.) This bankruptcy is alleged in SOR ¶ 1.b.

Applicant filed a Chapter 13 bankruptcy petition in May 2013. His petition was dismissed in October 2014 for failure to make the required payments. (GX 5.) He testified that he made seven or eight \$715 payments before the bankruptcy was dismissed, but he submitted no documentation of the payments. (Tr. 32.) He testified

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

² Applicant's federal tax debt and failures to timely file his income tax returns for 2005 and 2014 are not alleged in the SOR. 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 Applicant's federal tax debt and failure to timely file his income tax returns for these limited purposes.

that he stopped making the payments because he could not afford them while taking care of his father. (Tr. 42.) This bankruptcy is alleged in SOR ¶ 1.a.

All the debts alleged in the SOR are reflected in Applicant's June 2012 credit bureau report (CBR) (GX 3), except for the debts alleged in SOR ¶¶ 1.e and 1.m, which are reflected only in his December 2014 CBR.³ (GX 4). Applicant submitted selected pages of a November 2015 CBR. (AX A.) Because he did not submit a complete CBR, it is not possible to determine whether any debts alleged in the June 2012 and December 2014 SORs were deleted.

Applicant testified that the electric bill for \$447 (SOR ¶ 1.i) was resolved. His electric bill for October 2015 reflected a previous balance of \$102 and current charges of \$216. (AX B.)

Applicant testified that the judgment for \$3,476 filed against him by a furniture store in 2009 (SOR ¶ 1.n) was satisfied. He testified that he now has another debt of about \$4,000 with the same creditor. (Tr. 47-48.) He did not provide any documentation to corroborate his claim that the debt was resolved.

Applicant testified that he telephonically contacted the collection agency for the \$161 medical bill (SOR ¶ 1.q) and determined that the debt was incurred by his father, who has the same first and last names. He testified that he disputed this debt online but did not print a copy of the dispute. (Tr. 30.) I held the record open, but he did not submit any documentary evidence of the dispute.

SOR ¶¶ 1.p and 1.r appear to be duplicates. I granted Department Counsel's motion to withdraw SOR ¶ 1.r (Tr. 16.)

Applicant testified that he attempted to resolve several other debts alleged in the SOR, without success. He provided no documentation of his efforts. The debt alleged in SOR ¶ 1.i is the only debt that is resolved.

Applicant earns about \$600 or \$700 per week, depending on how much overtime he works. His expenses include \$1,000 per month for rent and a monthly car payment of \$427. Applicant is an only child, and his father is disabled. His father receives disability pay sufficient for him to pay the first and second mortgages on his home, but there is no evidence of the amount his father receives. Applicant testified that he spends about \$400-\$500 per month to take care of his father. (Tr. 38.)

³ The original SOR erroneously lettered two separate allegations as SOR ¶¶ 1.j. Applicant corrected the lettering in his response to the SOR. The handwritten notations on the SOR were made by Applicant. I corrected the SOR on my own motion to conform to Applicant's corrections. (Tr. 15.)

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 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, 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”).

The following mitigating conditions under this guideline are potentially applicable:

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 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 recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. The disability of Applicant's father was a circumstance beyond his control and it contributed to Applicant's financial problems. However, Applicant has not acted responsibly. His electric bill is current, but his cursory, undocumented, and incomplete efforts to resolve his other debts were not responsible.

AG ¶ 20(c) is not fully established. Applicant received the financial counseling required by the bankruptcy court, but his financial problems are not under control

AG ¶ 20(d) is established for the electric bill alleged in SOR ¶ 1.i, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant testified that he disputed the debt alleged in SOR ¶ 1.q, but he failed to submit documentation of his dispute, even though he was given additional time to submit it.

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 and I have considered the factors in AG ¶ 2(a). 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.q:	Against Applicant
Subparagraph 1.r:	Withdrawn
Subparagraph 1.s:	Against Applicant

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