



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01159
)	
Applicant for Security Clearance)	

Appearances

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

02/25/2016

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 on June 12, 2012. On August 27, 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 September 10, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 29, 2015, and the case was assigned to me on October 30, 2015. On the same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled 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 Exhibit (AX) A, which was admitted without objection. I kept the record open until December 18, 2015, to enable him to submit additional documentary evidence, but he did not submit anything further. DOHA received the transcript (Tr.) on December 2, 2015.

Findings of Fact

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

Applicant is a 48-year-old nuclear insulator employed by a defense contractor since February 2002. He served in the U.S. Army Reserve from August 1991 to August 1998 and received an honorable discharge. He has never held a security clearance.

Applicant has never married. He has five children, ranging from 8 to 17 years old. His June 2012 CBR reflected two child-support accounts, one for \$5,079 and the other for \$12,972. He was 150 days past due on both accounts. His December 2014 credit bureau report (CBR) reflects a child-support arrearage of \$4,552, alleged in SOR ¶ 1.b. He testified that his child-support payments are automatically deducted from his pay. His payments were about \$250 per week but have been reduced to \$170 per week. (Tr. 26-27.) He did not submit any documentation to support his testimony.

Applicant filed a Chapter 13 bankruptcy petition in June 2013. His payment plan was confirmed in October 2013. He filed an amended plan in January 2014, which was confirmed in March 2014. (GX 5.)

In Applicant's answer to the SOR, he stated that the delinquent debts alleged in SOR ¶ 1.b-1.f and 1.j-1.m, and 1.o were included in the bankruptcy. He testified that he could produce the list of creditors that were included in his bankruptcy petition, but he did not submit it, even though the record was held open for almost a month after the hearing. (Tr. 31.) His August 2015 CBR reflects that the debts alleged in SOR ¶¶ 1.c-1.e, 1.g, and 1.j-1.l, are included in the bankruptcy. The child-support arrearage and the debts alleged in SOR ¶ 1.f, 1.h, 1.i, and 1.m-1.o are not included. (GX 4 at 1-4.)

Applicant testified that his weekly \$141 payments to the bankruptcy trustee were automatically deducted from his pay. (Tr. 27.) He did not submit documentation of his automatic payments, but the fact his bankruptcy petition had not been dismissed as of the date of the hearing strongly supports an inference that he has been making the required payments.

At the hearing, Applicant admitted that some of the debts alleged in the SOR might not have been included in the bankruptcy. He testified that, after receiving the

SOR, he contacted some of the creditors and agreed to pay them directly. (Tr.42-43, 49.) He did not produce any documentation of payment agreements or payments.

Applicant testified that he was unable to work for about ten months because of a work-related injury about five years ago. His injury caused him to lose his insurance coverage and fall behind on his debts. (Tr. 63-65.)

Applicant testified that he had completed one of the two financial counseling courses required by the bankruptcy court. However, I am not convinced that he has a good grasp of his financial situation. When asked what caused him to have financial problems, he testified, "Believe me sir, sometimes I don't know what it is, but it's like money will come in my hand then [is] gone." (Tr. 62.)

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; and

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

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

AG ¶¶ 20(b), 20(c) and 20(d) are not fully established. Applicant's work-related injury, causing a loss of wages, was a condition beyond his control. However, it occurred at least five years ago, and he has been employed continuously since then. His decision to father five children and incur child-support obligations was a voluntary choice and not a condition beyond his control. His decision to file a Chapter 13 bankruptcy petition was a responsible choice. He completed part of the counseling required by the bankruptcy court, and the debts included in the bankruptcy are being resolved. However, many of his delinquent debts are not being resolved by the bankruptcy. He presented no documentary evidence to support his testimony that his child-support arrearage is being resolved by automatic deductions from his wages, and he produced no documentary evidence showing that the debts alleged in SOR ¶¶ 1.f, 1.h, 1.i, and 1.m-1.o are being resolved.

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 served honorably in the U.S. Army Reserve and has been employed by a defense contractor for 14 years. He was candid and sincere at the hearing. However, he is financially naïve and lacks financial discipline. He promised repeatedly during the hearing to provide documentary evidence to support his testimony, but he presented no additional evidence, even though he was given almost a month to do so.

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**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraphs 1.j-1.l:	For Applicant
Subparagraphs 1.m-1.o:	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