



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



In the matter of:)
)
) ISCR Case No. 15-02039
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On September 10, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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 on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant

Applicant's security clearance. On October 2, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 7, 2016. DOHA issued a notice of hearing on February 1, 2016, and the hearing was convened as scheduled on February 23, 2016.

At the hearing, Department Counsel offered Government Exhibits (Gx) 1 through 5. Applicant testified and submitted Applicant Exhibits (Ax) A through H. The record of the proceeding was left open until March 23, 2016, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted documents that have been marked as Ax I through Q. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 2, 2016.

Findings of Fact

Background Information. Applicant is a 49-year-old employee of a defense contractor. He has been working for his current employer since March 2012. He graduated from high school in 1981 and earned a bachelor's degree in 1989 and a master's degree in 2001. He has completed the credits required for a doctorate degree. He served in the U.S. Army from 1989 to 2010 and retired honorably in the grade of lieutenant colonel (O-5). He is married and has two children, ages 23 and 26. He has held a security clearance for about 25 years.¹

Allegations and Applicant's Response. The SOR alleged that Applicant had eight delinquent debts totaling \$107,779, including a delinquent mortgage loan. In his Answer to the SOR, Applicant neither admitted nor denied the allegations, but provided comments on each allegation.²

Reasons for Financial Problems. Applicant attributed his financial problems to various conditions beyond his control.

First, as Applicant was planning for retirement from the Army in 2010, he received a verbal job offer for a leadership position at a college. He expected that his income in this new position along with his military retirement pay would keep him at his active duty income level. In moving to another state, however, his wife would at least temporarily lose her income as teacher. Based on the job offer, he moved to the new location. Due to a decrease in enrollment, however, the school reneged on the job offer. Applicant continued negotiations with the school, worked there on a 90-day contract, and later received a job offer that he considered unacceptable. This resulted in him being unemployed from November 2010 to February 2011 and from July 2011 to August 2011. He worked at a temporary job from August 2011 to March 2012 before

¹ Tr. 6-8, 30, 37-38; Gx 1, 5; Ax B, C.

² Applicant's Answer to the SOR.

starting his current job. During these periods of unemployment or underemployment, he exhausted his savings and a retirement fund.³

Applicant also indicated that his daughter was a victim of an assault in about 2010 while attending college and was diagnosed with a mental health disorder. She received counseling for the assault and was institutionalized for a short period. She moved back home twice to continue with her treatments. Applicant paid her medical expenses that TRICARE did not cover. She returned to school for a period and is now fully employed.⁴

Applicant further stated that his mother and stepfather were elderly. His stepfather was diagnosed with dementia in 2012. He also has Parkinson's disease. Applicant and his siblings have assisted their parents financially. His stepfather has been residing in a nursing home since late 2014. Applicant also noted that he had two children in college until 2014 and incurred a \$1,500 car repair bill in December 2015.⁵

SOR ¶ 1.a – student loan past due in the amount of \$1,420. A credit report dated August 24, 2015, reflected this debt had a balance of \$30,175 and a date of last payment of March 2015. Applicant testified this was his daughter's student loan, and it was now current. In his post-hearing submission, he provided a credit report dated January 25, 2016, that reflected this debt was no longer past due.⁶

SOR ¶ 1.b – charged-off account in the amount of \$31,126. This is a credit card account that had a date of last activity of August 2011. Applicant testified that he established a repayment plan for this debt in which he has been paying \$200 per month since about March 2013. At the hearing, he submitted a document dated January 18, 2016, from the creditor showing the balance of this debt had been reduced to \$23,826. This debt is being resolved.⁷

SOR ¶ 1.c – mortgage over 180 days past due in the amount of \$72,053 with a total balance of \$348,887. In 2005, Applicant purchased a home for \$495,000. His monthly mortgage payments were \$3,800. In July 2010, he attempted to sell the home as he was preparing to retire and move to another state. He was not successful in selling the home. He began renting a home in the new state and continued to make the mortgage payments on his unoccupied home. The home remained on the market until March 2011, when it was rented for about \$700 less than his mortgage payments. In

³ Tr. 30-32, 34, 38-43; Gx 5; Applicant's Answer to the SOR.

⁴ Tr. 32-34; Applicant's Answer to the SOR.

⁵ Tr. 34-37; Ax E; Applicant's Answer to the SOR.

⁶ Tr. 62-63; Gx 4, 5; Ax Q.

⁷ Tr. 27-28, 61-62; Gx 2, 5; Ax F.

about August 2011, he refinanced the mortgage loan to reduce the monthly payments to \$2,300. His renters moved out in March 2012. He continued working with the bank and a realtor to sell the home. With resources exhausted, he made the last mortgage payment in September 2013. The home was foreclosed and later sold at auction on December 2, 2015. The court documents regarding the sale are confusing. The auction affidavit reflected the home was purchased for \$585,149 by a bank (the creditor) serving as trustee for a residential asset mortgage company. Other court documents reflect the home was sold to the same trustee for \$283,078 on December 14, 2015. In his post-hearing submission, he provided a credit report dated January 25, 2016, that reflected the mortgage had a balance and past-due amount of zero. After the hearing, Applicant also wrote to the creditor requesting information about the current status of the mortgage loan. The creditor responded by indicating the property was foreclosed and transferred to a real estate agent, but made no mention of the sales price or a mortgage loan deficiency. Based on this evidence, I find the creditor is not seeking to hold Applicant responsible for any mortgage loan deficiency that may have resulted from the sale of the home.⁸

SOR ¶ 1.d – student loan past due in the amount of \$2,179. A credit report dated January 13, 2015, reflected this student loan had a balance of \$30,306 and a date of last activity of August 2014. Applicant testified that this debt was current. Two more recent credit reports in the record do not contain entries reporting this student loan, but list other student loans as current. I find this student loan is resolved.⁹

SOR ¶¶ 1.e, 1.f, 1.g, and 1.h – medical debts placed for collection in the amounts of \$428, \$58, \$327, and \$188, respectively. These collection accounts were opened in 2011 and 2012. Applicant testified that TRICARE should have covered these debts. He stated that he was working with TRICARE to resolve them. They are only reported on the credit report dated June 12, 2012. Three more recent credit reports in the record do not contain entries reporting these debts. I find these debts are resolved.¹⁰

Financial Situation. Applicant's annual salary is \$72,000. His monthly income (military retirement pay and civilian salary) is \$9,114. His monthly expenses are about \$8,416, which leaves him a monthly remainder of about \$700. Since 1995, he has owned another home. The mortgage on that home is reported as "pays as agreed" and has a balance of \$27,460. Applicant rented this home in the past, but now resides in it. His most recent credit report listed six debts that were previously reported as past due

⁸ Tr. 28, 36, 43-61; Gx 3, 4; Ax G, L, M, P, Q. The credit report dated January 25, 2016, also contained conflicting entries about the mortgage. Two entries reflect that the mortgage had a balance of \$348,887 and past-due amount of \$102,101. It is possible the entries reflecting that balance and past-due amount may not account for the foreclosure sale of the property.

⁹ Tr. 63-64; Gx 2-4; Ax Q; Applicant's Answer to the SOR.

¹⁰ Tr. 17-21,64-66, Gx 2-5; Ax Q

but are now reported as current or paid. Besides the debts discussed above, he has not incurred any new delinquent debts since obtaining his current job.¹¹

Character Evidence

Applicant served on active duty in Iraq for about a year and in a high-visibility position in Washington, DC. Applicant's military awards include the Bronze Star, Defense Meritorious Service Medal, four Meritorious Service Medals, three Army Commendation Medals, and other medals and ribbons. He received Officer Evaluation Reports that rated him as "best qualified."¹²

Applicant presented a number of letters of reference that described him as a person of character and integrity. His performance evaluations for his current job reflect that he met or exceeded expectations in various rating categories. He was an Eagle Scout.¹³

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

¹¹ Tr. 42-43, 66-67; Ax I, J, Q.

¹² Ax B-D.

¹³ Ax E, H.

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 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

AG ¶ 18 sets forth the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable or unwilling to pay for an extended period. AG ¶¶ 19(a) and 19(c) apply.

Four financial considerations 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; and

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

Applicant encountered conditions beyond his control that contributed to his financial problems. Since then, he has taken reasonable steps to resolve his delinquent debts. The evidence established that his financial problems are under control and are being resolved. Those problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) through 20(d) apply.

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 relevant 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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. I considered Applicant's military service and civilian work history. He presented sufficient evidence to show his financial problems are being resolved. Overall, the record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. Applicant mitigated the security concerns under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.h: For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Clearance is granted.

James F. Duffy
Administrative Judge