



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-03761
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2015

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 April 23, 2013. On September 24, 2014, 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 the DOD on September 1, 2006.

Applicant answered the SOR on October 20, 2014, and he requested a decision on the record. On February 9, 2015, he requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 5, 2015, and the case was assigned to me on May 7, 2015. On May 8, 2015, DOHA notified Applicant that the hearing was scheduled for June 4, 2015. On June 4, 2015, Applicant requested a

continuance due his mother's illness, his request was granted, and on June 9, 2015, the case was reassigned to another administrative judge. Applicant requested a second continuance, which was granted, and his case was reassigned to me on June 30, 2015. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 27, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not submit any documents or call any witnesses. I kept the record open until September 11, 2015, to enable him to submit documentary evidence. He timely submitted AX A through C, which were admitted without objection. DOHA received the transcript (Tr.) on September 10, 2015.

Findings of Fact

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

Applicant is a 43-year-old applications analyst employed by a federal contractor since October 2011. He attended college from August 1989 to May 1995 but did not receive a degree. He worked for a federal contractor from June 2002 to March 2006. He received a security clearance in June 2002, which was administratively terminated in when he left his job with a federal contractor. (Tr. 6.)

Applicant worked for a private-sector employer from March 2006 to September 2009, when he was laid off. He was unemployed from September 2009 to January 2010, and he paid his living expenses with a settlement he received for being laid off. (Tr. 49.) He worked for another private-sector employer from January 2010 to April 2011, earning about half of what he earned before being laid off. (Tr. 49-50.) He worked for another federal contractor from April to October 2011, when he began his current job.)

Applicant has never married. He has a one-year-old son. He and his son's mother intend to begin living together to reduce expenses. (Tr. 35.)

Applicant's father passed away in December 2010. When his father and mother divorced, they agreed that each would pay half of the monthly mortgage loan payment on the marital home and his mother would continue to live in the home. When Applicant's father passed away, his mother, who is retired on a fixed income, was unable to pay the household bills and the full monthly payments on the mortgage loan. (Tr. 52.) Applicant began paying his mother's bills, including the mortgage payment, and he fell behind on his own financial obligations. His mother recently obtained a reverse mortgage on her home and now has sufficient income to pay her bills. (Tr. 34.)

When Applicant submitted his SCA in April 2013, he disclosed a delinquent student loan, a foreclosed home mortgage, two delinquent credit-card accounts, and repossession of a leased luxury car. He disclosed that he was seeking a hardship

deferment of the student loan, the mortgage loan was satisfied by the foreclosure sale, he was trying to negotiate payment plans for the delinquent credit cards, and he was awaiting notification of the amount due on the defaulted car lease. (GX 1 at 34-40.) The delinquent student loan, credit-card accounts, and defaulted car lease are alleged in the SOR. The SOR is based on credit bureau reports (CBR) from April 2013 (GX 4) and June 2014 (GX 3). Neither party submitted an updated CBR.

In March 2014, Applicant hired a debt-resolution law firm to assist him in resolving his delinquent debts. His June 2014 CBR reflects that payment plans were started in March-April 2014, about the time he hired the debt-resolution law firm, for the debts alleged in SOR ¶¶ 1.a-1.c and several other debts. (GX 3 at 2-3.) However, he testified that he terminated his contract with the firm because he was not satisfied with the progress it was making. (Tr. 46-47.)

In August 2015, Applicant contacted a “consolidation and negotiation company” to assist him in working with the creditors alleged in SOR ¶¶ 1.a-1.d. (Tr. 33.) As of the date of the hearing, he had not yet signed a contract with the company. (Tr. 62-63.) After the hearing, he submitted a letter from the company, stating that it would help him “repair inaccuracies on the credit file,” but his submission did not include a copy of a contract setting out the services to be provided or the debts to be settled. (AX B.)

The debt alleged in SOR ¶ 1.a arose from Applicant’s failure to make the payments on a lease of a luxury car. He leased the car in July 2010 and it was repossessed in October 2013. He was billed for the months remaining on the lease plus a penalty, totaling \$11,803. He testified that he tried to negotiate a settlement, but the creditor insisted on a lump-sum payment. (GX 4 at 5; Tr. 41.)

SOR ¶ 1.b is a delinquent personal loan charged off for \$6,685. Applicant tried to negotiate a monthly payment, but he could not afford the \$800 per month sought by the creditor. (Tr. 42.)

SOR ¶ 1.c is a delinquent credit-card account charged off for \$5,748. The creditor offered to settle this debt for about \$3,200, but Applicant could not afford the required lump-sum payment. (Tr. 43.)

SOR ¶ 1.d alleges a delinquent credit-card account placed for collection of \$3,086. This debt is reflected in Applicant’s June 2014 CBR. (GX 3 at 2.) At the hearing, Applicant testified that he had two credit cards from this creditor. One account was closed, and he was trying to validate the amount due on the second account. (Tr. 43-44.) The debt is not resolved.

SOR ¶ 1.e alleges a debt for satellite television service placed for collection of \$418. This debt is a fee for early termination of a contract. Applicant has disputed the debt, asserting that he terminated the contract because the company was unable to install the equipment necessary for high-definition television. He returned the satellite dish and receiver to the company. In October 2009, he sent a letter to the company,

challenging the termination fee. His letter lists multiple attempts by the company to install the dish, which were unsuccessful because the technicians did not have a long enough ladder to reach the top of his three-story townhouse. He testified that the technicians also wanted to drill holes and run cables in a manner that violated the restrictive covenants applicable to his townhouse. The termination fee was referred for collection in March 2011. (GX 3 at 2; AX A; Tr. 44-45.)

SOR ¶ 1.f alleges a medical bill for \$54, placed for collection. Applicant testified that this bill has been paid in full, but he could not find the receipt. (Tr. 33-34.) He has not provided documentation that the bill was paid.

SOR ¶¶ 1.g and 1.h allege student loans past due for \$1,540 and \$579, with balances of \$27,881 and \$10,498. In his answer to the SOR, Applicant stated that he was in a rehabilitation program for these loans. His April 2013 CBR reflected that both student loans were deferred. (GX 4 at 7.) His June 2014 CBR reflected one student loan for \$36,858 that was deferred and two student loans for \$16,437 and \$6,189 that were current. (GX 3 at 3.) However, the status of these loans apparently changed after June 2014, because Applicant admitted these debts in his answer to the SOR, and he testified that he was past due on his student loan payments and was trying to negotiate monthly payments. As of the date of the hearing, the lender wanted \$900 per month for twelve months to rehabilitate the loans, after which he could resume his monthly \$235 payments. (Tr. 71.) He testified that he could not afford \$900 per month and asked the credit-repair company to help him with the negotiation, even though he had not yet signed a contract with the company. (Tr. 46.)

Applicant's take-home pay after taxes is about \$4,800 per month. His intended cohabitant takes home about \$5,200. With their combined income, he believes that they will have a net monthly remainder of about \$1,000, which can be applied to his debts. (Tr. 56-58.) At the hearing, he promised to provide a personal financial statement, but he did not include it in his post-hearing submission. (Tr. 72.)

One of Applicant's co-workers for the past three years submitted a letter on his behalf. She described him as 'very respectful of privacy, classified information, rules and restrictions.' She considers him an upstanding, law-abiding citizen and proactive member of the community, respected by his peers and supervisors. (AX C.)

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

AG ¶ 20(b) is not fully established for the debts in SOR ¶¶ 1.a-1.d. Applicant's loss of employment in September 2009, his drastic pay cut when he found employment in January 2010, and the financial needs of his mother after his father passed away in December 2010 were circumstances largely beyond his control. He took several responsible steps by contacting his creditors, attempting to negotiate settlements, hiring a debt-resolution law firm, and obtaining a hardship deferment of his student loans. However, he also took several questionable steps. He leased an expensive car in July 2010, even though he took a drastic pay cut in January 2010. He fired the debt-resolution law firm, even though it appears that the law firm had negotiated payment plans for the debts in SOR ¶¶ 1.a-1.c and several other debts.

AG ¶ 20(c) is not established. Although Applicant has sought the assistance of a debt-resolution law firm and a credit-repair company, he has not obtained the financial counseling contemplated by this mitigating condition, and his financial problems are not under control.

AG ¶ 20(d) is not established. Applicant has not documented payment of the medical debt in SOR ¶ 1.f, and he has not produced any evidence of payments or negotiated payment plans for his other delinquent debts.

AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.e. He has not disputed the other debts alleged in the SOR.

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. He has worked for federal contractors for many years and was previously granted a security clearance. He disclosed his financial problems in his SCA and during a follow-up PSI. He assisted his mother through a period of financial crisis, even though he compromised his personal financial situation by doing so. He has remained in contact with his creditors and made several attempts to settle his debts. However, his efforts have been unfocused and sometimes unwise. His second-largest debt (\$11,803) was incurred when he leased an expensive car he could not afford.

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 financial problems. 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	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