



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 14-04791
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on April 14, 2014. On January 21, 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; Department of Defense 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 received the SOR on February 17, 2015; answered it; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 3, 2015. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to

Applicant on that same day. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on November 10, 2015, and did not respond. The case was assigned to me on March 3, 2016.

Findings of Fact

The SOR alleges 25 delinquent debts totaling approximately \$47,700. In his Answer, Applicant admitted each of the allegations and offered an explanation concerning each debt. While he admitted SOR ¶¶ 1.c and 1.d, he qualified that he had received an Internal Revenue Service Form 1099-C, Forgiveness of Debt (1099-C) for these two debts, which he filed with his 2013 tax returns. He also stated that he had received a 1099-C for the debt alleged in SOR ¶ 1.g, which he filed with his 2014 tax return. He states that the debts alleged in SOR ¶¶ 1.a and 1.e are the same debt. He also states that the debt alleged in SOR ¶ 1.r was for satellite television equipment that he returned and the account should reflect a \$0 balance. Applicant's admissions in his Answer are incorporated in my findings of fact.

Applicant is a 42-year-old employee of defense contractor for which he has worked since December 2002. He graduated from high school in 1992 and received a completion certificate from an aerospace industry training program in 2002. He married his current wife in 2008, and they have a seven-year-old daughter and a five-year-old son. Applicant's 19 year old stepson also lives with them. He has a 14-year-old daughter from a previous relationship. This is his first application for a security clearance. (GX 3.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated June 2015 and April 2014. (GX 5; GX 6.) He listed a number of his delinquent accounts on his e-QIP and discussed each account during his Personal Subject Interview (PSI) (GX 3; GX 4.)

The debts alleged in SOR ¶¶ 1.a, 1.b, 1.f, 1.h through 1.k, 1.m through 1.o and 1.q are for delinquent credit cards totaling \$25,411. The \$7,522 debt alleged in SOR ¶ 1.l is owed to Applicant's mortgage lender, the \$2,019 debt alleged in ¶ 1.p is owed to a collection agency for a delinquent cellular service account, and the \$139 debt alleged in SOR 1.t is for an unpaid utility bill. (GX 4; GX 5.) Applicant has not made any payments on any of these debts, which total \$35,091. The debts alleged in SOR ¶¶ 1.s, 1.u, 1.v, 1.x, and 1.y, totaling \$402, are for unpaid medical accounts. The \$2,637 debt alleged in 1.e is the underlying debt for the \$3,946 judgment alleged in 1.a, and is therefore, a duplicate debt.

Applicant states that the debts alleged in SOR ¶¶ 1.c (\$3,536) and 1.d (\$3,094) have been resolved through 1099-C filings. He also states that the \$971 satellite television debt should reflect a \$0 balance as of May 21, 2014, because he returned the equipment. (GX 2.) However, he did not provide any evidence in support of these statements.

Applicant stated that his financial issues “are the result of several life changing events over a period of time from 2007 to 2010.” (GX 2.) According to Applicant, following his February 2008 divorce, he became responsible for his ex-wife’s debt. He also provided financial support for his parents during this period. In 2011, he was the defendant in a paternity suit which resulted in his owing \$92,000 in child support. His wages are garnished weekly for \$256.16. (GX 4.) The balance as of June 2015 was \$91,555. (GX 5.) Additionally, as of June 2015, he had approximately \$29,888 in current credit card debt for 16 open accounts, many of which have balances very close to the credit limit. (GX 4.)

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’s 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).

The record evidence establishes that SOR ¶¶ 1.a and 1.e are the same debt. Therefore, I have not considered the debt alleged in SOR ¶ 1.e when evaluating Applicant’s financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

Applicant's admissions, corroborated by his CBRs, e-QIP, and PSI, 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 has numerous, recent delinquent debts that were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established. Applicant experienced circumstances largely beyond his control when he and his former wife divorced and he became responsible for her debts. However, Applicant's decision to help his parents when they were struggling financially was voluntary and at his own detriment. While five of the delinquent debts totaling \$402 are for unpaid medical bills, there is no evidence that they originated from a medical emergency. His ongoing child support requirements, while unanticipated, are not born from a condition that was largely beyond his control.

AG ¶ 20(c) is not established. Applicant has not received any counseling. He is not paying any of the delinquent accounts. To the contrary, he has amassed a significant amount of current credit-card debt. There are no indications that his financial problems are under control.

AG ¶ 20(d) is not established. Applicant has not made any tangible efforts to repay his creditors.

AG ¶ 20(e) is not established. Applicant stated that the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.g were resolved through 1099-C filings, and that the debt alleged in SOR ¶ 1.r was satisfied by returning dish/cable equipment. However, he did not submit any supporting evidence.

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 I have also considered the following:

Applicant's decision to financially assist his parents is morally commendable, but was personally irresponsible. His monthly child-support payments are significant, but do not excuse his failure to make any payments on any of his debts. His failure to resolve any of his delinquent accounts and his substantial, current credit-card balances indicate that he does not have his finances under control.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.y:	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.

Stephanie C. Hess
Administrative Judge