



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



In the matter of:)
)
) ISCR Case No. 15-01534
)
)
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 14, 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 8, 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 4. Applicant testified and submitted Applicant Exhibits (Ax) A through F. The record of the proceeding was left open until March 8, 2016, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted documents that have been marked as Ax G through K. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 2, 2016.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has been working for his current employer since June 2012. He graduated from high school in 1979 and attended college without earning a degree. He served on active duty in the U.S. Navy for 20 years and retired honorably in the grade of petty officer first class (E-6) in 2000. He has been married five times. He married his current wife in March 2010. He has two children, ages 22 and 32. He was granted a security clearance in 1980.¹

The SOR alleged that Applicant had 20 delinquent debts totaling \$51,977 (SOR ¶¶ 1.a-1.g, 1.i-1.u); that he filed Chapter 13 bankruptcy in 2007, which was dismissed in 2008 (SOR ¶ 1.h); that he failed to file his 2008 federal income tax return as required (SOR ¶ 1.v); that he failed to file his 2009 state income tax return as required (SOR ¶ 1.w); and that he failed to pay his state income taxes for 2009 (SOR ¶ 1.x). In his Answer to the SOR (Ans.) Applicant admitted each allegation with explanations. His admissions are incorporated as findings of fact.²

Applicant attributed his financial problems to periods of unemployment, medical problems, and a divorce. He was unemployed from September 2009 to December 2009 and from September 2010 to October 2010. After a short period of employment at a home improvement store, he was unemployed again in December 2010 when he fell down the stairs at his home and broke his back. He was not eligible for workers' or unemployment compensation because his injuries were incurred at home while he was in a probationary period at work. He underwent physical therapy and remained in recovery until he started his current job in June 2012. He first worked for his current employer on a sporadic basis and became a full-time employee at the end of 2013. Since then, he has moved to two different states for a new position and a promotion.³

In early 2006, Applicant and his wife purchased a home for \$546,000 before the housing-market collapse. Their monthly mortgage payments were \$2,851. At that time,

¹ Tr. 44-45, 50-51; Gx 1.

² Ans.

³ Tr. 24-44, 49-53, 58-61; Gx 1; Ans.

his annual salary was about \$85,000. His wife worked at a credit union and earned about \$40,000 annually. However, she quit her job about three months after they purchased the home. He did not know why she quit her job. She did not pursue further employment. With the loss of her income, he struggled to make the mortgage payments. In 2007, they tried to sell the home, but were unsuccessful. The value of the home had dropped drastically. They also tried unsuccessfully to refinance the home. He filed Chapter 13 bankruptcy in an attempt to force the restructuring of the loan. During the bankruptcy, he realized that he would not be able to save the home even if the loan was restructured. He concluded the best course of action was to have the bankruptcy dismissed and home foreclosed. By doing so, he believed the foreclosure would be on his credit report, but the bankruptcy would not be listed. He thought having only the foreclosure on his credit report would be more advantageous to him. The home was foreclosed. The mortgage loan no longer appears on his credit reports and is not alleged in the SOR. Ironically, the bankruptcy is still reported on his credit reports.⁴

Applicant stopped making his mortgage payments around November 2008. He and his wife vacated the property in February 2009. At that point, they rented an apartment for about \$850 per month. Two months later, his wife left him. They filed for divorce in September 2009. He went through an acrimonious divorce. Upon filing the divorce, he was required to pay \$3,242 per month as temporary spousal support. At that time, he was also paying \$804 per month in child support. To minimize expenses, he moved to another apartment that rented for about \$600 per month. He indicated that his wife was responsible for some debts, but failed to pay them. Her creditors brought collection actions against him. In April 2010, their divorce was granted. He was required to continue paying spousal support. He moved to another state for a federal job opportunity, but that position was eliminated due to budgetary constraints. He then obtained a job at a home improvement store and shortly thereafter broke his back in the accident. In May 2011, the state court terminated the spousal support obligation. He testified that it has taken him a while for his financial situation to stabilize so the he could begin resolving his delinquent debts.⁵

The following table sets forth the status of the alleged debts.

SOR ¶	Amount	Comments & Status	Evidence
1.a	\$6,630	Mobile trailer loan with a date of last activity of December 2009. Applicant claimed he owed \$4,200 on the trailer when it was voluntarily repossessed during his divorce. He assumed it was then resold and was not informed of a loan deficiency. Upon learning of the negative credit report entry, he contacted the creditor in	Tr. 63-68; Gx, 2, 4; Ax A.

⁴ Tr. 28-44; Gx 1-4; Ax A; Ans. Applicant indicated that he participated in a legal action against the mortgage company that alleged predatory lending. See Tr. 38, Ans.

⁵ Tr. 24, 40-53, 59; Ans. Prior to November 2008, Applicant indicated that he was making partial mortgage payment. He indicated that he was paying as much as he could afford on the mortgage.

		an attempt to obtain information about whether the trailer was resold and, if so, for what amount. The creditor failed to respond to his requests for information and indicated they have no paperwork on the debt. He has disputed this debt.	
1.b	\$4,503	Vehicle loan with a date of last activity of December 2010. This vehicle was voluntarily repossessed after Applicant broke his back and could not afford the payments. In about 2012, he contacted the creditor and was told the debt was charged off. It no longer appears on his most recent credit reports.	Tr. 68-69, 71-72; Gx 2-5; Ax A; Ans.
1.c	\$1,131	Medical debt with a date of last activity of October 2013. Applicant believed he set up a repayment plan for this debt, but later realized his automatic debit request was not processed. In his post-hearing submission, he provided a bank statement indicating it contained a payment towards this debt, but an examination of that payment reflected it went toward a non-alleged debt.	Tr. 73-75; Gx 3; Ax A, H-I; Ans.
1.d	\$926	Medical debt with a date of last activity of October 2013. Applicant established a settlement agreement for this debt and provided a bank statement showing it was paid in October 2015.	Tr. 75-76; Gx 3; Ans.
1.e	\$314	Utility debt with a date of last activity of November 2011. Applicant provided a bank statement showing it was paid in October 2015.	Tr. 76; Gx 2, 3; Ax A; Ans.
1.f	\$262	Communications service debt with a date last activity of March 2014. Applicant provided a bank statement showing it was paid in October 2015.	Tr. 76; Gx 3; Ans.
1.g	\$51	Medical debt with a date of last activity of October 2013. Applicant provided a bank statement showing it was paid in October 2015.	Tr. 76; Gx 3; Ans.
1.i	\$29,651	Vehicle loan with a date of last activity of October 2007. This vehicle was voluntarily repossessed during Applicant's bankruptcy. He claimed that he owed less on the vehicle than its fair market value and pointed out that it no longer appears on his most recent credit reports. He also testified that he contacted the creditor about this debt and was informed that he did not owe anything further.	Tr. 67, 69-71, 76-77; Gx 2-5; Ax A; Ans.

1.j	\$172	Communications service debt with a date of last activity of February 2011. Applicant provided a bank statement showing it was paid in September 2015.	Tr. 77 ; Gx 2; Ans.
1.k	\$1,147	Credit card debt with a date of last activity of September 2011. Applicant contacted the creditor and was advised he did not owe anything on this debt. It no longer appears on his most recent credit reports. He also provided proof the same company later issued him another credit card.	Tr. 77-78; Gx 2; Ans.
1.l	\$98	Medical debt with a date of last activity of April 2013. Applicant called the creditor and was advised this debt was removed from their system in 2013 and he did not owe anything further.	Tr. 79, 80-81; Gx 2.
1.m	\$196	Debt to a city with a date of last activity of March 2010. Applicant believed he set up a repayment plan for this debt, but later realized the automatic debit request was not processed. In his post-hearing submission, he provided a bank statement showing it was paid in February 2016.	Tr. 79-80; Gx 2; Ax A, H-I; Ans.
1.n	\$508	Utility debt with a date of last activity of February 2011. He testified he paid this bill. As proof, he provided a bill showing that the utility company later issued him a new account.	Tr. 79, 81-82; Gx 2; Ans.
1.o	\$60	Medical debt with a date of last activity of January 2012. Applicant established a settlement agreement for this debt and provided a bank statement showing it was paid in October 2015.	Tr. 75-76, 79; Gx 2; Ax A; Ans.
1.p	\$66	Medical debt with a date of last activity of March 2012. Applicant provided a bank statement showing it was paid in October 2015.	Tr. 79; Gx 2; Ans.
1.q	\$137	Medical debt with a date of last activity of April 2012. Applicant provided a bank statement showing it was paid in October 2015.	Tr. 79; Gx 2; Ans.
1.r	\$96	Insurance debt with a date of last activity of May 2012. Applicant testified that he contacted the creditor and paid this bill. It is not reflected on his most recent credit reports.	Tr. 82-83; Gx 2; Ans.
1.s	\$773	Cable TV debt with a date of last activity of April 2013. Applicant testified he returned the cable box contrary to the creditor's claim. He disputed this debt. It is not reflected on his most recent credit reports.	Tr. 83-84; Gx 2; Ans.

1.t	\$166	Medical debt assigned for collection in February 2013. Applicant claimed he contacted the creditor and was informed they no longer had a record of this debt. It is not reflected on his most recent credit reports.	Tr. 84-85; Gx 2; Ans.
1.u	\$5,090	This is a duplicate of the debt alleged in SOR ¶ 1.a	Tr. 63-68; Gx 2, 4; Ax A.

Due to his pending separation and divorce, Applicant failed to file his 2008 federal income tax return and 2009 state income tax return in a timely manner. He provided proof that he filed those delinquent income tax returns when he began working again. He testified that he does not owe the Federal Government any past-due taxes. He initially owed the state about \$18,000 in past-due taxes. In 2013, he entered into a repayment plan with the state and began making regular monthly payments of about \$105. He recently increased his monthly payments to \$150. At the time of the hearing, the balance of his past-due state income taxes had been reduced to about \$3,961. He testified that he has timely filed his federal and state income tax returns since 2009.⁶

Applicant's current financial situation is stable. His annual salary is \$118,000. His annual military retirement pay is \$16,000. His current wife does not work, but she receives \$1,214 per month in disability pay. Their combined annual income is about \$150,000. He testified that he has not incurred any new delinquent debts in the last two years.⁷

Applicant presented a reference letter from a senior vice president that described him as an extremely valuable employee because of his commitment, honesty, trustworthiness, and hardworking nature.⁸

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

⁶ Tr. 90-91; Gx 1; Ax C-F, J, K.

⁷ Tr. 59-62, 85-90.

⁸ Ax B.

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 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required

Applicant accumulated delinquent debts that he was unable or unwilling to pay for an extended period. He failed to file his 2008 federal income tax return and 2009 state income tax return as required. AG ¶¶ 19(a), 19(c), and 19(g) apply.

Five 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;

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

(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.

Applicant encountered conditions beyond his control that contributed to his financial problems. Most significantly, he was unemployed for about 18 months after he broke his back in late 2010. After returning to work, he filed his 2008 federal income tax return and 2009 state income tax return and began a repayment plan for his past-due state income taxes. He has consistently made payments under that repayment plan for a number of years and reduced his past-due state income taxes from about \$18,000 to \$4,000. He also paid 11 of the other delinquent debts, although most of those were paid after issuance of the SOR. He contacted five creditors and was advised that he did not owe anything further on those debts. They no longer appear on his credit report. He disputed two debts; one no longer appears on his credit report. One of the alleged debts is a duplicate of another. He claimed he made a payment on one debt, but the evidence does not support that claim. In general, he has shown that he is committed to resolving his delinquent debts. He is now financially stable. His financial problems are under control, are being resolved and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) through 20(e) apply in varying degrees.

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 that guideline, but some warrant additional comment. I considered all of the record evidence, including Applicant's military service and his work history. From the evidence presented, he has shown that he is committed to resolving his delinquent debts.

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 concern 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
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Subparagraphs 1.a-1.x:	For Applicant
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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