



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-03653
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 11, 2012. On November 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on December 5, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February

17, 2016, and the case was assigned to me on March 22, 2016. On March 24, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 18, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. DOHA received the transcript (Tr.) on April 27, 2016.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations, but stated that all the delinquent debts had been resolved or were being resolved. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old security engineer employed by a defense contractor since February 2011. He has worked for defense contractors since August 2003, with a period of unemployment from March to August 2004. He was fired in April 2009 for absenteeism due to personal issues, but he immediately found another job with a defense contractor.

Applicant served on active duty in the U.S. Navy from January 1997 to July 2003, and he was honorably discharged. He attended a technical institute from September 2003 to June 2006 and received an associate's degree. He received a security clearance in September 1997.

Applicant married in April 2006, separated in October 2007, and was divorced in September 2009. His nine-year-old daughter was born during this marriage. The primary reason for the divorce was his inability to support his family. He was unable to manage his finances and was too generous with his friends. (Tr. 43; GX 5 at 2.) He has resided with a domestic partner since August 2010. (GX 5 at 1.)

Applicant disclosed numerous delinquent debts in his SCA, and he stated that he was working with a debt-consolidation agency to resolve his debts. His financial problems began in 2009, and he attributed them to helping out a financially irresponsible friend, his divorce, and his child-support obligation. (GX 1 at 61.)

After Applicant's wife moved out of the marital home in October 2007, he allowed a friend to live with him for about a year. While Applicant's friend lived with him, he paid his friend's car payments, medical bills, living expenses, and the rent for the home they both occupied. (Tr. 41; GX 5 at 1-2.)

After Applicant's divorce, he was required to pay \$1,143 per month in child support. In September 2012, at his ex-wife's suggestion, the child support was reduced to the current rate of \$823 per month. (Tr. 42; GX 5 at 2.)

The delinquent debts alleged in the SOR are reflected in Applicant's credit bureau reports (CBRs) from October 2012, March 2015, and October 2015. (GX 2-4.) The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a-1.c: delinquent student loans charged off for \$4,341; \$7,364; and \$10,896. Applicant borrowed about \$50,000 while in school. (Tr. 45.) He stopped making payments on his student loans in October 2009, while he was supporting his friend. (Tr. 45.) His answer to the SOR included an account statement reflecting payments of interest only from September 2009 to May 2015, with a balance due of \$26,141. In May 2015, he began making payments of \$124 per month, and in March 2016 he increased his payments to \$200 per month. (AX A; Tr. 46.)

SOR ¶ 1.d: deficiency after vehicle repossession, charged off for \$10,994. This debt was resolved in April 2013. (AX B.)

SOR ¶ 1.e: credit-card account charged off for \$1,383 in December 2008. Applicant testified that he resolved this debt through his debt-consolidation plan. His March 2015 CBR reflects a zero balance on this account. (GX 3 at 2; Tr. 47;

SOR ¶¶ 1.f-1.g: judgments for unpaid rent filed in March 2010 for \$1,152 and in April 2010 for \$1,375. The March 2010 judgment was satisfied in April 2010, and the April 2010 judgment was satisfied in September 2013. (Answer to SOR; AX C; Tr. 48.)

SOR ¶ 1.h: judgment filed in April 2011 for \$3,472. This judgment was satisfied in February 2015. (Answer to SOR; AX D.)

SOR ¶ 1.i: credit-card account placed for collection of \$5,774. Applicant's answer to the SOR included documentation of monthly payments from December 2014 through March 2015 and a balance of \$4,600 as of December 2015. The balance was paid in two installments in February and March 2016. (AX E.)

SOR ¶ 1.j: credit-card account placed for collection of \$941 in February 2009. In a personal subject interview (PSI) in January 2013, Applicant told the investigator that this debt was included in his debt-consolidation plan. (GX 5 at 4.) It was paid in full in January 2015. Applicant's documentation reflects a different creditor but the last four digits of the account number are the same. (AX F.)

In his January 2013 PSI, Applicant told an investigator that his debts were being resolved by a debt-consolidation agency, to which he was paying \$607 per month. He believed that he had a better grasp of his financial situation and was staying on budget. He told the investigator that he had never considered using a credit-counseling service, but would look into using one. (GX 5 at 6.) Applicant canceled his contract with the debt-consolidation agency about a week after the PSI. In his answer to the SOR and at the hearing, he stated that the investigator told him she had found some "negative reviews" of the debt-consolidation agency and suggested using a credit-counseling service

instead. He testified that, based on the investigator's comments, he terminated his contract with the debt-consolidation agency and contacted his creditors directly. (Tr. 50.)

Applicant currently earns about \$73,000 per year. (Tr. 44.) At the time of the hearing, he had about \$700 in two checking accounts and about \$18,000 in his retirement account. He recently qualified for a home mortgage loan, paid off a car loan, and purchased another vehicle. He testified that all his delinquent debts have been resolved and he had encountered no financial difficulties during the past year. He and his partner live frugally and pool their incomes. He used federal income tax refunds and bonuses to help pay off his debts. (Tr. 51-54.) His most recent CBR from April 2016 reflects that his financial situation is under control. (AX N.)

Applicant's performance appraisals for fiscal year (FY) 2012 and 2013 reflected that he achieved expectations. (AX L and M.) For FY 2013, he significantly exceeded expectations. (AX J and K.) For FY 2014 and 2015, he exceeded expectations. (AX H and I.)

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, his testimony at the hearing, and the documentary evidence submitted at and after the hearing raise 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 were numerous, recent, and were not incurred under circumstances making them unlikely to recur

AG ¶ 20(b) is partially established. Applicant's marital breakup was a circumstance beyond his control. His misguided kindness toward an irresponsible friend was not a circumstance beyond his control. He neglected his debts, except for satisfying the judgment in SOR ¶ 1.g in April 2010. He failed to take any significant action to resolve his remaining debts until he submitted his SCA in October 2012. However, after disclosing his debts in his SCA and being confronted with them during the PSI, he began taking significant actions to resolve his financial problems.

AG ¶ 20(c) is established. Applicant engaged a debt-consolidation agency and began making regular payments on several debts. His satisfactory resolution of all the debts alleged in the SOR provides "clear evidence" that his financial problems are under control.

AG ¶ 20(d) is partially established. Applicant's actions to resolve his debts did not begin until he disclosed them in his SCA and was confronted with them in his PSI. His failure to act until his security clearance was in jeopardy diminishes the mitigating effect of his actions. The requirement of this mitigating condition for "good faith" is not satisfied by payment of debts motivated primarily by the need to protect a security clearance. On the other hand, Applicant heeded the "wake-up call" provided by his SCA and the follow-up PSI, and he has resolved all his delinquent debts. More importantly, he has

changed his behavior and has started to exercise financial discipline. He did not wait until his hearing was imminent. Instead, he resolved the debt in judgment in SOR ¶ 1.f in April 2010, long before he submitted his SCA. He resolved the debt in SOR ¶ 1.d in April 2013, resolved the judgment in SOR ¶ 1.g in September 2013, resolved the judgment in SOR ¶ 1.h in February 2015, and began making regular payments on his student loans in May 2015. His management of his financial affairs is no longer a security concern.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges that Applicant terminated his contract with a debt-consolidation agency one week after telling a security investigator that he was successfully gaining control of his financial situation. Because it does not allege that Applicant's statements to the investigator were false, it is unclear whether SOR ¶ 2.a was intended to allege falsification during the PSI or to allege bad judgment by terminating his contract with the debt-resolution agency.

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 16(b): deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . .

Neither of the above disqualifying conditions is established. Applicant credibly testified that the security investigator expressed misgivings about the reputation of his debt-consolidation agency and suggested credit counseling instead. Applicant took the

investigator's misgivings seriously, terminated his contract with the debt-consolidation agency, and resolved his debts by working directly with his creditors.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant was sincere, candid, and credible at the hearing. He served honorably in the U.S. Navy, and he has held a security clearance for almost 20 years. He heeded the “wake-up call” triggered by his need to revalidate his clearance, and he has overcome his irresponsible financial habits. His performance appraisals reflect that he is a talented and respected employee.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his delinquent debts and personal conduct. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his 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): **FOR APPLICANT**

Subparagraphs 1.a-1.i: For Applicant

Paragraph 2, Guideline E (Personal Conduct):

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge